



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of)  
VERIZON HAWAII INC. ) Docket No. 04-0040  
For Arbitration of an Amendment ) Order No. 21022  
To Interconnection Agreements )  
With Competitive Local Exchange )  
Carriers and Commercial Mobile )  
Radio Service Providers in )  
Hawaii Pursuant to Section 252 )  
Of the Communications Act of )  
1934, as Amended, and the )  
Triennial Review Order. )

ORDER

I.

Background

Verizon Hawaii Inc. ("Verizon Hawaii")<sup>1</sup> filed a petition requesting that the commission initiate a consolidated arbitration proceeding to amend the interconnection agreements between Verizon Hawaii and (1) each of the competitive local exchange carriers ("CLECs") and, (2) to the extent that their current interconnection agreements provide for access to unbundled network elements ("UNE"), each of the commercial mobile radio service ("CMRS") providers in Hawaii. The amendments are intended to implement changes regarding Verizon Hawaii's

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<sup>1</sup>In the State of Hawaii ("State"), Verizon Hawaii is commonly recognized as an incumbent local exchange carrier ("ILEC"). Additionally, certain references to Verizon Hawaii in this order may be referring to Verizon Communications, Inc., Verizon Hawaii's current parent, and its various affiliates, in general.

unbundling obligations under the Federal Communications Commission's ("FCC's") Triennial Review Order ("TRO")<sup>2</sup> ("Petition"). The Petition was filed on February 20, 2004.

Subsequently, Verizon Hawaii filed a letter on March 11, 2004, acknowledging the D.C. Circuit Court of Appeals' ("D.C. Circuit Court") March 2, 2004 order ("*USTA II*")<sup>3</sup> vacating and remanding certain provisions of the *TRO*, and to inform us that it is reviewing *USTA II* and may file modifications to its Petition. Verizon Hawaii stated that any such modifications will be filed by March 19, 2004. Accordingly, it also requested that the commission extend the deadline for the non-petitioning parties to file their responses.

By Order No. 20846, filed on March 12, 2004, the commission required Verizon Hawaii to file modifications to its arbitration petition, if any, by March 19, 2004, and extended the deadline for the non-petitioning parties to file responses to Verizon Hawaii's Petition until: (1) April 13, 2004, if Verizon Hawaii files its modifications; and (2) April 2, 2004, if Verizon Hawaii opts to not file modifications.

CELLCO PARTNERSHIP, dba VERIZON WIRELESS ("Verizon Wireless") filed its response letter on March 16, 2004.

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<sup>2</sup>*In Re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*; CC Docket Nos. 01-338, 96-98, and 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; FCC No. 03-36; Adopted February 20, 2003; Released August 21, 2003.

<sup>3</sup>*United States Telecom Ass'n v. FCC*, Nos. 00-1012 et al., 2004WL 374262 (D.C. Cir., March 2, 2004).

Verizon Hawaii filed an update to the Petition ("Update") on March 19, 2004.

On April 13, 2004, various non-petitioning parties to this docket filed their responses to Verizon Hawaii's Petition and Update, pursuant to Order No. 20846. The following submitted responsive filings on that day: (1) LEVEL 3 COMMUNICATIONS, LLC ("Level 3"); (2) SANDWICH ISLES COMMUNICATIONS, INC. ("Sandwich Isles"); (3) PACIFIC LIGHTNET, INC. ("PLNI"); (4) SPRINT COMMUNICATIONS, COMPANY, L.P. ("Sprint"); (5) KMC Data LLC ("KMC Data"); (6) MCIMETRO ACCESS TRANSMISSION SERVICES LLC ("MCI"); and (7) AT&T COMMUNICATIONS OF HAWAII, INC. ("AT&T"). On that same day, AT&T also filed a motion to dismiss or strike Verizon Hawaii's Update ("Motion to Dismiss").

TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic") submitted a filing for an extension of time to file its response, response to Verizon Hawaii's Petition, and motion to dismiss ("Oceanic's Filing") on April 20, 2004.

On April 22, 2004, Verizon Hawaii filed memorandums in opposition to Sprint's motion to dismiss and AT&T's Motion to Dismiss. Subsequently, on April 28, 2004, Verizon Hawaii filed a memorandum in opposition to Oceanic's motion to dismiss and request for extension of time to file response.

On May 7, 2004, Verizon Hawaii filed a motion requesting the commission to hold the proceeding in abeyance until June 15, 2004 ("Motion for Abeyance").<sup>4</sup>

The commission, by this order, addresses Verizon Hawaii's request for a consolidated arbitration proceeding as set forth in its Petition, as amended by the Update. The commission will address this procedural issue. We will not address any substantive matters with regards to proposals to amend specific terms and conditions of Verizon Hawaii's interconnection agreements with any CLEC or CMRS provider operating in the State.

## II.

### Verizon Hawaii's Petition and Update

Verizon Hawaii contends that the FCC in the *TRO* promulgated new rules regarding the scope of the ILECs' obligations to provide access to its UNEs. It represents that the *TRO* requires carriers to use the timetable of § 252(b) of the

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<sup>4</sup>On May 14, 2004, MCI filed a partial opposition to Verizon Hawaii's Motion for Abeyance ("Opposition"). MCI contends that the commission should deny Verizon Hawaii's Motion for Abeyance with regards to matters not affected by *USTA II* and that are ripe for arbitration, and, among other things, requests that we order Verizon Hawaii to continue to provide certain services as UNEs at existing rates, terms, and conditions until all issues regarding Verizon Hawaii's obligations as an ILEC are resolved. On May 26, 2004, Verizon Hawaii filed a motion for leave to file a reply to MCI's Opposition, and attached its reply to its submittal ("Reply"). In its Reply, Verizon Hawaii argues, among other things, that MCI is requesting the commission act improperly and outside of our jurisdiction, and recommends that we deny MCI's request.

Telecommunications Act of 1996 (the "Act")<sup>5</sup> to implement the modifications to their interconnection agreements and that the effective date of the *TRO* is deemed to be the commencement date of the negotiations. Verizon Hawaii states that the negotiations between Verizon Hawaii and each of the CLECs and CMRS providers in the State began on October 2, 2003, the effective date of the *TRO*, since it sent each carrier a letter initiating the negotiations and proposed a draft interconnection amendment ("Amendment") (a copy of the Amendment was included with Verizon Hawaii's Petition as Exhibit 2) to implement the new rules. It represents that the parties "have not reached agreement on many (and, in most cases, any) of the substantive issues."<sup>6</sup> Verizon Hawaii states that it files its Petition pursuant to the "arbitration window" established by § 252(b)(1) and the *TRO*.<sup>7</sup> It informs us that under this section of the Act, and as provided by the *TRO*, the commission must make its determinations within nine (9) months after a request for negotiation was made. Thus, it represents that the commission must finish its determination of the unresolved issues of this matter by July 2, 2004.

Verizon Hawaii further contends that the commission is permitted "to consolidate proceedings under § 252 where not

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<sup>5</sup>The Act amended Title 47 of the United State Code (U.S.C.). Section references in this order refer to those in 47 U.S.C., as amended by the Act.

<sup>6</sup>See, Verizon Hawaii's Petition at 4.

<sup>7</sup>Verizon Hawaii represents that February 14, 2004, to March 11, 2004, constitutes its "arbitration window" to file its petition with the commission under § 252(b)(1).

inconsistent with the requirements of the Act to reduce administrative burdens on telecommunications carriers and the State commission[.]”<sup>8</sup> Verizon Hawaii represents that its Amendment will bring all of the interconnection agreements in the State in compliance with present laws in a manner that will not waste the parties’ or the commission’s resources.

