

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding of)
Commercial Mobile Radio)
Service ("CMRS") Providers in)
The State of Hawaii, Including)
An Investigation to Determine)
Whether it is Consistent with)
The Public Interest to Exempt)
CMRS Providers, their)
Services, or Both, from Any)
Provisions of Hawaii)
Revised Statutes Chapter 269.)
_____)

DOCKET NO. 03-0186

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2004 APR -7 12 34
STATE OF HAWAII
PUBLIC UTILITIES COMMISSION

DECISION AND ORDER NO. 20890

Filed April 7, 2004

At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

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_____))	

DECISION AND ORDER

I.

Background and Procedural History

The federal Omnibus Budget Reconciliation Act of 1993 (the "OBRA")¹ expressly provides that it does not prohibit "a State" from regulating "other terms and conditions"² of commercial mobile radio services ("CMRS").³

¹Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312, 392 (1993) (codified in principal part at 47 U.S.C. § 332).

²The OBRA provides, in relevant part, the following:

State preemption. (A) Notwithstanding [47 United States Code ("U.S.C.") §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms

In 1995, the Federal Communications Commission (the "FCC") confirmed and explained, among other things, that although

and conditions of commercial mobile service[.]
47 U.S.C. § 332(c)(3) (emphasis added).

³As used in this decision and order, CMRS shall have the same meaning as defined in 47 U.S.C. §§ 153 and 332(d)(1).

47 U.S.C. § 153(27) provides:

The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the [Federal Communications] Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No.. 92-100), or any successor proceeding.

47 U.S.C. § 332(d)(1) provides, in relevant part:

[T]he term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the [Federal Communications] Commission[.]

CMRS includes cellular, paging, broadband personal communications ("PCS"), and digital specialized mobile radio ("SMR") services (aka, wireless telecommunications services or mobile telephony services). See, Hawaii Administrative Rules § 6-80-4 and Eighth Report, *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 03-0379, FCC 03-150 (rel. July 14, 2003) ("FCC's 8th Report"). Because cellular, broadband PCS, and digital SMR services are essentially interchangeable from the perspective of most consumers, the FCC considers them to be a cohesive industry sector. FCC's 8th Report at paragraph 38. CMRS providers are also commonly known as CMRS carriers or wireless telecommunications carriers.

the OBRA amended the Communications Act of 1934 to preempt state and local (collectively referred to as "States") rate and entry regulation of CMRS, the OBRA expressly reserved to the States the authority to regulate the "other terms and conditions" of CMRS.⁴

In light of the OBRA and the FCC's ruling in 1995, the commission has continued to assert jurisdiction, pursuant to its authority granted under Hawaii Revised Statutes ("HRS") Chapter 269, over "other terms and conditions" of CMRS in the State of Hawaii ("State" or "Hawaii"). "Other terms and conditions" include, without limitation, transfers of control, customer billing information and practices, billing disputes, and other consumer protection matters. The commission regulates "other terms and conditions" of CMRS in Hawaii under its statutory mandate to protect the public interest.

The commission recognizes that there has been an expansion in the development and deployment of wireless telecommunications technologies and services internationally, nationally and locally. Developing and promoting investment in new and innovative wireless telecommunications technologies will continue to impact the economy, education, health, safety, leisure, general welfare, and prosperity of the State and its people in the future. The commission is also aware that during the 2003 Hawaii legislative session, various commission-registered wireless telecommunications carriers that provide CMRS in Hawaii supported

⁴*In the Matter of Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii*, PR Docket No. 94-103, Report and Order, FCC 95-194 (rel. May 19, 1995).

measures intended to streamline the regulation of CMRS providers in Hawaii by amending HRS Chapter 269 to make only certain state regulatory requirements applicable to CMRS providers.

In light of the above, the commission instituted a proceeding on June 26, 2003 to examine the issues surrounding whether it is consistent with the public interest to exempt CMRS providers, their services, or both, from any provision of HRS Chapter 269 in accordance with HRS § 269-16.9 and Hawaii Administrative Rules ("HAR") § 6-80-135.⁵ On that same date, we also made the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") and the following currently registered CMRS providers parties in this proceeding:

1. AMERITECH MOBILE COMMUNICATIONS, LLC
("Ameritech Mobile")
2. AMERITECH WIRELESS HOLDINGS, INC., dba
CINGULAR WIRELESS ("Ameritech Wireless")
3. AT&T WIRELESS PCS, LLC ("AT&T Wireless PCS")
4. AT&T WIRELESS SERVICES OF HAWAII, INC.
("AT&T Wireless Hawaii")
5. CELLCO PARTNERSHIP, dba VERIZON WIRELESS
("Verizon Wireless")
6. NEXTEL WEST CORPORATION ("Nextel West")
7. NPCR, INC. ("NPCR")
8. SPRINTCOM, INC., dba SPRINT PCS ("Sprint PCS")
9. T-MOBILE USA, INC. ("T-Mobile")
10. GENERAL TELCOURIER, INC., dba PAGER ONE
("Pager One")
11. ISLAND PAGE, INC. ("Island Page")
12. ARCH WIRELESS OPERATING COMPANY, INC. (fka,
MOBILE COMMUNICATIONS CORPORATION OF AMERICA,
dba RAM PAGING HAWAII) ("Arch Wireless")
13. MOBILE ONE, INC. ("Mobile One")

⁵Order No. 20264, filed on June 26, 2003,

On August 7, 2003, the commission granted VERIZON HAWAII INC.'s ("Verizon") and AT&T COMMUNICATIONS OF HAWAII, INC.'s ("AT&T") respective motions to intervene.⁶

On September 12, 2003, Ameritech Mobile, Ameritech Wireless, AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS, T-Mobile, Arch Wireless, Verizon, AT&T and the Consumer Advocate filed their proposed Stipulated Procedural Order for the commission's review and approval.

