



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----	In the Matter of	-----)	
		)	
	PACIFIC LIGHTNET, INC.	)	Docket No. 03-0197
		)	
	Petition for Arbitration Pursuant	)	Order No. 20705
	To 47 U.S.C. § 252(b) of	)	
	Interconnection Rates, Terms, and	)	
	Conditions with Verizon Hawaii Inc.)	)	
<hr/>			

ORDER

I.

Introduction

On August 28, 2003, PACIFIC LIGHTNET, INC. ("PLNI") filed a Motion to Appear on Behalf of PLNI ("Motion to Appear") and an affidavit of J. Jeffrey Mayhook, requesting that Mr. Mayhook be allowed to participate in the representation of PLNI in the instant docket, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-12(a) and (b)(2).

On November 21, 2003, PLNI filed a Motion for Enlargement of Time to Extend This Docket's Discovery Window by One Day ("Motion to Enlarge Time") and a request to expedite the consideration of its Motion to Enlarge Time. On October 2, 2003, the commission approved Prehearing Order No. 20477, which included, among other things, the procedural schedule stipulated to by PLNI and VERIZON HAWAII INC. ("Verizon Hawaii") (Verizon Hawaii and PLNI are collectively referred to as the "Parties"). Section IX, Schedule of Proceedings, of Prehearing Order No. 20477 established

December 3, 2003 as the deadline by which all discovery must be completed by the Parties. Included in the section noting the close of the discovery period was the parenthetical note that "all requests must be received by November 19, 2003."

In the Motion to Enlarge Time, PLNI's counsel explained that it filed its discovery request to Verizon Hawaii on November 20, 2003, one day after the deadline provided in Prehearing Order No. 20477, because she had "inexplicably miscalendared this matter such that she scheduled PLNI's discovery request to Verizon [Hawaii] for filing and service [on] November 20, 2003."<sup>1</sup> PLNI requests that its time-barred discovery requests be allowed, and that the commission provide Verizon Hawaii with an additional day by which to respond to PLNI's requests.

On December 1, 2003, Verizon Hawaii filed its Opposition to PLNI's Motion for Enlargement of Time for Discovery and for Expedited Consideration. Verizon Hawaii alleges that PLNI's requests should be denied because the failure of PLNI's counsel to properly calendar the deadline for information requests neither constitutes "good cause," nor "excusable neglect" for enlarging the discovery window.

---

<sup>1</sup>Motion to Enlarge at 2.

II.

Discussion

A.

Motion to Appear

HAR § 6-61-12(b)(2) allows, at the commission's discretion, an attorney who is not authorized to practice law in the State of Hawaii but who associates with a member in good standing of the bar of the State of Hawaii in the presentation of a specific proceeding.

Upon review, the commission finds that J. Jeffrey Mayhook should be allowed to participate in the representation of PLNI in the instant docket. Accordingly, the commission concludes that PLNI's Motion to Appear should be granted.

B.

Motion to Enlarge Time

PLNI asserts that HAR § 6-61-41(c) "suggests there may be circumstances that contemplate the resolution of motions on a shortened timeframe," as the basis for its request for expedited review of its Motion to Enlarge.<sup>2</sup> While we acknowledge that there may be instances that require a shortened timeframe for review, we disagree that HAR § 6-61-41(c) provides the commission with such a basis to shorten its review and Verizon Hawaii's opportunity to oppose the Motion to Enlarge Time in this instance. HAR

---

<sup>2</sup>Motion to Enlarge Time at 1 (footnote omitted).

§ 6-61-41(c) provides that a memorandum in opposition should be filed "not later than five days after being served the motion, or, if the hearing on the motion will occur less than five days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the chairperson." The commission declines to provide Verizon Hawaii with fewer than five (5) days in which to oppose the Motion to Enlarge, as is required by the aforementioned rule. Accordingly, the commission concludes that PLNI's request for expedited consideration of its Motion to Enlarge Time should be denied.

PLNI requests the extension of the discovery filing date by one day, pursuant to HAR § 6-61-23(a)(2). HAR § 6-61-23(a)(2) allows the commission the discretion, upon a motion filed after the expiration of the specified period, to permit an act to be done where the failure to act was the result of excusable neglect. As stated above, PLNI's failure to meet the discovery-filing deadline was as a result of its counsel's inadvertent error in calendaring the deadline.

Verizon Hawaii asserts that "excusable neglect" is not the standard that should be applied by the commission in evaluating PLNI's request to enlarge the time by which PLNI must file its discovery requests. Instead, Verizon Hawaii states that Prehearing Order No. 20477 requires that, "After the scheduled date for submitting information requests has passed, no additional requests for information shall be allowed except upon stipulation

by the parties or by approval of the [c]ommission upon *good cause* shown." Prehearing Order No. 20477 at VII (emphasis added).

The commission finds that the actions of PLNI's counsel that resulted in the missed discovery-filing deadline neither constitute good cause, nor excusable neglect. Accordingly, the commission concludes that PLNI's Motion to Enlarge Time should be denied.

### III.

#### Orders

##### THE COMMISSION ORDERS:

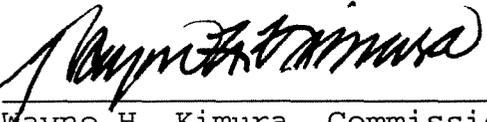
1. PLNI's Motion to Appear is granted.
2. PLNI's request for expedited consideration is denied.
3. PLNI's Motion to Enlarge Time is denied.

DONE at Honolulu, Hawaii this 5th day of December,

2003.

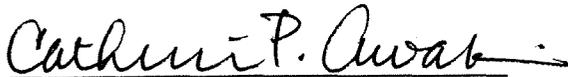
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Catherine P. Awakuni  
Commission Counsel

03-0197.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20705 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

LAURA MAYHOOK, ESQ.  
J. JEFFREY MAYHOOK, ESQ.  
MAYHOOK LAW, PLLC  
34808 NE 14<sup>th</sup> Avenue  
La Center, WA 98629

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

KIMBERLY A. NEWMAN  
MICHAEL J. WALSH, JR.  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006-4001

THOMAS C. SINGHER  
O'MELVENY & MYERS LLP  
153 East 53<sup>rd</sup> Street, 54<sup>th</sup> Floor  
New York, NY 10022

  
\_\_\_\_\_  
Karen Higashi

DATED: December 5, 2003