In its Update, Verizon Hawaii attaches a revised version of its Amendment in light of *USTA II*, and describes the modifications made to the Amendment since its initial filing.

### III.

#### Responsive Filings

In its efforts to be as inclusive as possible, Verizon Hawaii served its Petition on thirty-two (32) CLECs and CMRS providers, set forth in a list attached to its Petition as Exhibit 1 (i.e., the “Non-petitioning Parties”). Of these Non-petitioning Parties, nine (9) filed responses with the commission regarding Verizon Hawaii’s request for a consolidated arbitrated proceeding. While Sprint, KMC Data, MCI, AT&T, and Oceanic filed substantive pleadings (recognized in this order, as their separate and respective “Response”), Verizon Wireless, Level 3, Sandwich Isles, and PLNI filed informative response filings.

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<sup>8</sup>See, Verizon Hawaii’s Petition at 5. Citing § 252(g) of the Act. Internal quotes and markings omitted.

A.

Informative Response Filings

Verizon Wireless filed a letter to inform us that it is in the midst of negotiating with Verizon Hawaii on the terms of dismissal, and that it has confirmed with Verizon Hawaii that once they have reached an agreement, Verizon Wireless can be dismissed as a party to this proceeding.

Level 3 informs us that it is actively negotiating an interconnection agreement with Verizon Hawaii to replace its existing interconnection agreement. It also states that it does not anticipate being an active participant in this proceeding and requests that it be dismissed from this docket. Moreover, it mentions that this proceeding is a waste of the commission's and the parties' time since negotiations with Verizon Hawaii are currently on-going. It also contends that Verizon Hawaii's Petition is untimely since Verizon Hawaii did not follow the "change of law" and "dispute resolution" procedures of its interconnection agreements before filing its arbitration.

Sandwich Isles informs us that it is continuing and will continue to negotiate in good faith with Verizon Hawaii regarding the issues related to its interconnection agreement with the ILEC and that it reserves its right to participate further in this proceeding under Subchapter 5 of Hawaii Administrative Rules ("HAR") Title 6, Chapter 80.

PLNI informs us that it has reached an agreement with Verizon Hawaii to amend its existing interconnection agreement, making its participation in this proceeding moot. It informs us

that it should be dismissed as a party to this proceeding. Verizon Hawaii appears to agree with PLNI's assessment.<sup>9</sup>

B.

Substantive Response Filings

1.

Sprint's Response

Sprint asserts that the Petition should be dismissed. In the alternative, it states that the proceedings in this docket should be stayed until meaningful good faith negotiations can be completed, or until the implications of *USTA II* are fully resolved. Sprint's recommendations are based on the arguments set forth below.

First, Sprint contends that Verizon Hawaii failed to negotiate in good faith as required under the Act and commission rules. Sprint contends that Verizon Hawaii deflected any meaningful discussion to resolve their differences. Sprint argues that the § 252(b)(1) timetable is a default timetable to be used to resolve open issues after "good faith" negotiations have occurred. It further argues that Verizon Hawaii's decision to file its Petition without first negotiating in "good faith" places unnecessary burdens on the commission and the CLECs.

Second, Sprint argues that Verizon Hawaii's Petition is procedurally defective since it fails to adhere to the express

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<sup>9</sup>Verizon Hawaii's attorney of record endorsed PLNI's April 13, 2004 letter.

requirements of the Act and our rules. While § 252(b)(2) and HAR § 6-80-53(a)(2) requires a petition for an arbitration to set forth: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issue discussed and resolved by the parties, Sprint contends that Verizon Hawaii's Petition did not satisfy any of these requirements.

Third, Sprint maintains that while *USTA II* reversed and remanded certain parts of the *TRO*, it does not expect the order to fully resolve the issues of the *TRO*. Sprint informs us that it did not have sufficient time to fully analyze *USTA II* and requests additional time to file comments if Verizon Hawaii's Petition is not dismissed or stayed.