On October 2, 2003, Island Page, by letter dated September 30, 2003, joined with the September 12, 2003 proposed Stipulated Procedural Order.

On October 7, 2003, the commission issued Procedural Order No. 20563, which adopted in part, and denied in part⁷, the September 12, 2003 proposed Stipulated Procedural Order. Procedural Order No. 20563 established, among other things, the issues, schedule of proceedings and procedures in this proceeding. By that same order, the commission also approved Ameritech Mobile's and Ameritech Wireless' withdrawal as parties to this proceeding.⁸

⁶Order No. 20368, filed on August 7, 2003.

⁷Procedural Order No. 20563, among other things, deleted the preemption issue stated in the September 12, 2003 proposed Stipulated Procedural Order.

⁸To date, the remaining parties in this docket are: AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS, T-Mobile, Pager One, Island Page, Arch Wireless, Mobile One, Verizon, AT&T and the Consumer Advocate (collectively, hereinafter referred to as "Parties").

On October 21, 2003, a status conference was held at the commission's hearing room where the Parties briefed the commission on the status of their meetings and/or negotiations.

On November 18, 2003, the commission denied AT&T Wireless PCS', AT&T Wireless Hawaii's, Nextel West's, NPCR's, SprintPCS' and T-Mobile's motion for reconsideration of Procedural Order No. 20563.⁹

On January 21, 2004, AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS, T-Mobile, Pager One, Island Page, Arch Wireless, Mobile One, Verizon, AT&T and the Consumer Advocate (collectively, "Stipulating Parties") filed a Stipulation in lieu of Hearing ("Stipulation").

On January 22, 2004, the Stipulating Parties filed an Amended Stipulation.

On January 23, 2004, (1) AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS, and T-Mobile (collectively, "Wireless Carriers") filed their joint final position statement to address issues that were not resolved by the Amended Stipulation, and (2) T-Mobile and the Consumer Advocate filed separate final position statements to address certain aspects of these unresolved issues.

⁹Order No. 20643, filed on November 18, 2003. Order No. 20643, among other things, denied Verizon Wireless' motion to reconsider our decision to not adopt the preemption issue stated in the September 12, 2003 proposed Stipulated Procedural Order.

II.

Issues

As stated in Procedural Order No. 20563, the issues in this docket are:

1. In view of the competitiveness of CMRS and CMRS providers' practices,

- a. What provisions of HRS Chapter 269, HAR Chapters 6-80 and 6-81, and General Order No. 8 ("G.O. No. 8") should CMRS be exempted from under HRS § 269-16.9(a)?
- b. Under HRS § 269-16.9(c), what conditions or limits, if any, should apply to any such exemptions granted to CMRS in this proceeding?
- c. What provisions of HRS Chapter 269, HAR Chapters 6-80 and 6-81, and G.O. No. 8 should the commission otherwise waive under HRS § 269-16.9(e) for CMRS providers and services?

III.

Amended Stipulation

The Amended Stipulation provides, among other things, the following agreements, terms and conditions (collectively referred to as "agreements"):

1. The Stipulating Parties "agree that no participant in the Hawaii CMRS marketplace qualifies as a dominant operator. Instead, each participant is non-dominant, meaning that

none of them has the power to control prices, exclude competitors, or prevent competition." "Based on this finding of non-dominance, [the Stipulating Parties] also agree that pursuant to HRS § 269-16.9(e), the commission could waive the application of various provisions contained in HRS Chapter 269 to CMRS [providers] based on a determination that competition serves, or will be able to serve, the same purpose as public interest regulation in Hawaii."

2. The Stipulating Parties "recognized that waivers of various statutory provisions pursuant to HRS § 269-16.9(e) would be more appropriate and efficient than seeking exemptions pursuant to HRS § 269-16.9(a)."
3. The Stipulating Parties agree that the provisions of HRS Chapter 269 and HAR Chapter 6-80 as specified in Table 2 of the Amended Stipulation and attached thereto should be waived without any conditions.
4. The Stipulating Parties agree that the provisions of HRS Chapter 269 and HAR Chapter 6-80 as specified in Table 3 of the Amended Stipulation and attached thereto should be waived with conditions.
5. The Stipulating Parties agree that the provisions of HRS Chapter 269 and HAR Chapter 6-80 as specified in Table 4 of the Amended Stipulation and attached thereto are inapplicable to CMRS providers.
6. The Stipulating Parties agree that the remaining provisions of HRS Chapter 269 and HAR Chapter 6-80 as specified in Table 5 of the Amended Stipulation and attached thereto are not addressed by Tables 2-4, and they agree to certain clarifications of those provisions.
7. The Stipulating Parties agree that the provisions of HAR Chapter 6-81 would not be addressed at this time as no State Universal Service Fund ("USF") has been implemented, but the effect of these provisions and their applicability to CMRS providers may be

considered at such time as the commission considers implementing a State USF.¹⁰

8. The Stipulating Parties agree that the commission should find that HAR Chapter 6-80 has superseded G.O. No. 8 for CMRS providers.
9. The Stipulating Parties agree to the following findings of fact:
 - a. That five (5) national CMRS providers provide mobile telephone services in the Honolulu Metropolitan Service Areas and at least three (3) national CMRS providers provide mobile telephone services in the Hawaii Rural Service Areas.¹¹
 - b. Presently, mobile telephony service providers generally offer all of their national product offerings in Hawaii.
 - c. Deregulation of CMRS may provide incentives for additional investment by CMRS providers.
 - d. No CMRS provider is dominant in the Hawaii marketplace, permitting competition to serve the same purpose as public interest regulation with respect to many statutory and regulatory requirements currently in place.

