

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
VERIZON HAWAII INC.) Docket No. 02-0039
For Approval to Lease Properties to) Decision and Order No. 19984
Verizon Select Services Inc.)

DECISION AND ORDER

I.

By application filed on February 21, 2002, VERIZON HAWAII INC. seeks *nunc pro tunc* (aka after-the-fact) approval of two leases with Verizon Select Services Inc. Verizon Hawaii Inc. makes its request in accordance with: (1) the commission's Decision and Order No. 18341, filed on January 29, 2001, in Docket No. 00-0338; and (2) Hawaii Revised Statutes (HRS) § 269-19.

A copy of the application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On March 27, 2002, Verizon Hawaii Inc. responded to the Consumer Advocate's information requests. On September 18, 2002, Verizon Hawaii Inc. submitted its pricing study, dated September 2002, in response to CA-IR-1(a).

Thereafter, by letter dated October 22, 2002, Verizon Hawaii Inc. informed the Consumer Advocate that: (1) Verizon Select Services Inc. did not lease any furniture or office equipment; and (2) based on the pricing study, Verizon Hawaii Inc. will assess the market rates for both

leasehold locations, "retroactive to the beginning of the lease term."

By position statement filed on December 10, 2002, the Consumer Advocate does not object to *nunc pro tunc* approval of the two leases, subject to certain recommendations. On January 14, 2003, Verizon Hawaii Inc. responded to the Consumer Advocate's recommendations.

II.

A.

Verizon Hawaii Inc. is a public utility and the incumbent telecommunications carrier in the State of Hawaii (State). Verizon Select Services Inc. is authorized to operate as a reseller of intrastate telecommunications services in the State, and has a commission approved interconnection agreement with Verizon Hawaii Inc. to purchase services for resale.¹ Verizon Hawaii Inc. and Verizon Select Services Inc. are wholly-owned subsidiaries of GTE Corporation.² Verizon Communications is the parent company of GTE Corporation.³

B.

By Decision and Order No. 18341, the commission approved an internal reorganization involving Verizon Hawaii International Inc., Verizon Select Services Inc., and

¹See Decision and Order No. 15321, filed on January 21, 1997, in Docket No. 96-0466 (COA); Decision and Order No. 16124, filed on December 19, 1997, in Docket No. 97-0344 (interconnection agreement).

²See Decision and Order No. 18341.

³Id.

Verizon Hawaii Inc. In granting approval, the commission instructed the applicants to file "all affiliated agreements for operational services arising from the transaction described in the instant docket promptly after Applicants have finalized all aspects of the proposed reorganization."

C.

Verizon Hawaii Inc. submits its two leases for commission review and approval, in compliance with Decision and Order No. 18341 and HRS § 269-19. It states that: (1) Verizon Hawaii International Inc.'s prepaid calling card business was consolidated into the calling card operations of Verizon Select Services Inc.; and (2) this consolidation made it necessary for Verizon Select Services Inc. to use Verizon Hawaii Inc.'s floor space previously utilized by Verizon Hawaii International Inc., for prepaid calling card operations during a transitional period.

As a result, Verizon Select Services Inc. entered into two lease agreements with Verizon Hawaii Inc., to lease: (1) 1,865 square feet of office space at 1177 Bishop Street, i.e., the Alakea main building; and (2) 256 square feet of space at 1021 Kikowaena Place.

The terms of both agreements, executed on September 26, 2001, are for three years, from November 15, 2000 to November 14, 2003. However, since Verizon Select Services Inc. has "transitioned the prepaid calling card business out of these locations," both leases were terminated, effective January 31, 2002.

III.

A.

In general, the Consumer Advocate does not object to the terms and conditions of the two lease agreements. That said, it recommends that:

1. In Article 9 of both lease agreements, Verizon Hawaii Inc. delete the reference to Section 202 of the New York Labor Law, as inapplicable.

2. Based on the pricing study, dated September 2002, the lease rates should be lowered to: (A) \$2.20 per square foot per month, for the 1177 Bishop Street lease; and (B) \$1.73 per square foot per month, for the 1021 Kikowaena Place lease. Moreover, "[t]hese revisions should be made retroactive to the beginning of each lease, which will require Verizon [Hawaii Inc.] to adjust VSS's account for any overpayments of prior lease rents."

