

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
VERIZON HAWAII INC.)
For Approval of the Pole)
Attachment and Conduit Occupancy)
Licensing Agreement Between)
VERIZON HAWAII INC. and TIME)
WARNER TELECOM OF HAWAII, L.P.)
_____)

DOCKET NO. 04-0045

DECISION AND ORDER NO. 20903

RECEIVED
2004 APR 15 A 8:44
DIV. OF ATTORNEY GENERAL
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed April 14, 2004
At 2:00 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.

II.

Background

A.

Agreement

Verizon Hawaii is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii ("State"). It engages in the provision of varied telecommunications services to its customers and the general public within its chartered territory in the State.

Time Warner Hawaii does business in the State as Oceanic Communications and is a reseller and facilities-based provider of telecommunications services.²

The Agreement governs Time Warner Hawaii's non-exclusive revocable license to occupy, place, and maintain attachments to Verizon Hawaii's poles, ducts, and conduits for the provision of cable television and/or telecommunications services. The Agreement has a term of two (2) years and sets forth specific rates, terms, and conditions of the license.

²Time Warner Hawaii initially received authority to provide digital and analog intrastate dedicated transport telecommunications service in the City and County of Honolulu (see, Decision and Order No. 14145, filed on August 17, 1995, in Docket No. 94-0093), and later received authorization to expand its service territory to the entire State in Decision and Order No. 14395, filed on November 27, 1995, in Docket No. 95-0316.

B.

Consumer Advocate's Position

The Consumer Advocate determined that the Agreement's terms, conditions, and rates are consistent with applicable Federal Communications Commission ("FCC") orders³ and the commission's decisions in Docket No. 7702.⁴ The Consumer Advocate believes that Verizon Hawaii and Time Warner Hawaii "negotiated in good faith the terms and rates for pole attachment and conduit occupancy", as reflected in the Agreement, in compliance with Order No. 19446, filed on July 3, 2002, in Docket No. 7702 ("Docket No. 19446"). In that order, the commission refrained from establishing maximum duct rates for 2002 through 2005 and encouraged parties to the docket to establish rates through negotiations.

The Consumer Advocate does not object to the approval of Verizon Hawaii's request since the rates proposed in the Agreement do not result in any discrimination towards carriers not part of the Agreement. It also determined that that Agreement is consistent with the public interest, convenience, and necessity since granting Time Warner Hawaii the opportunity to attach and access its own equipment to Verizon Hawaii's poles, ducts, and conduits for the provision of telecommunications services

³The Consumer Advocate cited formula revisions adopted by the FCC in FCC No. 00-116, CS Docket No. 97-98, released April 3, 2000 and FCC No. 01-170, CS Docket Nos. 97-98 and 97-151 consolidated, released May 25, 2001.

⁴The Consumer Advocate noted the following orders of Docket No. 7702: (1) Order No. 18265, filed on December 19, 2000; and (2) Order No. 19446, filed on July 3, 2002.

continues the advancement of competition in the State's telecommunications market.

III.

Findings and Conclusions

HAR § 6-80-78 requires all agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration be submitted to the commission for review and approval. The Agreement is not an arbitrated agreement but one that appears to be negotiated by Verizon Hawaii and Time Warner Hawaii. Under HAR § 6-80-78(b) the commission may reject a negotiated interconnection agreement if we find:

- (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.

The commission agrees with the Consumer Advocate's determinations that the Agreement does not appear to discriminate against other telecommunications carriers, and that the implementation of the Agreement is consistent with the public interest, convenience, and necessity. The Agreement also appears to be consistent with FCC requirements and commission orders, specifically, Order No. 19446. Furthermore, we recognize that approval of the Agreement is in the public interest since it will allow Time Warner Hawaii to attach and have access to Verizon Hawaii's poles, ducts, and conduits, which furthers competition in the State's telecommunications market.

Accordingly, we conclude that the Agreement should be approved.

IV.

Orders

THE COMMISSION ORDERS:

1. The Pole Attachment and Conduit Occupancy Licensing Agreement between Verizon Hawaii and Time Warner Hawaii, filed on February 25, 2004, is approved under HAR § 6-80-78(b).

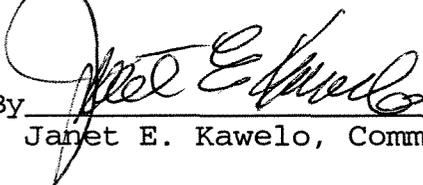
2. This docket is closed.

DONE at Honolulu, Hawaii this 14th day of April, 2004.

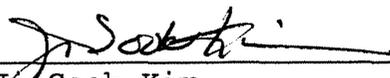
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel
04-0045.EH

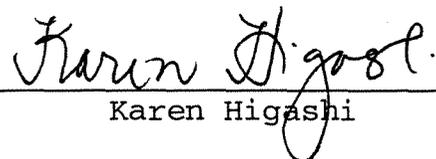
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20903 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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DATED: April 14, 2004