¹⁰The Stipulating Parties acknowledge that issues relating to the designation of CMRS providers as eligible telecommunications carriers for federal and/or state universal service purposes have not been analyzed in reaching the agreements memorialized in the Amended Stipulation and the documents attached thereto.

¹¹In Hawaii, Verizon Wireless, AT&T Wireless PCS and AT&T Wireless Hawaii hold cellular and broadband PCS licenses. SprintPCS and T-Mobile hold broadband PCS licenses. Nextel West and NPCR hold digital SMR licenses. Wireless Carriers' January 23, 2004 Position Statement at 4, n.9. The cellular market was initially divided into 306 Metropolitan Serving Areas ("MSAs"), such as Boston or Chicago, and 428 Rural Serving Areas ("RSAs"), which corresponds to more rural locations. Honolulu represents the MSA for Oahu, and Kauai, Maui and Hawaii represent the three (3) RSAs in Hawaii. January 23, 2004 Wireless Carriers' Position Statement, Exhibit A. Presently, Verizon Wireless, AT&T Wireless PCS, AT&T Wireless Hawaii, Nextel West and NPCR serve the islands of Hawaii, Maui, Molokai, Lanai, Oahu and Kauai. SprintPCS and T-Mobile serve the islands of Hawaii, Maui, Oahu and Kauai. Amended Stipulation at 11, n.14.

e. 47 U.S.C. § 332(c)(3)(A) provides: "[N]o State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service."

10. The Stipulating Parties agree that any and all waivers approved by the commission in this docket will equally apply to all CMRS Parties in this docket (including any and all of their respective successors in interest, assigns, affiliated companies, etc. that may from time to time assume all or part of any CMRS Party's operations in Hawaii), including any Party who has not signed the Amended Stipulation.

IV.

Discussion

A.

Authority to Waive Regulatory Requirements

HRS § 269-16.9(e) permits 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. However, the commission may not waive a telecommunications carrier or telecommunications service from: (1) Any provisions of HRS § 269-34; or (2) Any provisions of HAR Chapter 6-80 that implement HRS § 269-34. HAR § 6-80-135(a).

The preamble to Act 49, Session Laws of Hawaii 1990, which added HRS § 269-16.9 to HRS Chapter 269, states:

[T]he legislature declares that it is the goal of the State to secure and maintain high quality

universal telecommunications services at just and reasonable rates for all classes of customers and to encourage innovation within the telecommunications industry by a combination of regulation and competition in varying degrees.

The purpose of this act is to provide for flexible regulation by the public utilities commission to allow for such competition among telecommunications providers as the commission determines to be in the public's interest.

1990 Haw. Sess. L. Act 49, § 1 at 88.

HRS § 269-16.9(a) also allows the commission to exempt a telecommunications provider or service from any or all of the provisions of HRS Chapter 269, except the provisions of HRS § 269-34, upon a determination that the exemption is in the public interest. In making this determination under HRS § 269-16.9(a), the commission must consider whether the exemption promotes (1) state policies in telecommunications; (2) the development, maintenance, and operation of effective and economically efficient telecommunications services; and (3) the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry. See also, *In re AT&T Communications of Hawaii, Inc.*, Docket No. 7719, Decision and Order No. 13128 (February 11, 1994).

The legislative history of Act 49 also emphasizes that the Act,

will allow for the timely introduction of new telecommunications services. As public utilities, the providers of these new services may be exempted from any or all regulatory requirements, but with a reservation of regulatory powers by the Commission.

Regulatory flexibility will enable the Commission to streamline procedures affecting the introduction of new services.

Sen. Stand. Comm. Rep. No. 2431, in 1990 Senate Journal, at 1027.

In their Amended Stipulation, the Stipulating Parties state that because "no participant in the CMRS market is in a position to control prices, or prevent market entry and competition," waivers of various statutory provisions pursuant to HRS § 269-16.9(e) would be more appropriate and efficient than seeking exemptions pursuant to HRS § 269-16.9(a). In particular, the Stipulating Parties represent that they agreed to waivers rather than exemptions because: (1) exemptions and waivers accomplish the same deregulatory purpose; and (2) competition is the basis for the present deregulatory discussion.

We agree with the Stipulating Parties' position on this issue, and conclude that there is no practical distinction in granting exemptions or waivers under HRS § 269-16.9(a) or (e), respectively, in this instance. Referring to the legislative history of HRS § 269-16.9, both provisions appear to provide the commission with the discretion in providing telecommunications carriers with certain regulatory flexibility and relief consistent with the public interest. Upon review, we agree with the Stipulating Parties that "pursuant to HRS § 269-16.9(e), the [c]ommission could waive the application of various provisions contained in HRS Chapter 269 to CMRS [providers] based on a determination

that competition serves, or will be able to serve, the same purpose as public interest regulation in Hawaii." Accordingly, the commission's primary focus in this docket will be to investigate and determine whether any regulatory requirements can be waived for any and all CMRS providers, pursuant to HRS § 269-16.9(e).¹²

B.

Stipulated Findings of Fact and Conclusion of Law

Upon review of the Stipulating Parties' findings of fact and conclusion of law set forth in Section VII. of the Amended Stipulation, we find that these findings of fact and conclusion of law are reasonable.¹³ Therefore, we will approve and adopt all four (4) findings of fact and the conclusion of law in its entirety. The four (4) findings of fact state as follows:

1. Five (5) national CMRS providers provide mobile telephone services in the Honolulu Metropolitan Service Areas and at least three (3) national CMRS providers provide mobile telephone services in the Hawaii Rural Service Areas.