3. Verizon Hawaii Inc. charge Verizon Select Services Inc. a one-time administrative fee associated with the subject transactions, consistent with past commission practice.⁴

In response, Verizon Hawaii Inc. does not object to the first two recommendations. It does, however, object to the third recommendation. The parties' respective positions on the administrative fee issue are discussed below.

⁴Upon review, it appears that the amount of the administrative fee the Consumer Advocate seeks to assess is \$1,500.

B.

The Consumer Advocate contends that Verizon Hawaii Inc.'s assessment of an administrative fee is consistent with the commission's Decision and Order No. 16283, filed on April 14, 1998, in Docket No. 97-0239. There, the commission approved GTE Hawaiian Telephone Company Incorporated's (GTE Hawaiian Tel) lease of its Wahiawa base yard property (319 Koa Street) to an affiliated entity, GTE Media Ventures Incorporated, dba Oahu Wireless Cable (OWC), subject to certain conditions, including GTE Hawaiian Tel's assessment of a \$1,500 administrative fee to OWC.⁵

In response, Verizon Hawaii Inc. explains that the administrative fee is "intended to recover the cost of legal preparation and review of a lease agreement and the cost of the Company's real estate consultant to perform activities related to negotiation of the lease arrangement with the lessee." For the two leases at issue, however, Verizon Hawaii Inc. states:

. . . Fees are charged when Verizon Hawaii Inc. incurs costs for outside legal and real estate service providers. In some cases leases can be done administratively by in-house Verizon employees without any outside costs.⁶

. . . [it] did not incur either outside or in-house costs for legal preparation or review of the lease agreement or lease negotiation. Neither outside counsel nor in-house counsel reviewed the VSS lease agreement. And neither an outside real estate

⁵The commission noted:

GTE Hawaiian Tel ordinarily charges both GTE and non-GTE companies an administrative reimbursement fee for transactions such as the lease proposed in this application. No such fee is included in this case. To maintain consistency, we determine that GTE Hawaiian Tel must charge OWC an administrative reimbursement fee of \$1,500.

⁶Verizon Hawaii Inc.'s response to CA-IR-4(d).

consultant nor Verizon's real estate department negotiated the lease. A standard form agreement was used, and the lease rates were based on an analysis of the market price of the property.⁷

Verizon Hawaii Inc. also cites to the commission's Decision and Order No. 19666, filed on September 23, 2002, in Docket No. 02-0025. There, the commission approved, *nunc pro tunc*, Verizon Hawaii Inc.'s lease of office space at its Alakea main building (1177 Bishop Street) to an affiliated entity, Verizon Hawaii International Inc. Verizon Hawaii Inc. asserts that: (1) in Docket No. 02-0025, the Consumer Advocate did not recommend and the commission did not require the assessment of an administrative fee; and (2) the circumstances in Docket No. 02-0025 and the instant docket are similar.⁸

Even if Verizon Hawaii Inc. did not incur any outside costs to consummate the subject transactions, the Consumer Advocate maintains that:

1. The in-house costs incurred should be recovered from the tenant.
2. Ratepayers should not pay for the administrative costs associated with the subject leases.
3. An administrative fee "appears reasonable to avoid the possible appearance of discriminatory practices."

⁷Verizon Hawaii Inc.'s reply letter, filed on January 14, 2003 (footnote and text therein omitted).

⁸In support, Verizon Hawaii Inc. cites to its response to CA-IR-11(a), in Docket No. 02-0025:

No administrative fees will be charged. The purpose of the fees are to reimburse Verizon Hawaii for real estate and legal fees associated with leased property. In this case, the space was already occupied by the tenant and the lease was needed to formalize a legal arrangement and set-up appropriate billing per FCC guidelines. The lease preparation was done in-house, without real estate consultants, utilizing standard form agreements, avoiding all legal expenses.

Furthermore, on a going forward basis, the Consumer Advocate recommends that Verizon Hawaii Inc.:

1. "[P]rovide support that calculates costs associated with a typical lease arrangement to verify that ratepayers are not being asked to subsidize lessee costs."
2. "[C]harge \$1,500 on future lease arrangements, until [it] can show that costs for legal and real estate activities have changed."

