

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 PUBLIC UTILITIES COMMISSION)
)
 Instituting a Proceeding on)
 Communications, Including an)
 Investigation of the)
 Communications Infrastructure)
 of the State of Hawaii.)
 _____)

DOCKET NO. 7702

RECEIVED

2002 JUN -7 P 3:42

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

ORDER NO. 19406

Filed June 7, 2002
At 10:00 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION) Docket No. 7702
)
Instituting a Proceeding on) Order No. 19406
Communications, Including an)
Investigation of the)
Communications Infrastructure)
of the State of Hawaii.)
-----)

ORDER

I.

On July 24, 2001, AT&T COMMUNICATIONS OF HAWAII, INC. (AT&T) filed a motion to initiate a generic proceeding to establish permanent intrastate access rates in this docket or, in the alternative, to conduct such a proceeding in a separate docket (Motion). AT&T filed the Motion pursuant to Order No. 14129 (filed on August 14, 1995) and Hawaii Administrative Rules (HAR) § 6-61-41, and served it on every Docket No. 7702 party.

On July 31, 2001, VERIZON HAWAII INC. (Verizon Hawaii) timely filed a memorandum in opposition to the Motion (Opposition). No additional memorandum in opposition to or support of the Motion was filed.

On August 9, 2001, AT&T filed a reply to the Opposition (Reply). On August 21, 2001, Verizon Hawaii filed a motion to strike the Reply or, in the alternative, leave to file a response

to the Reply (Motion to Strike) and attached its response to the Reply (Response).

II.

In considering Verizon Hawaii's Motion to Strike, we recognize that in the past, due to various circumstances unique to this docket, the commission, on a case-by-case basis, afforded various parties to this docket some procedural leeway. Considering the submission of the Response, among other things, we do not find it unreasonable or unfair to consider AT&T's Reply in our deliberations. In the future, the commission will expect the parties to adhere to our procedural rules. Thus, the commission will allow the submission of AT&T's Reply and treat Verizon Hawaii's Motion to Strike as a request for leave to file the Response.

Based on the above, the commission concludes that Verizon Hawaii's request for leave to file the Response, filed on August 21, 2001, should be granted.

III.

A.

In its Motion, AT&T states that the commission, in Order No. 14129, approved the present access tariff on an interim basis until a permanent tariff is adopted. Citing the completion of phases II and III and the establishment of forward-looking cost-based rates for certain unbundled network elements (UNEs) in this docket, among other things, AT&T contends that it is now

appropriate to initiate procedures to replace the present interim access rates, based on the traditional embedded cost ratemaking process, with permanent intrastate access rates, formulated on the commission's total service long-run incremental cost (TSLRIC) methodology (permanent intrastate access rates). Moreover, AT&T requests that the present rates be retained, subject to "true-up", until permanent intrastate access rates are determined.

As advanced in its Motion and furthered in its Reply, AT&T bases its position on two main arguments. First, AT&T asserts that "any delay" in initiating the proceeding to establish permanent intrastate access rates may provide Verizon Hawaii with an incentive to "price squeeze" competitors in the intrastate toll market. Second, it contends that switch access service is comprised of functionalities similar to those for which forward-looking cost-based rates have been established, suggesting that the same cost methodology should be utilized for the pricing of access services.

B.

In opposition to AT&T's Motion, Verizon Hawaii contends that since intrastate access rates are based on rate of return regulation, any modification to the access rates cannot occur in a vacuum. It states that the access rates permit Verizon Hawaii to recover its actual cost and generate a contribution that supports its provision of basic services. Thus, Verizon Hawaii

reasons that, at a minimum, any reduction in access rates must correspond to a dollar-for-dollar increase in other rates.

Additionally, Verizon Hawaii counters that, contrary to AT&T's claim, it does not have the ability to "price squeeze" its competitors. Verizon Hawaii claims that its share of the intraLATA toll market has decreased since 1996 and that competitors are protected from market abuses through the commission's: (1) imputation requirements, and (2) regulatory oversight of the market.

Verizon Hawaii further states that access services and local interconnection should not be priced in the same manner since they are distinct services. Additionally, Verizon Hawaii contends that the use of total element long-run incremental cost (TELRIC), a pricing methodology synonymous with the TSLRIC,¹ to price UNES is not a settled matter and recommends that the commission await the United States Supreme Court's decision² with regards to the pricing of access rates in the same manner.³

¹See Decision and Order No. 16775, filed on January 7, 1999, at 14.

²The Supreme Court issued its decision on the Federal Communications Commission's (FCC's) use of TELRIC on May 13, 2002 (*Verizon Communications Inc. et al. v. FCC et al.*, Certiorari to the United States Court of Appeals for the Eighth Circuit, No. 00-511, Argued October 10, 2001).

³Among other things, Verizon Hawaii recommends that the commission open a new docket if we decide to grant AT&T's motion, and that no true-up should be allowed in the event that lower access rates are adopted since doing so would be contrary to the filed rate doctrine and retroactive ratemaking.