¹²We recognize that the Stipulating Parties waive any notice of hearing and hearing to the extent required under HRS § 269-16.9(a) and/or HAR § 6-80-135. However, we find this waiver to be unnecessary and moot, and, therefore, will not be holding any hearings in this docket because: (1) The commission will not be granting any exemptions in this docket under HRS § 269-16.9(a); and (2) A hearing is discretionary under HAR § 6-80-135.

¹³Although Section VII. of the Amended Stipulation lists five (5) stipulated findings of fact ("FOF"), we construe FOF No. 5 to be a conclusion of law. In any event, any conclusion of law herein improperly designated should be deemed or construed as a finding of fact, and vice versa.

2. Presently, mobile telephony service providers generally offer all of their national product offerings in Hawaii.
3. Deregulation of CMRS may provide incentives for additional investment by CMRS providers.
4. No CMRS provider is dominant in the Hawaii marketplace, permitting competition to serve the same purpose as public interest regulation with respect to many statutory and regulatory requirements currently in place.

The conclusion of law states as follows:

5. 47 U.S.C. § 332(c)(3)(A) provides: "[N]o State or local government shall have any authority to regulate the entry of or rates charged by any commercial mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service."

These stipulated findings of fact and conclusion of law form some of the bases for granting many of the waivers, discussed below.

C.

Waiver of HRS Chapter 269/HAR Chapter 6-80 Requirements
(without conditions, limitations or clarification)

Upon review of the Stipulating Parties' agreements to waive various sections of HRS Chapter 269/HAR Chapter 6-80, as set forth in Table 2 attached to their Amended Stipulation, we conclude

that only certain sections of HRS Chapter 269/HAR Chapter 6-80 included in Table 2 should be waived, pursuant to HRS § 269-16.9(e). The commission finds that (1) the Stipulating Parties' agreements on the sections listed below are reasonable; (2) competition, in this instance, will serve the same purpose as public interest regulation; and (3) the waiver of such sections is consistent with the public interest. In particular, the commission concludes that the following sections should be waived without conditions, limitations, or clarification:

HRS Chapter 269

- HRS § 269-7.5(b) and (d) - **Certificates of public convenience and necessity**
- HRS § 269-12(b) and (c) - **Notices**
- HRS § 269-16 - **Regulation of utility rates; ratemaking procedures**
- HRS § 269-16.5 - **Lifeline telephone rates**
- HRS § 269-16.9(f) - **Telecommunications providers and services**
- HRS § 269-17 - **Issuance of securities**
- HRS § 269-17.5 - **Issuance of voting stock; restrictions**
- HRS § 269-18 - **Acquirement of stock of another public utility**
- HRS § 269-19.5 - **Relations with an affiliated interest; definition; contracts with affiliates filed and subject to commission action**
- HRS § 269-25 - **Valuations**
- HRS § 269-30(c) - **Finances; public utility fee**
- HRS § 269-37 - **Compensation agreements**
- HRS § 269-38 - **Regulatory flexibility for effectively competitive services**
- HRS § 269-39 - **Cross-subsidies**

HAR Chapter 6-80

- HAR § 6-80-7 - **Consolidated proceeding**
- HAR § 6-80-8 - **Filing of existing agreements with the commission**
- HAR § 6-80-17(c)(1)(C), (D), (E); (e)(1) and (2) - **Application for certification**
- HAR § 6-80-18 (a)(1), (2), (3); (g) - **Issuance or denial of certification**
- HAR § 6-80-19 - **Suspension or revocation**

- HAR § 6-80-25 - **Classification of services**
- HAR § 6-80-26 - **Reclassification of services**
- HAR § 6-80-27 - **Procedures for classifying or reclassifying a service**
- HAR § 6-80-32 - **Pricing - fully and partially competitive services**
- HAR § 6-80-33 - **Pricing - noncompetitive services**
- HAR § 6-80-34 - **Pricing - resale and exempt services**
- HAR § 6-80-35 - **Cross-subsidization prohibited**
- HAR § 6-80-36 - **Separate subsidiary for competitive service**
- HAR § 6-80-37 - **Nondiscrimination in the provision of telecommunications services**
- HAR § 6-80-38 - **Refunds or credits**
- HAR § 6-80-40 - **Denial or approval of tariffs**
- HAR § 6-80-41 - **Proposed increases or decreases in prices**
- HAR § 6-80-42 - **Cost studies**
- HAR § 6-80-87 - **Operating standards for telecommunications service - general**
- HAR § 6-80-89 - **Exchange area maps**
- HAR § 6-80-90 - **Capital improvements**
- HAR § 6-80-91(c) - **Annual financial reports**
- HAR § 6-80-92 (a) and (b) only - **Other reports**
- HAR § 6-80-93 - **Standards for service quality**
- HAR § 6-80-94 - **Service installation**
- HAR § 6-80-95 - **Disruption of service**
- HAR § 6-80-96 - **Answering calls**
- HAR § 6-80-97 - **Transmission requirements**
- HAR § 6-80-98 - **Call completion**
- HAR § 6-80-99 - **Rates and special charges information**
- HAR § 6-80-100 - **Customer billing**
- HAR § 6-80-101 (a) and (d) only - **Billing information**
- HAR § 6-80-102 - **Billing Disputes**
- HAR § 6-80-103 - **Adjustments for out of service conditions**
- HAR § 6-80-104 - **Establishment of credit**
- HAR § 6-80-105 - **Customer deposits**
- HAR § 6-80-106 - **Denial or discontinuance of service**
- HAR § 6-80-113(a) (2), (3), (4), (5), (6), (7); (b) (3) - **Customer rights in a competitive telecommunications market**
- HAR § 6-80-115 (a) (10) only - **Standards for customer privacy**
- HAR § 6-80-116 - **Aggregate customer information**
- HAR § 6-80-122 - **Abandonment or discontinuance of noncompetitive service**

