

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Telephone Number Portability; Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200; CC Docket Nos. 99-200, 96-98 and 95-116; Adopted December 12, 2001 and Released December 28, 2001; FCC 01-362 ("FCC 01-362").

Copies of the petition were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On April 29, 2002, the Consumer Advocate served Sandwich Isles with information requests ("IRs"). On May 24, 2002, Sandwich Isles filed its responses to the IRs. The only parties to this docket are Sandwich Isles and the Consumer Advocate.²

On October 24, 2002, an Amended Stipulation for an Order to Temporarily Suspend Proceedings was filed ("Amended Stipulation").³ Among other things, the parties stipulated to take no further action regarding Sandwich Isles' petition in this docket until February 20, 2003.⁴ On February 20, 2003, the parties filed a Second Amended Stipulation for an Order to Temporarily Suspend Proceedings ("Second Amended Stipulation"). Through the Second Amended Stipulation, the

²On May 10, 2002, the parties filed a proposed stipulation for a protective order for the commission's review and consideration. On May 22, 2002, Protective Order No. 19356 was issued.

³The Amended Stipulation corrected a typographical error contained in a prior stipulation filed on October 17, 2002.

⁴By Order No. 19754, filed on October 30, 2002, the commission approved the Amended Stipulation in its entirety.

commission was informed that Sandwich Isles had not completed its work with NANPA and that it requests additional time to do so.⁵ By Order No. 20047, filed on February 26, 2003, the commission approved the parties' Second Amended Stipulation in its entirety.

On April 22, 2003, Sandwich Isles informed the commission and the Consumer Advocate of its intention to not withdraw its petition in this docket.⁶ On that same day, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to the relief sought by Sandwich Isles; however, it recommends that a restriction be placed on the amount of numbers that Sandwich Isles is allowed to retain.

II.

A.

Sandwich Isles is a Hawaii corporation providing telecommunications services in the State of Hawaii ("State"). It is a subsidiary of Waimana Enterprises, Inc. Sandwich Isles represents that it was granted an exclusive license by the Department of Hawaiian Home Lands of the State of Hawaii ("DHHL")

⁵The Consumer Advocate agreed to Sandwich Isles' request for additional time. The parties stipulated: (1) to take no further action with regards to the petition in this docket until April 22, 2003; (2) that on or before April 22, 2003, Sandwich Isles will advise the Consumer Advocate and the Commission in writing whether or not it intends to withdraw its petition; and (3) that the Consumer Advocate shall file its Statement of Position, and this proceeding will move forward, if Sandwich Isles decides to pursue the petition in this docket.

⁶Previously, by a letter addressed to the Consumer Advocate, dated and filed on April 16, 2003, Sandwich Isles made certain additional representations.

in 1995 to provide intrastate telecommunications services on lands administered by the DHHL. In 1997, the commission granted Sandwich Isles a certificate of authority to provide intrastate telecommunications services in the State, restricted to providing these services on lands administered by the DHHL.⁷

B.

Sandwich Isles represents that the DHHL properties consists of 69 non-contiguous parcels of land on six main Hawaiian Islands. It currently provides telecommunications services in Hawaii through five central offices (one each on the islands of Maui and Oahu, and three on the Big Island) and through the use of remote switches and digital loop carriers. Due to population density and the geographic separation of its service areas, Sandwich Isles represents that its Oahu network was designed to provide services through three stand-alone host switches to serve its three service areas--Windward, Leeward, and Honolulu. It envisioned utilizing separate and distinct central office codes for each service area on Oahu.⁸

Sandwich Isles states that it was given indication of new service commitments in its Leeward service area during the spring of 2000. On December 18, 2000, Sandwich Isles submitted

⁷See Order No. 16078, filed on November 14, 1997, in Docket No. 96-0026.

⁸For the island of Oahu, Sandwich Isles is currently servicing all of its customers through its assigned "520" and "426" central office codes.

an application for a new "620" growth central office code.⁹ By written response dated December 20, 2000, NANPA denied Sandwich Isles' request, citing that Sandwich Isles did not meet the central office code guideline requirements.¹⁰

While it acknowledges that NANPA's denial of its request complied with current federal regulations, Sandwich Isles states that the commission should overturn NANPA's denial of its request for a new "620" central office code due to the following¹¹:

- The new FCC rules are intended to deal with critical number exhaust issues on the mainland U.S., which are not relevant to Hawaii.
- The Hawaii 808 NPA [(numbering plan area)] has 298 unused NXX [(central office)] codes, capable of providing another 2,980,000 telephone numbers.
- Upon information and belief, Verizon Hawaii is currently serving a total of approximately 650,000 access lines throughout the entire state. Hawaii has ample number reserves.
- [Sandwich Isles'] request for the additional NXX should, in effect, be treated as a "grandfathered" situation.

⁹Initially, on November 8, 2000, Sandwich Isles applied for a new "612" central office code. However, citing changes to the rules in light of FCC 00-104, NANPA denied Sandwich Isles' application for a new code on November 17, 2000.

¹⁰To qualify for a new growth central office code under the new rules, the applicant must demonstrate that its Months to Exhaust (MTE) is less than or equal to 6 months. At the time of the denial, Sandwich Isles had a MTE of 667 months.

¹¹See Response to CA (Consumer Advocate)-IR-7.b.

