

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
DELTACOM, INC. and BUSINESS)
TELECOM, INC.)
For Approval of Guarantee)
of Indebtedness)

DOCKET NO. 2007-0161

DECISION AND ORDER NO. 23755

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Oct. 23, 2007
At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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In the Matter of the Application of)
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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), 269-17, and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to the request by DeltaCom, Inc. ("DeltaCom") and Business Telecom, Inc. ("BTI") (collectively, "Applicants") to participate in certain financing arrangements as requested in their June 19, 2007 filing ("Application").¹

¹Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to all proceedings before the commission pursuant to HRS § 269-51 and Hawaii Administrative Rules § 6-61-62. No persons moved to intervene or participate in this docket.

I.

Background

A.

Description of Subject Entities

ITC^DeltaCom, Inc. ("ITCD") is a publicly-traded Delaware holding company with headquarters in Alabama.² It is the ultimate parent of DeltaCom, BTI, and Interstate FiberNet, Inc. ("IFN").³ IFN is a wholly-owned subsidiary of ITCD.⁴

DeltaCom is a wholly-owned subsidiary of IFN.⁵ It was incorporated in Alabama and is a provider of interexchange telecommunications services and competitive local exchange telecommunications services.⁶ It obtained its authority to provide long distance and intrastate telecommunications services on a resold basis in the State of Hawaii ("State") in Decision and Order No. 16931, filed on April 6, 1999, in Docket No. 98-0408.⁷

BTI is a wholly-owned subsidiary of ITCD, and incorporated in North Carolina.⁸ It provides integrated telecommunications services, primarily in the southeastern United

²See Application at 2.

³See Application at 2.

⁴See Application at 2.

⁵See Application at 2.

⁶See Application at 2.

⁷See Consumer Advocate's Statement of Position ("Statement of Position") at n.2.

⁸See Application at 2.

States.⁹ It was authorized to operate as a reseller of intrastate interexchange telecommunications services in Hawaii by Decision and Order No. 16358, filed June 2, 1998, in Docket No. 98-0143.¹⁰

Tennenbaum Capital Partners, LLC ("TCP") is an investment firm with over \$3.5 billion in capital under its management.¹¹ Credit Suisse Group is a global financial services company which operates in all aspects of finance.¹²

B.

Application

On June 19, 2007, Applicants filed an application seeking commission approval to participate in certain financing arrangements wherein DeltaCom and BTI would act as guarantees of a transaction between ITCD, TCP, and Credit Suisse Group.¹³

The proposed transaction consists of a senior secured first lien credit facility in an aggregate principal amount of up to \$240,000,000 ("First Lien Senior Facility") and a senior secured second lien term loan facility in an aggregate principal amount of up to \$75,000,000 ("Second Lien Term Facility") (collectively "Facilities") for ITCD to deleverage its balance

⁹See Application at 2.

¹⁰See Statement of Position at n.3.

¹¹See Application at 3.

¹²See Application at 3.

¹³See Application at 4.

sheet and enhance its liquidity profile.¹⁴ IFN will serve as primary obligor of the Facilities; DeltaCom and BTI will guarantee the Facilities ("Proposed Financial Transactions").¹⁵

Applicants represent that "[t]here will be no change in control of ITCD, IFN, or the Applicants [] as a result of the Facilities; this Application seeks approval only for DeltaCom and BTI to guarantee the Facilities."¹⁶

Applicants submit that the Proposed Financial Transactions "will serve the public interest by ensuring that operational needs are funded and that the companies have sufficient liquidity. The proposed transaction will thus serve the public interest by enabling ITCD and its subsidiaries to continue to provide telecommunications services at competitive rates in this State."¹⁷ According to Applicants, the companies will provide innovative, high-quality telecommunications services and promote competition.¹⁸

C.

Consumer Advocate's Statement of Position

On September 7, 2007, the Consumer Advocate filed its Statement of Position informing the commission that it recommends

¹⁴See Application at 1.

¹⁵See Application at 1.

¹⁶See Application at 1-2.

¹⁷See Application at 5.

¹⁸See Application at 5.

that the commission waive its approval authority, or in the alternative, it does not object to the commission's approval of the Application.¹⁹

Significantly, the Consumer Advocate states that Applicants are non-dominant resellers of telecommunication services among many who are authorized to provide service in the State; DeltaCom and BTI reported revenues of \$376 and \$11, respectively for 2006; and "competition should continue to serve the same purpose as public regulation even if the requested financing arrangement is executed and there is a default on the loan" since their customers will be able to obtain services from other providers in the State.²⁰

The Consumer Advocate recommends that the commission waive the requirements of HRS §§ 269-7(a), 269-17, and 269-19 pursuant to HRS § 269-16.9 and HAR § 6-80-135.²¹ In the alternative, the commission may approve the Proposed Financial Transactions.²²

II.

Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and

¹⁹See Statement of Position at 1.

²⁰See Statement of Position at 5-6.

²¹See Statement of Position at 4-7.

²²See Statement of Position at 7-8.

"all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under this section, the commission will approve the Proposed Financial Transactions if they are reasonable and consistent with the public interest.²³

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. Furthermore, pursuant to HRS § 269-17, "[a]ll stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void."

HRS § 269-19 requires a public utility corporation to obtain the commission's consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance,

²³See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,²⁴ the commission finds and concludes that the Proposed Financial Transactions fall under the purview of HRS §§ 269-7(a), 269-17 and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 permits 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 (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by Applicants are fully competitive, and that Applicants are non-dominant carriers in Hawaii. The commission also finds that the Proposed Financial Transactions are 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), 269-17, and 269-19, to the extent applicable, should be waived with regards to the matters

²⁴The commission takes official notice of all commission records relating to Applicants, pursuant to HAR § 6-61-48.

in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.²⁵ Similarly, based on the findings and conclusions stated above, the commission should also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Applicants fail to meet any of these filing requirements.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transactions described in the Application filed on June 19, 2007, pursuant to HRS § 269-16.9 and HAR § 6-80-135.

2. To the extent that the Application does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR §§ 6-61-101 and 6-61-105, are waived.


3. This docket is closed unless otherwise ordered by the commission.

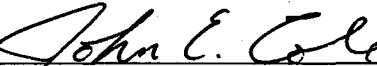
²⁵See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a), 269-17, and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 is based on our review of the instant Application only. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

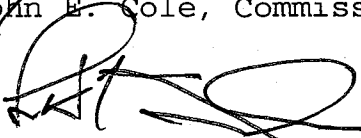
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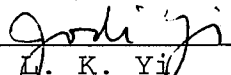
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

2007-0161.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23755 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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Karen Higashi

DATED: OCT 23 2007