- HAR § 6-80-123(a) and (b) only - **Abandonment or discontinuance of fully or partially competitive service**

For the remaining sections listed in Table 2 of the Amended Stipulation, we decline to waive the following sections in their entirety: HRS § 269-9 and HAR §§ 6-80-6, 6-80-86, 6-80-107 and 6-80-129(2)-(15).¹⁴ HAR §§ 6-80-92(a)-(e), 6-80-101, 6-80-115 are waived only in part.¹⁵ As noted below, HRS §§ 269-36 and 269-37 and HAR §§ 6-80-39, 6-80-60, 6-80-61, and 6-80-62 are waived subject to conditions, limitations or clarification. Any other remaining sections listed in Table 2 of the Amended Stipulation not specifically addressed in this decision and order are not waived and the Stipulating Parties' requests for waivers on these sections are deemed denied.

D.

Waiver of HRS Chapter 269/HAR Chapter 6-80 Requirements
(with conditions, limitations or clarification)

Upon review of the Stipulating Parties' agreements relating to Tables 2 and 3 attached to their Amended Stipulation, we agree with the Stipulating Parties that certain sections of HRS Chapter 269/HAR Chapter 6-80 should be waived with conditions, limitations or clarifications, pursuant to HRS § 269-16.9(e).

¹⁴We find that waiving HRS § 269-9 and HAR §§ 6-80-6, 6-80-86 and 6-80-107 would not be consistent with the public interest. Moreover, because HAR § 6-80-129 implements HRS § 269-34, we are precluded from waiving any portions of HAR § 6-80-129.

¹⁵We find that waiving HAR §§ 6-80-92(c), (d) and (e), 6-80-101(b) and (c), and 6-80-115(a)(1) through (6) and (a)(8) and (9) would not be consistent with the public interest.

The commission finds that (1) the Stipulating Parties' agreements on these sections listed below are reasonable; (2) competition, in this instance, will serve the same purpose as public interest regulation; and (3) the waiver of such sections, subject to certain conditions, limitations or clarification, is consistent with the public interest. In particular, the commission concludes that the following sections should be waived, subject to certain conditions, limitations or clarification:

HRS Chapter 269

- HRS § 269-7(a) - **Investigative powers**, waiver limited only to the requirement that CMRS providers obtain prior commission approval for transactions affecting the relations and transactions of its parent and/or affiliated entities.
- HRS § 269-7.5(a) - **Certificates of public convenience and necessity**, provided that a CMRS provider may give notice of its intent to offer CMRS services in the State on a "registration form" type of application or petition for a certificate of registration ("COR") to be agreed upon by the Stipulating Parties and approved by the commission. In the COR application or petition, the CMRS provider shall provide the information specified in HAR §§ 6-80-17(c)(1) and (d), except that the CMRS provider will not be required to provide the information required in HAR §§ 6-80-17(c)(1)(C) and (D). Upon filing of the application or petition for COR, pursuant to HAR Chapter 6-61, the commission will process such application or petition for COR in accordance with HAR § 6-80-17(d) and 6-80-18(b).
- HRS § 269-8.2 - **Location of records**, provided that HAR § 6-80-136(a)(3) applies to the extent HRS §§ 269-7(a) and 269-16.9(g) apply.
- HRS § 269-8.5 - **Annual financial reports**, provided that CMRS providers shall provide the commission and the Consumer Advocate their respective statewide subscriber counts twice a year concurrent with the submission of their Bill for Collection and Schedule on Computation of the Public Utility Fee and Public Utility Fee payments filed in accordance with HRS § 269-30. These filings may be subject to stipulated protective orders or protective orders filed in accordance with HAR § 6-61-50.

- HRS § 269-19 - **Mergers and consolidation of public utility corporations**, provided that a CMRS provider operating in the State will provide the commission and the Consumer Advocate with a notice of a merger or consolidation with any other non-affiliated public utility operating in the State on or around the same day an FCC-required application for approval of such merger or consolidation is filed with the FCC.
- HRS § 269-36 - **Telecommunications number portability**, provided that no waiver is granted to the extent that the FCC delegates to the commission certain responsibilities of number portability affecting CMRS providers in Hawaii.
- HRS § 269-42 - **Universal service program; contributions**, provided that it is waived until the commission considers activating or implementing the State universal service fund.

HAR Chapter 6-80

- HAR § 6-80-20 - **Temporary certificate of authority - carrier of last resort**, provided that it is waived until the commission considers activating or implementing the State universal service fund.
- HAR § 6-80-39 - **Tariffs**, provided that CMRS providers shall maintain and promptly provide updated information regarding their service plans (with terms and conditions) and the appropriate contact information (i.e., designated carrier representative) upon the commission's, the Consumer Advocate's or consumer's request. Such updated information shall also be placed within a reasonable time period on the CMRS providers' respective websites, if they have any.
- HAR § 6-80-60 - **Availability of number portability**, provided that no waiver is granted to the extent that the FCC delegates to the commission certain responsibilities of number portability affecting CMRS providers in Hawaii.
- HAR § 6-80-61 - **Number portability**, provided that no waiver is granted to the extent that the FCC delegates to the commission certain responsibilities of number portability affecting CMRS providers in Hawaii.
- HAR § 6-80-62 - **Customer access to number portability**, provided that no waiver is granted to the extent that the FCC delegates to the commission certain responsibilities of number portability affecting CMRS providers in Hawaii.
- HAR § 6-80-63 - **Directory assistance and directory publication**, provided that waiver is granted for HAR § 6-80-63(e) only to the extent that there are no wireless directory listings.

