BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
FIRST COMMUNICATIONS LLC, and ) DOCKET NO. 2007-0194
GORES FC HOLDINGS, LLC )
For Approval of Transfer of Control)

DECISION AND ORDER NO. 23684

Filed Sept. 27, 2007
At 11 o'clock A M.

Karen Higash
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
FIRST COMMUNICATIONS LLC, and ) Docket No. 2007-0194
GORES FC HOLDINGS, LLC )
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DECISION AND ORDER

By this Decision and Order, the commission waives the
requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and
269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101
and 6-61-105, to the extent applicable, with respect to
FIRST COMMUNICATIONS, LLC ("FCL")¹ and GORES FC HOLDINGS, LLC’s
(“Gores FC”) (collectively, “Applicants”) request to approve
the indirect transfer of control of FCL that will result from
Gores FC obtaining de facto control of FCL’s parent company,
First Communications, Inc. ("FCI"),² by obtaining a right
to appoint a majority of FCI’s board of directors
("Proposed Transaction").

¹By Decision and Order No. 23499, filed on June 20, 2007, in
Docket No. 2006-0471, FCL was granted a certificate of authority
to provide resold local exchange and interexchange
telecommunications services in the State of Hawaii.

²FCI is the parent company of FCL and Lightyear Network
Solutions ("Lightyear"). Lightyear is authorized by the
commission to provide resold and facilities-based
telecommunications services in the State, pursuant to
Decision and Order No. 20820, filed on February 26, 2004, in
Docket No. 03-0413.
I.

Background

A.

Application

On July 17, 2007, Applicants filed an application for commission approval of the Proposed Transaction, pursuant to HRS § 269-19 (“Application”). According to Applicants, they seek approval to consummate a transaction whereby Gores FC will obtain the right to appoint a majority of FCI’s board of directors. They also inform the commission that Gores FC will obtain an additional 3.2 percent interest in FCI by converting non-voting shares of common stock to voting shares, which will increase its voting interest in FCI to 35.6 percent.

Applicants state that Gores FC is financially and managerially qualified to take de facto control of FCI, and that the Proposed Transaction will improve FCI’s business operations. Because the transaction is at the holding company level, Applicants assert that the transaction will be entirely transparent to FCL’s customers and that it will not result in any change to FCL’s day-to-day operations or to its rates, terms, or conditions of service.

Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (“Consumer Advocate”), an ex officio party to this proceeding.
B.

Consumer Advocate's Statement of Position

On September 6, 2007, the Consumer Advocate filed its statement of position in which it states that it does not object to 1) waiver of the commission's investigatory authority to review the Proposed Transaction, 2) waiver of the commission's approval requirements, or 3) commission approval of the Proposed Transaction.

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, that FCL (and Lightyear) are non-dominant carriers in the State. We also find that the Proposed Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS §§ 269-7(a) and 269-19 should be waived, to the extent

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The Consumer Advocate argued in its Statement of Position that HRS § 269-19 was not applicable to the Proposed Transaction.
applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135. Similarly, based on these findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Application fails to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Application filed on July 17, 2007.

2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

As the commission has found that a waiver is appropriate, it need not determine the applicability of HRS § 269-19.

The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) or 269-19 should be waived. Thus, our waiver in this instance should not be construed by any public utility, including Applicant, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.
DONE at Honolulu, Hawaii SEP 27 2007

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso, Chairman

By John E. Cole, Commissioner

By Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Commission Counsel

2007-0194
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23684 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: SEP 27 2007

Karen Higashi