C.

Upon review and careful consideration of all the arguments offered by AT&T and Verizon Hawaii, the commission concludes that AT&T's Motion should be denied. Essentially, we found AT&T's arguments to be unpersuasive.

First, AT&T's claim that "any delay" in initiating a procedure to establish permanent access rates may provide Verizon Hawaii with an incentive to "price squeeze" competitors in the intrastate toll market is unsupported by the record. For example, due to the erosion of Verizon Hawaii's share of the inter-island toll market (also known as, intraLATA toll market), among other things, upon Verizon Hawaii's petition, inter-island toll service was reclassified from a partially competitive service to a fully competitive one.⁴ Additionally, upon review, we find that the imputation rule provides competitors with adequate protection from market abuses. In Order No. 14734, filed on June 12, 1996, the commission rejected Verizon Hawaii's proposal to impute only the margin included in the price of a monopoly service reasoning that it would provide Verizon Hawaii with an unfair advantage. In that order, we required Verizon Hawaii to impute the full tariff rate. Furthermore, if such abuses were to occur, competitors may file a formal complaint with the commission, pursuant to HAR chapter 6-61, subchapter five.

⁴See Decision and Order No. 18933, filed on October 5, 2001, in Docket No. 01-0243.

Second, while the functionalities of switch access and those for interconnection appear to be similar, they are distinct services. For instance, access and interconnection services, as offered by Verizon Hawaii, are governed under different sections of the federal law and are considered by the FCC and the courts to be legally different types of telecommunications services.⁵ AT&T also concedes that access and interconnection services are legally different.⁶

The commission recognizes that permanent access rates will eventually need to be established. However, AT&T was unpersuasive in its claim that a procedure to establish permanent access rates is appropriate at this time. It appears that the other parties to this docket agree since no party in this proceeding joined or supported AT&T's Motion. While the commission has established forward-looking rates for certain UNES and has made headway with regards to the promotion of competition in Hawaii's telecommunications industry through phases II and III of this docket, there are certain open issues that have yet to be determined.⁷

Based on the above, the commission concludes that AT&T's Motion should be denied.

⁵Verizon Hawaii's Opposition at 13 and 14.

⁶AT&T's Reply at 5.

⁷Although we recognize the Supreme Court's recent decision on the FCC's use of TELRIC, our determination with regards to AT&T's Motion is not conditioned on this decision.

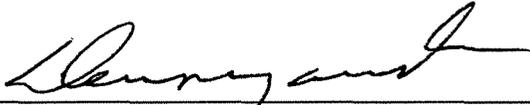
IV.

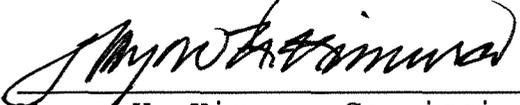
THE COMMISSION ORDERS:

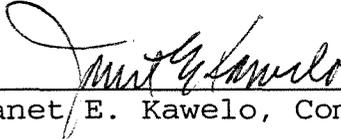
1. Verizon Hawaii's request for leave to file its Response, filed on August 21, 2001, is granted.
2. AT&T's Motion, filed on July 24, 2001, is denied.

DONE at Honolulu, Hawaii the 7th day of June, 2002.

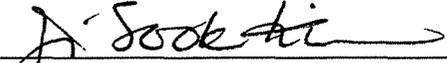
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Dennis R. Yamada, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

7702.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 19406 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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

ALAN M. OSHIMA, ESQ.
MICHAEL H. LAU, ESQ.
OSHIMA, CHUN, FONG & CHUNG
Davies Pacific Center, Suite 400
841 Bishop Street
Honolulu, HI 96813

TERRANCE SPANN, ESQ.
GENERAL ATTORNEY
OFFICE OF THE JUDGE ADVOCATE GENERAL
DEPARTMENT OF THE ARMY
Litigation Center
901 North Stuart Street, Room 400
Arlington, VA 22203-1837

JOEL K. MATSUNAGA
VICE PRESIDENT-EXTERNAL AFFAIRS
VERIZON HAWAII INC.
P. O. Box 2200, A-17
Honolulu, HI 96841

LESLIE ALAN UEOKA, ESQ.
VERIZON HAWAII INC.
P. O. Box 2200
Honolulu, HI 96841

(Certificate of Service - Continued)

LISA SUAN
GOVERNMENT AFFAIRS MANAGER
GST TELECOM HAWAII, INC.
737 Bishop Street, Suite 1900
Honolulu, HI 96813

EDWARD C. MURLEY
VICE PRESIDENT
REGULATORY AFFAIRS
OCEANIC COMMUNICATIONS
2669 Kilihau Street
Honolulu, HI 96819

J. DOUGLAS ING, ESQ.
BETH K. FUJIMOTO, ESQ.
WATANABE, ING & KAWASHIMA
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, HI 96813

STEPHEN H. KUKTA, ESQ.
SPRINT COMMUNICATIONS COMPANY, L.P.
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467



Catherine Sakato

DATED: June 7, 2002