C.

The commission has carefully reviewed its past decisions approving the leasing of office space or real property by Verizon Hawaii Inc. or its predecessor-in-interest, GTE Hawaiian Tel, to an affiliated entity.⁹ In certain instances, Verizon Hawaii Inc. did not and was not required to assess its affiliate an administrative fee to consummate the lease transaction.¹⁰ The facts and circumstances of each particular transaction appear to have controlled.

Upon careful review, the commission, in this instance, will not require Verizon Hawaii Inc. to assess an administrative fee to Verizon Select Services Inc. For the subject transactions, Verizon Hawaii Inc.: (1) used a standard form

⁹See, e.g., Docket No. 02-0025, *In re Verizon Hawaii Inc.* (office space to Verizon Hawaii International Inc.); Docket No. 01-0069, *In re Verizon Hawaii Inc.* (office space to Verizon Advanced Data Inc.); Docket No. 97-0239, *In re GTE Hawaiian Tel. Co. Inc.* (base yard to GTE Media Ventures Incorporated, dba Oahu Wireless Cable); Docket No. 96-0264, *In re GTE Hawaiian Tel Co. Inc.*, (office space to the Hawaiian Tel Employees Federal Credit Union).

¹⁰See, e.g., Decision and Order No. 19777, filed on November 18, 2002, in Docket No. 01-0069; Decision and Order No. 19666, filed on September 23, 2002, in Docket No. 02-0025; and Decision and Order No. 15032, filed on September 26, 1996, in Docket No. 96-0264.

agreement for both leases (Exhibits I and II to the application); and (2) did not incur any outside professional costs, nor did it utilize the services of its in-house legal counsel.

The actual costs incurred in finalizing, transmitting, and signing the leases, in comparison with the \$1,500 figure proposed by the Consumer Advocate, appears minimal, and in this instance, is part of Verizon Hawaii Inc.'s daily costs of doing business.¹¹

IV.

HRS § 269-19 states that no public utility corporation shall sell, lease, assign, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, without having first secured the commission's approval.

Upon review, the commission finds that, subject to incorporating two of the revisions proposed by the Consumer Advocate and agreed upon by Verizon Hawaii Inc., the property leases are reasonable and consistent with the public interest. The commission is unaware of any occurrences where the implementation of the lease agreements adversely impacted or interfered with Verizon Hawaii Inc.'s ability to provide telecommunications services.

¹¹At the same time, the commission makes clear that its decision on this issue is limited to the facts and circumstances of this case. Also, this decision does not in any way affect the commission's review of licensing arrangements, where Verizon Hawaii Inc. has consistently assessed administrative fees upon the licensee.

The commission, thus, will approve the lease agreements, *nunc pro tunc*, subject to the revisions noted in section III.A(1) and (2) of this decision and order.

V.

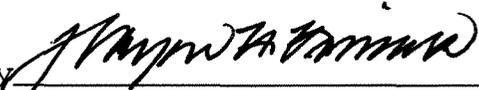
THE COMMISSION ORDERS:

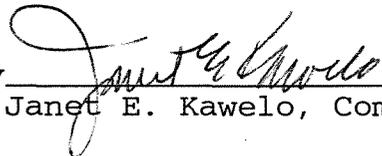
1. The lease agreements filed by Verizon Hawaii Inc. on November 30, 2001, to lease properties at 1177 Bishop Street and 1021 Kikowaena Place, to Verizon Select Services Inc., are approved, *nunc pro tunc*, subject to the revisions noted in section III.A(1) and (2), above.

2. Unless ordered or directed otherwise, within 60 days from the date of this decision and order, Verizon Hawaii Inc. shall submit written proof of its compliance with section III.A(1) and (2), including any appropriate amendments to the subject leases.

DONE at Honolulu, Hawaii this 24th day of January,
2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By (REGUSED)
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

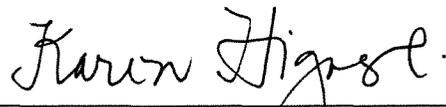
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19984 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

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



Karen Higashi

DATED: January 24, 2003