- HAR § 6-80-64 - **Directories**, provided that waiver is granted for HAR § 6-80-64(a)(2) only to the extent that there are no wireless directory listings.
- HAR § 6-80-65 - **Directory Errors**, provided that waiver is granted only to the extent that there are no wireless directory listings.
- HAR § 6-80-66 - **Number changes**, provided that waiver is granted only to the extent that there are no wireless directory listings.
- HAR § 6-80-67 - **Intercept service**, provided that waiver is granted only to the extent that there are no wireless directory listings.
- HAR § 6-80-91(a), (b), (d) - **Annual financial reports**, provided that CMRS providers shall provide the commission and the Consumer Advocate their respective statewide subscriber counts twice a year concurrent with the submission of their Bill for Collection and Schedule on Computation of the Public Utility Fee and Public Utility Fee payments filed in accordance with HRS § 269-30. These filings may be subject to stipulated protective orders or protective orders filed in accordance with HAR § 6-61-50.
- HAR § 6-80-115(a)(7) only - Standards for customer privacy, provided that waiver is granted only to the extent that there are no wireless directory listings.

For the remaining sections listed in Table 3 of the Amended Stipulation, we decline to waive the following sections in their entirety: HRS §§ 269-16.91 and 269-54 and HAR §§ 6-80-88, 6-80-113(a)(1), and 6-80-113(b)(1).¹⁶ Any other remaining sections listed in Table 3 of the Amended Stipulation not specifically addressed in this decision and order are not waived and the Stipulating Parties' requests for waivers on these sections are deemed denied.

¹⁶We find that waiving HRS §§ 269-16.91 and 269-54, and HAR §§ 6-80-88, 6-80-113(a)(1) and 6-80-113(b)(1) would not be consistent with the public interest. See also, Section IV.E.4, *supra*, for HRS § 269-16.91.

E.

Other Stipulated Matters

1.

General Applicability of Waivers to all CMRS Providers

In the Amended Stipulation, the Stipulating Parties agree that "any and all waivers approved by the [c]ommission in this docket will equally apply to all CMRS [providers] (including any and all of their respective successors in interests, affiliated companies, etc. that may from time to time assume all or part of any CMRS [provider's] operations in Hawaii), including any who have not signed this Stipulation." To ensure consistency, predictability and equality amongst any and all existing and new CMRS providers in Hawaii, we find this agreement to be reasonable, in part. In sum, we believe it to be appropriate to provide any and all new CMRS providers that were not parties to this docket an opportunity to opt out of any waivers granted in this docket if they choose to do so. Thus, we conclude that, unless ordered otherwise, any and all waivers approved by the commission by this decision and order shall equally apply to all CMRS providers in Hawaii (including any and all new CMRS providers that were not parties to this docket and any and all of the existing Stipulating Parties' or CMRS providers' successors in interests or affiliated companies that may from time to time assume all or part of these providers' operations in Hawaii). However, any and all new CMRS providers that were not parties to this docket may request to opt out of any waivers granted in this docket by filing a petition to opt out with the commission.

Table 4 and G.O. No. 8

The Stipulating Parties' Amended Stipulation requests that we issue a ruling that the HRS Chapter 269/HAR Chapter 6-80 requirements set forth in Table 4 of the Amended Stipulation are inapplicable to CMRS providers in Hawaii. They also request that we confirm that G.O. No. 8 has been superseded by HAR Chapter 6-80 with respect to CMRS carriers.

We decline to issue any declaratory ruling as to whether certain regulatory requirements should be deemed inapplicable or superseded by another rule with respect to CMRS providers. We believe that such a ruling may be also unnecessary since it should be clear to the wireless industry that certain regulatory requirements set forth in Hawaii statutes or rules are not requirements imposed on CMRS providers. As we reiterated on numerous occasions, our sole purpose in opening this docket is to investigate and determine whether certain regulatory requirements could be streamlined for CMRS providers in Hawaii, pursuant to HRS § 269-16.9, through either the granting of exemptions or waivers. Accordingly, we will deny the Stipulating Parties' requests for a determination that: (1) The HRS Chapter 269/HAR Chapter 6-80 requirements set forth in Table 4 of the Amended Stipulation are inapplicable to CMRS providers in Hawaii; and (2) G.O. No. 8 has been superseded by HAR Chapter 6-80 with respect to CMRS providers.¹⁷

¹⁷Our denial of these requests does not prevent the Stipulating Parties from filing petitions for a declaratory ruling under HAR Chapter 6-61 on these two (2) issues.

3.

Table 5

The Stipulating Parties' Amended Stipulation requests that we issue a ruling approving the stipulated clarifications specified in Table 5. Amended Stipulation at 17. Table 5 of the Amended Stipulation appears to be a listing of all remaining HRS Chapter 269/HAR Chapter 6-80 regulatory requirements that are in dispute. On January 23, 2004, the Wireless Carriers, T-Mobile and the Consumer Advocate filed position statements to, among other things, address these unresolved requirements.

Upon review of Table 5 and consideration of the Wireless Carriers', T-Mobile's and the Consumer Advocate's arguments set forth in their respective position statements, we find that waiving these regulatory requirements (except HRS § 269-7(a) to the extent limited in Section IV.D. above) would not be consistent with the public interest. Accordingly, we decline, at this juncture, to waive any of the regulatory requirements set forth in Table 5 of the Amended Stipulation (except HRS § 269-7(a) to the extent limited in Section IV.D. above) at this time. For the same reasons noted in Section IV.E.2. above, we also decline to issue any ruling concerning the stipulated clarifications specified in Table 5.