- [Sandwich Isles'] network design and Lucent 5ESS host switch acquisition occurred prior to the change in the FCC rules. The "620" NXX code would have been assigned under the old rules.
- [Sandwich Isles] has demonstrated a verifiable need for the "620" NXX code and is now left with no alternative but to request the HPUC [(Hawaii Public Utilities Commission)] to authorize the NANPA to issue the new NXX code.

It further articulated that the new central office code is needed at this time since¹²:

- [Sandwich Isles'] intent, based on its network design of host/remote configurations that has been designed and funded to meet RUS [(Rural Utilities Service Division of the U.S. Department of Agriculture)] specifications, is to serve the Leeward HHL [(Hawaiian Home Lands)] communities with a distinct "620" code.
- [Sandwich Isles] has customers coming on line this summer in the HHL communities of Nanakuli, Waianae, and Paheehee Ridge.
- [Sandwich Isles'] current arrangement of servicing its customers in the Puu Kapolei area from the Papakolea remote switch is not an efficient service arrangement.
- [Sandwich Isles does] not want to assign temporary "520" telephone numbers to these customers in [its] Leeward service area, only to change them to a "620" NXX at a later time when the new NXX code is received.

C.

The Consumer Advocate states that while it does not concur with some of Sandwich Isles' conclusions and statements, it believes that there are sufficient reasons to grant the relief

¹²See Response to CA-IR-7.a.

sought in this petition. The Consumer Advocate does not oppose Sandwich Isles' request for two primary reasons: (1) "[a]llowing Sandwich Isles to receive the relief sought will facilitate and encourage facilities-based competition;" and (2) "[l]imiting the numbering resources that Sandwich Isles will receive to only 1,000 numbers will mitigate any potential concerns about 'hoarding.'" ¹³

III.

The FCC vested state public utility commissions with the authority to overturn or affirm NANPA's denial of a carrier's request for additional numbering resources.¹⁴ In its order adopted on December 12, 2001, the FCC established a "safety valve" mechanism, and delegated to the state public utility commissions the authority to hear claims when carriers are denied requests for numbering resources by NANPA.¹⁵ Under current FCC regulations, state commissions "may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for number resources and has exhausted all other available remedies."¹⁶

¹³See Statement of Position at 9.

¹⁴See FCC 00-104.

¹⁵See FCC 01-362, at ¶ 61.

¹⁶See 42 C.F.R. § 52.15(g)(4).

Upon review, the commission initially finds and concludes that Sandwich Isles' petition filed on April 12, 2002, is properly before this commission. The commission also finds that Sandwich Isles has sufficiently demonstrated a verifiable need for its numbering resource request and that it has exhausted all of its other remedies. Sandwich Isles' RUS funding for its telecommunications infrastructure for Oahu appears to be predicated on the provision of services through three distinct central office codes. It anticipates servicing new Leeward customers in the near future and the use of a distinct "620" code at this time will allow Sandwich Isles to provide telecommunications services in a more efficient manner and reduce customer confusion since it will eliminate the need to change customer numbers at a later date. Additionally, subsequent to NANPA's denial of its request, Sandwich Isles' petition for commission review and a reversal of NANPA's decision is its only recourse at this juncture. Consequently, it appears that it has exhausted all of its other remedies.

Moreover, we are cognizant of Sandwich Isles' recent efforts to preserve numbering resources. It recently returned 15,000 numbers from its two Oahu central office codes to the national numbering pool.¹⁷ Nonetheless, the Consumer Advocate's recommendation to limit the amount of numbering resources Sandwich Isles is allowed to retain to 1,000 numbers appears to be reasonable. This limitation should, as articulated by the

¹⁷See Sandwich Isles' April 16, 2003 letter to the Consumer Advocate.

Consumer Advocate, reduce concerns associated with the "hoarding" of numbers. Finally, the commission believes that overturning NANPA's denial of Sandwich Isles' request is consistent with the public interest and will encourage facilities-based competition and investment in the State.

Based on the above, the Commission concludes that NANPA's December 20, 2000 denial of Sandwich Isles' December 18, 2000 request for a new "620" central office code assignment should be overturned, provided that Sandwich Isles is only authorized to receive and retain 1,000 of these numbers.¹⁸ Additionally, as represented in its April 16, 2003 letter, Sandwich Isles will provide the Consumer Advocate and the commission with written confirmation documenting the return of the excess numbers within 10 days after the completion of this "give back" process.

IV.

THE COMMISSION ORDERS:

1. Sandwich Isles' petition filed on April 12, 2002, is properly before this commission.

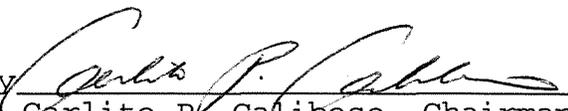
2. NANPA's December 20, 2000 denial of Sandwich Isles' December 18, 2000 request for a new "620" central office code assignment is overturned, provided that Sandwich Isles is only authorized to receive and retain 1,000 of these numbers.

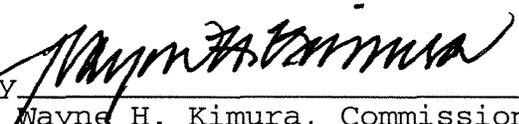
¹⁸Specifically, upon receipt of the 10,000 block of "620" central office code numbers, Sandwich Isles must "give back" 9,000 of them.

3. Sandwich Isles will provide the commission and the Consumer Advocate with written confirmation documenting the return of the excess numbering resources within 10 days after the "give back" process is completed.

DONE at Honolulu, Hawaii this 18th day of June, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

02-0084.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20236 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: June 18, 2003