

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
VERIZON HAWAII INC.)
For Approval of Amendment No. 2)
to the Interconnection Agreement)
between Verizon Hawaii Inc. and)
Verizon Avenue.)

DOCKET NO. 04-0014

DECISION AND ORDER NO. 20895

Filed April 8, 2004
At 2:30 o'clock P.M.

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DIRECTOR GENERAL ATTORNEY
DEPT OF PUBLIC UTILITIES
COORDINATOR ATTORNS
STATE OF HAWAII

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.

Petition

By petition filed on January 20, 2004, VERIZON HAWAII INC. ("Verizon Hawaii") requests commission approval of the negotiated Amendment No. 2 to the interconnection agreement ("Amendment No. 2") between Verizon Hawaii and Verizon Avenue (together with Verizon Hawaii, "Parties"). Verizon Hawaii included a copy of Amendment No. 2 as part of its petition. Amendment No. 2 was filed pursuant to section 252(e) of the federal Telecommunications Act of 1996 ("Act")¹ and Hawaii Administrative Rules ("HAR") § 6-80-54.

Copies of Verizon Hawaii's petition were served upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). By statement of

¹The Act amended Title 47 of the United States Code ("U.S.C."). Section references in this decision and order are, thus, to those in 47 U.S.C., as amended by the Act.

position ("SOP") filed on March 2, 2004, the Consumer Advocate informed the commission that it does not object to the commission's approval of Verizon Hawaii's petition, with recommendations, as discussed below. By letter filed with the commission on March 8, 2004, Verizon Hawaii objected to the Consumer Advocate's recommendations ("Objection Letter").

II.

Background

Verizon Hawaii is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii (State), and engaged in the provision of varied telecommunications services within its certificated territory in the State. Verizon Hawaii is an "incumbent local exchange carrier" as the term is defined in 47 U.S.C. § 252.

The commission approved the original interconnection agreement ("Interconnection Agreement") between the Parties by Decision and Order No. 19718, filed on October 21, 2002, in Docket No. 02-0190. By Order No. 20577, filed on October 14, 2003, in Docket No. 03-0229, the commission approved Amendment No. 1 to the original interconnection agreement.

The terms and conditions of Amendment No. 2 were negotiated and arrived at voluntarily by the Parties, as contemplated by 47 U.S.C. § 252(a). Amendment No. 2 reflects changes to the Interconnection Agreement made necessary by the

addition of rates, terms and conditions set forth by the Federal Communications Commission's Triennial Review Order ("TRO").²

III.

Consumer Advocate

In its SOP, the Consumer Advocate concludes that Amendment No. 2 is reasonable and consistent with the federal requirements. In particular, the Consumer Advocate determined that Amendment No. 2 does not appear to discriminate against a carrier not a party to the Interconnection Agreement, was negotiated and agreed to in good faith by the Parties and appears to be consistent with the public interest, convenience and necessity objectives of promoting competition in the telecommunications industry.

The Consumer Advocate points out that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit. The Parties agree that should a stay or reversal of any of the TRO's provisions contained in Amendment No. 2 result from the appeal, that the subject provisions in Amendment No. 2 shall be suspended or voided, and have no force and effect from the day of the stay or reversal.

The Consumer Advocate also notes that most of the changes reflected in Amendment No. 2 cannot be compared to other agreements for purposes of determining whether discrimination

²The rates reflected in the TRO are attached as Exhibit A of Verizon Hawaii's petition ("Exhibit A").

against another party exists.³ The Consumer Advocate recommends that Verizon Hawaii provide copies of its worksheets reflecting the calculations made in arriving at the rates shown in Exhibit A for purposes of determining reasonableness in future applications.

IV.

Verizon

In its Objection Letter, Verizon Hawaii asserts that the Consumer Advocate's recommendation, that Verizon Hawaii provide worksheets to support the reasonableness of its rates, is unreasonable and unnecessary for the following reasons: (1) the Act and the commission's rules limit the review of negotiated rates, i.e., the commission may reject a negotiated agreement only if it finds that an agreement "discriminates against a telecommunications carrier not a party to the agreement" or is contrary to the public interest, convenience and necessity, otherwise, the commission must approve a negotiated interconnection agreement; (2) the Consumer Advocate has never made a request for worksheets or calculations during the eight (8) years in which Verizon Hawaii has been submitting negotiated or adopted interconnection agreements for commission approval, and yet has been able to make a favorable determination in all of Verizon Hawaii's agreements; (3) neither the Act nor

³The Consumer Advocate states, however, that six (6) out of the thirty-seven (37) activities listed in the TRO are consistent with rates previously approved by the commission, and the remaining rates are consistent with the provisions of the TRO. See SOP, p.4.

the commission's rules require the filing of such calculations for approval of interconnection agreements; (4) there are safeguards in the Act to ensure that rates are non-discriminatory and consistent with the public convenience, need and necessity; and (5) federal and state laws were designed to simplify the regulatory process regarding interconnection agreements.

For these reasons Verizon Hawaii urges the commission to reject the Consumer Advocate's recommendation.

V.

Discussion

Our review of Amendment No. 2 is governed by 47 U.S.C. § 252(e) and HAR § 6-80-54. These sections provide that we may reject a negotiated agreement only if:

- (1) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.

Our review indicates that Amendment No. 2 does not discriminate against other telecommunications carriers and that the implementation of the Amendment is consistent with the public interest, convenience, and necessity. We, thus, conclude that Amendment No. 2 should be approved.

With regard to the Consumer Advocate's recommendation that in future applications, Verizon Hawaii provide copies of worksheets and calculations made to determine its rates, we agree with Verizon Hawaii that this requirement appears to be unnecessary at this time. To assist the commission and the Consumer Advocate in their review of interconnection agreements in the future, we do expect, however, Verizon Hawaii to furnish information on a case-by-case basis as may be required by the Consumer Advocate or the commission. We, thus, will not adopt the Consumer Advocate's recommendation at this juncture.

VI.

THE COMMISSION ORDERS:

1. Amendment No. 2 to the interconnection agreement between Verizon Hawaii and Verizon Avenue, filed on January 20, 2004, is approved.
2. This docket is closed.

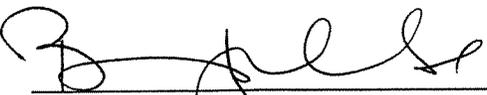
DONE at Honolulu, Hawaii this 8th day of April, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel
04-0014.sl

By 
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20895 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
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JOEL K. MATSUNAGA, VICE PRESIDENT-EXTERNAL AFFAIRS
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Karen Higashi

DATED: April 8, 2004