4.

HAR Chapter 6-81

In the Amended Stipulation, the Stipulating Parties agree that HAR Chapter 6-81, which relates to the State Universal Service Fund ("USF"), should not be addressed at this time as no State USF

has been implemented. Accordingly, the Stipulating Parties request that the commission approve their agreement to consider the applicability of HAR Chapter 6-81 at such time as the commission considers implementing a State USF.

We agree with the Stipulating Parties that it may be premature to investigate whether the requirements of HAR Chapter 6-81 should be streamlined for CMRS providers since the State USF has yet to be implemented. As we previously stated, we opened this docket to solely investigate whether certain regulatory requirements imposed on CMRS providers could be either exempted or waived under HRS § 269-16.9. At this juncture, we do not find any relevant facts that would convince us that it would be consistent with the public interest to waive these regulatory requirements for CMRS providers, including HRS § 269-16.91, under HRS § 269-16.9(e) and HAR § 6-80-135. Accordingly, we decline to waive these requirements at this time.¹⁸ Finally, we do not believe that commission approval of the Stipulating Parties' agreement to consider the applicability of HAR Chapter 6-81 at such time as the commission considers implementing a State USF is necessary. The commission will likely revisit this issue should the State USF be implemented in the future, and any interested persons including the Stipulating Parties will have sufficient notice and opportunity to provide comments, if any.

¹⁸The Stipulating Parties should also be mindful that our refusal to waive these requirements at this time does not prevent them from filing a petition on their own under HRS § 269-16.9 to waive such requirements should the commission consider implementing a State USF in the future.

Protective Orders

The Stipulating Parties request that we approve the forms of the Stipulations for Protective Order attached to the Amended Stipulation as Exhibits "A" and "B", respectively, and confirm that the protective orders thereby approved by the commission will remain in full force and effect after the closing of this docket to protect the confidential data that will be filed by the Stipulating Parties with the commission and the Consumer Advocate as agreed in the Amended Stipulation.

Upon review of these forms, we make the following observations. First, issuance of protective orders under HAR § 6-61-50 was never an issue to be addressed in this docket. See Procedural Order No. 20563. Second, the Stipulating Parties neither explain in detail the differences between the two (2) forms nor the grounds supporting the Stipulating Parties' request for the commission's pre-approval of these forms. Finally, like any other public utility under our purview, any party in this docket may file a stipulation for protective order (similar to the forms attached to the Amended Stipulation as Exhibit "A" and "B", respectively) in accordance with HAR § 6-61-50 for commission review and approval to serve their particular purposes. For these reasons, we decline to issue any ruling on these forms at this time.

V.

Conclusion

As part of our efforts in examining whether the regulation of CMRS providers in Hawaii could be streamlined by any means, we revealed that the regulatory requirements affecting the wireless carrier industry in Hawaii are set forth in both HRS Chapter 269 and HAR Chapter 6-80.¹⁹ Accordingly, by finding, among other things, that competition will serve the same purpose as public interest regulation for some of these requirements, we determined that certain regulatory requirements in HRS Chapter 269 and HAR Chapter 6-80, as more specifically described and listed in Section III.C. and D. above, should be waived for any and all CMRS providers in Hawaii, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135 and subject to the applicable conditions, limitations and clarification discussed herein.²⁰ We also note that the Stipulating Parties also agree to many of these waivers, and by

¹⁹We must commend the Stipulating Parties in their efforts in assisting the commission to undertake such a comprehensive and in-depth investigation in such a short period of time. The Stipulating Parties played an integral part in this investigative docket.

²⁰Consistent with HRS § 269-16.9(g) and HAR § 6-80-137, the commission reserves the right to rescind any waiver granted in this decision and order if, after notice and hearing, it finds that the conditions prompting the granting of the waiver no longer apply, or that the waiver is no longer in the public interest, or that the CMRS providers failed to comply with one or more of the conditions of the waiver or any other applicable statutory or regulatory requirements. The Stipulating Parties should also be mindful that our findings and conclusions rendered and waivers granted in this docket are based on the Stipulating Parties' representations relating to, among other things, the current CMRS marketplace in Hawaii. Therefore, should circumstances change, as represented in this docket, the commission may revisit this matter under HRS § 269-16.9(g) and HAR § 6-80-137.

this decision and order, we have approved and adopted some of them in their entirety or with modifications. We also have granted waivers subject to certain conditions, limitations, or clarification.

As a result of these waivers, we believe that CMRS providers in Hawaii will now be afforded sufficient and appropriate regulatory flexibility and relief to, among other things, develop and promote investment in new and innovative wireless telecommunications technologies in Hawaii. For example, CMRS providers in Hawaii will no longer be required to obtain prior commission approval for any mergers, refinancing, or transfer of control type of transactions normally required under either HRS §§ 269-7(a), 269-17, 269-17.5, 269-18, or 269-19. The CMRS providers will only be required to provide the commission and the Consumer Advocate with a notice of a merger or consolidation with any other non-affiliated public utility operating in the State on or around the same day an FCC-required application for approval of such merger or consolidation is filed with the FCC.

In addition, CMRS providers need not file tariffs, as required under HAR § 6-80-39, provided that CMRS providers continue to maintain and promptly provide updated information regarding their service plans (with terms and conditions) and contact information (i.e., carrier's designated representative) upon the commission's, the Consumer Advocate's or consumer's request. Such updated information shall also be placed within a reasonable time period on the CMRS providers' websites, if they have any.

