

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
PRIMUS TELECOMMUNICATIONS, INC.)
Regarding a Transaction in)
Connection with the Planned)
Consensual Financial)
Restructuring of Primus)
Telecommunications Group,)
Incorporated.)
_____)

DOCKET NO. 2009-0144

DECISION AND ORDER

PUBLIC UTILITIES
COMMISSION

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FILED

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PRIMUS TELECOMMUNICATIONS, INC.))	Docket No. 2009-0144
Regarding a Transaction in))	
Connection with the Planned))	
Consensual Financial))	
Restructuring of Primus))	
Telecommunications Group,))	
Incorporated.))	
_____))	

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 the planned consensual financial restructuring ("Restructuring") under Chapter 11 of the Bankruptcy Code of PRIMUS TELECOMMUNICATIONS, INC.'s ("Petitioner") ultimate corporate parent, Primus Telecommunications Group, Incorporated ("PTGI"), whereby current ownership and control of PTGI will be extinguished and certain note holders will exchange their debt for equity in the restructured PTGI, thus indirectly transferring control of Petitioner ("Proposed Transaction").

I.

Background

A.

Petition

On June 23, 2009, Petitioner¹ filed notice of and, if deemed applicable by the commission, a request for review and approval of the Proposed Transaction ("Petition").² According to Petitioner, the United States Bankruptcy Court for the District of Delaware confirmed a Plan of Reorganization ("Plan") under which approximately \$315 million, or over 50%, of the outstanding principal debt obligation of PTGI and its affiliated non-operating holding companies, including Petitioner, will be reduced. Petitioner states that the restructuring under the Plan, will materially improve the capital structure and liquidity of PTGI in order to ensure that its operating subsidiaries, including Petitioner, will have access to sufficient financial resources needed to meet their working capital, debt service and capital expenditure needs. Among other things, the Plan provides that: (1) the common stock now held by the equity holders of PTGI will be extinguished as of the effective date of the Plan; and (2) certain note holders will receive new common stock of the reorganized PTGI in exchange for releasing their claims.

¹Petitioner is a Delaware corporation headquartered in McLean, Virginia, and is authorized to provide interexchange telecommunications services in Hawaii. See In re Primus Telecommunications, Inc. and Telegroup, Inc., Docket No. 99-0189, Decision and Order No. 17664, filed on April 11, 2000.

²Petitioner served copies of the Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding.

According to Petitioner, the Proposed Transaction is reasonable and in the public interest. Petitioner states that the Proposed Transaction will serve the public interest in that: "(1) the Restructuring will enhance the financial strength of PTGI and therefore [Petitioner] and (2) the Restructuring will benefit competition in the Hawaii telecommunications market by ensuring that [Petitioner] remains a viable competitor."³ In addition, Petitioner represents that the Proposed Transaction will not result in any transfer of its operating authority, change its managerial or technical capabilities to provide services, or change its day-to-day operations. Petitioner also states that end-user customers will continue to receive services at the same rates, terms, and conditions as prior to the transaction. As such, the Proposed Transaction, according to Petitioner, will be transparent and have no impact upon customers in Hawaii.

B.

Consumer Advocate's Statement of Position

On June 30, 2009, the Consumer Advocate submitted its Statement of Position, informing the commission that it will not be participating in this proceeding.⁴

³See Petition at 4-5.

⁴The Consumer Advocate notes in its statement that its lack of participation in this docket should not be construed as either accepting, supporting, or adopting any of the positions proposed, justifications offered, or requested relief articulated in the Petition.

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, the commission finds, at this time, that Petitioner is a non-dominant carrier in Hawaii. The commission also finds 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 applicable, with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁵ Similarly, based on these findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Petition fails to meet any of these filing requirements.

⁵The 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.

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 Petition filed on June 23, 2009.

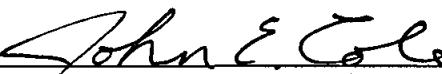
2. The filing requirements of HAR §§ 6-61-101 and 6-61-105, to the extent applicable, are also waived.

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

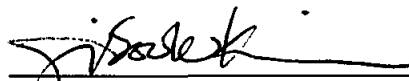
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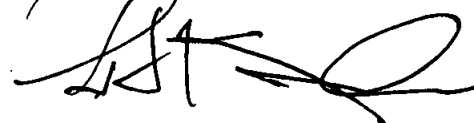
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


J. Sook Kim
Commission Counsel


By
Leslie H. Kondo, Commissioner

2009-0144.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

DEAN NISHINA
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

CATHERINE WANG
DANIELLE BURT
KATIE B. BESHA
BINGHAM MCCUTCHEN LLLP
2020 K Street, N.W.
Washington, DC 20006

Counsel for PRIMUS TELECOMMUNICATIONS, INC.