The process to obtain a COR from the commission will also be streamlined by this decision and order. CMRS providers may now obtain a COR by filing a "registration form" type of application or petition that will be agreed upon by the Stipulating Parties and approved by the commission²¹, or they can file their own application or petition that suits their needs so long as it contains the information specified in HAR § 6-80-17(c)(1) and (d), except the CMRS provider will not be required to provide the information required in HAR § 6-80-17(c)(1)(C) and (D). In other words, a CMRS provider's application or petition must only include information on the type of telecommunications service to be offered by the CMRS provider and the geographical scope of the CMRS provider's proposed operation.

As discussed in Section IV. above, we also decline to adopt many of the Stipulating Parties' agreements to waive certain regulatory requirements primarily because we find that waiving such requirements would not be consistent with the public interest. In particular, we are not convinced that competition, in these instances, will serve the same purpose as public interest regulation with respect to these requirements. We also find that many of these requirements in HAR Chapter 6-80 implement the requirements of HRS § 269-34, thereby preventing us from granting any waivers under HAR § 6-80-135.

²¹Within ninety (90) days from the date of this decision and order, we will require the Stipulating Parties to informally meet, confer, and file a stipulated "registration form" type of application or petition for a COR for the commission's review and approval.

In summary, many of the requirements that we decline to waive at this time concern our ability to continue to regulate or oversee certain "terms and conditions" of CMRS as authorized by the OBRA. For example, we denied the Stipulating Parties' request to waive our ability to investigate customer complaints under HAR § 6-80-107. As indicated in our annual report submitted to the Legislature for fiscal year 2002-03 ("Annual Report"), we continue to receive numerous complaints against wireless carriers.²² We are cognizant of the argument that a competitive wireless carrier market offers the best protection for consumers (either through self-policing or other means). Nonetheless, if the wireless carrier industry continues to grow in this State and users become more dependent on them as their primary source of telecommunications, we believe that it is imperative and in the public interest to ensure adequate consumer protection, while fostering increased competition and promoting investment in the wireless telecommunications market in Hawaii. In our view, consumers have certain expectations of today's telecommunications system (whether the system is operated by wireline, wireless or other technologies) including having a system that (1) provides ubiquitous, reliable and safe telecommunications services, (2) adheres to certain minimum standards for telecommunications services, and (3) assures the provision and continuation of critical features such as E911 and telecommunications relay services. For these reasons, we are retaining many of the

²²For calendar year 2002, we received 119 informal and verbal complaints against cellular and paging companies. Annual Report at 27.

regulatory requirements that address these issues. For any other remaining agreements or requests in the Amended Stipulation and the Stipulating Parties' respective position statements not specifically addressed in this decision and order, these agreements or requests are deemed denied.

VI.

Orders

THE COMMISSION ORDERS:

1. The regulatory requirements in HRS Chapter 269 and HAR Chapter 6-80, as more specifically described in Section III.C. and D. above, are waived for any and all CMRS providers in Hawaii, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135, subject to the applicable conditions, limitations and clarification discussed herein.

2. The Stipulating Parties' Amended Stipulation, filed on January 22, 2004, is approved, in part, and denied, in part, consistent with the terms and conditions of this decision and order. Specifically, the Stipulating Parties' request for:

- a. A waiver of the HRS Chapter 269/HAR Chapter 6-80 regulatory requirements specified in Tables 2 and 3 of the Amended Stipulation is approved, in part, and denied, in part, consistent with the terms and conditions of this decision and order.

- b. A ruling that the HRS Chapter 269/HAR Chapter 6-80 regulatory requirements specified in Table 4 of the Amended Stipulation are inapplicable to CMRS providers is denied in its entirety.
- c. A ruling concerning the stipulated clarifications specified in Table 5 is denied.
- d. A ruling approving their agreement with respect to the HAR Chapter 6-81 regulatory requirements is denied.
- e. A ruling that G.O. No. 8 has been superseded by HAR Chapter 6-80 with respect to CMRS providers is denied.
- f. A ruling on the forms of the Stipulations for Protective Order attached to the Amended Stipulation as Exhibits "A" and "B" is denied.

Any other remaining agreements or requests in the Amended Stipulation and the Stipulating Parties' respective position statements not specifically addressed in this decision and order are deemed denied.

3. Unless ordered otherwise, any and all waivers approved by the commission by this decision and order shall equally apply to all CMRS providers in Hawaii (including any and all new CMRS providers that were not parties to this docket and any and all of the existing Stipulating Parties' or CMRS

providers' successors in interests or affiliated companies that may from time to time assume all or part of these providers' operations in Hawaii). However, any and all new CMRS providers that were not parties to this docket may request to opt out of any waivers granted in this docket by filing a petition to opt out with the commission.

4. Consistent with HRS § 269-16.9(g) and HAR § 6-80-137, the commission reserves the right to rescind any waiver granted in this decision and order if, after notice and hearing, it finds that the conditions prompting the granting of the waiver no longer apply, or that the waiver is no longer in the public interest, or that the CMRS providers failed to comply with one or more of the conditions of the waiver or any other applicable statutory or regulatory requirements.

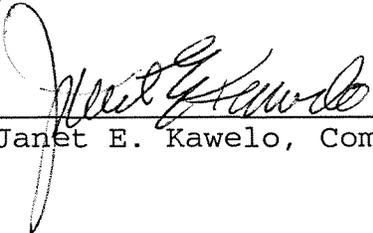
5. Within ninety (90) days from the date of this decision and order, the Stipulating Parties shall submit to the commission a stipulated "registration form" type of application or petition for a COA for the commission's review and approval.

DONE at Honolulu, Hawaii this 7th day of April, 2004.

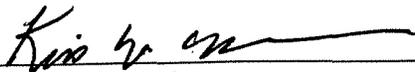
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

03-0186.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20890 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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