Moreover, Sprint provided us with a March 3, 2004 North Carolina Utility Commission ("N.C. Commission") decision on a similar petition for arbitration filed by the Verizon affiliate in that state. The N.C. Commission "ruled that those proceedings be continued indefinitely because (1) the petition constituted a parallel *TRO* proceeding, (2) it made no sense to begin arbitration where the underlying FCC rules were being challenged, and (3) Verizon did not comply with the commission's procedural rules."<sup>10</sup> The N.C. Commission's decision is included as Attachment 1 to Sprint's Response, and Sprint requests that we dismiss or stay Verizon Hawaii Petition for the same reasons.

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<sup>10</sup>See, Sprint Response, filed on April 13, 2004, at 4, quoting *In re Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Docket No. P-19, SUB 477, Order Continuing Proceeding Indefinitely (N. Car. Util. Comm'n, March 3, 2004).

2.

KMC Data's Response

KMC Data begins its response by listing a host of procedural and substantive problems with Verizon Hawaii's filings. KMC Data specifically contends that Verizon Hawaii "filed its petition without describing negotiations (or lack thereof) conducted to date, without regard to the change of law provision(s) of any individual interconnection agreement, and without even describing (yet alone defining) a list of issues" for the commission to consider.<sup>11</sup> KMC Data further contends that Verizon Hawaii failed to respond to its counteroffers and that it made no effort to establish a negotiation schedule with them. While suggesting that we should reject Verizon Hawaii's Petition and Update for inconsistencies with federal and state laws, KMC Data contends that this consolidated proceeding to arbitrate interconnection agreement amendments will be an efficient means to resolve many issues that affect many carriers, and recommends a procedural guideline for the commission to utilize.

3.

MCI's Response

In its Response, MCI "reserves its right with respect to whether this arbitration process should be conducted on a consolidated basis, . . . , and if so, to what extent or degree."<sup>12</sup> Nevertheless, MCI informs us that it agrees with many of the

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<sup>11</sup>See, KMC Data's Response, filed on April 13, 2004, at 1.

<sup>12</sup>See, MCI's Response, filed on April 13, 2004, at 1.

terms and conditions of Verizon Hawaii's Amendment. It states that its primary concern is with Verizon Hawaii's Update. MCI contends that it is premature at this juncture to incorporate the D.C. Circuit Court's order into the parties' agreement since the order is not yet effective. It further contends that once *USTA II* becomes effective, triggering the "change of law" provisions of the parties' interconnection agreements, the parties are obligated under the agreements to negotiate before coming to the commission for arbitration. Additionally, MCI expressly sets forth numerous reservations in its Response. For example, it reserves its right to argue that the FCC, in its *TRO*, did not mandate carriers to use the § 252(b) timetable when negotiating amendments to interconnection agreements that contain a "change of law" provision. It specifically reserves its right to argue that the "change of law" provision of its interconnection agreement governs the process of negotiating and arbitrating the amendments to implement the *TRO* as opposed to the timing requirements of § 252(b).

4.

#### AT&T's Filings

On April 3, 2004, AT&T filed two (2) separate filings. First, it filed its Response to the Petition asserting that Verizon Hawaii's Amendment is deficient in several ways and provided the commission with a section-by-section critique of Verizon Hawaii's proposed amendments and a copy of its own proposed *TRO* amendments. Among other things, AT&T attached its

proposed *TRO* interconnection agreement amendments as Exhibit 3 to its Response and requests that the commission adopts them.

AT&T also filed its Motion to Dismiss. In this motion, AT&T contends that the issues raised in Verizon Hawaii's Update are not yet ripe for arbitration and suggests that they may never be; accordingly it requests that the commission dismiss or strike the Update. AT&T reminds us that the court in *USTA II* stayed the effects of the order until the later of: (1) denial of any petition for rehearing or rehearing *en banc*; or (2) sixty (60) days after the issuance of the order. AT&T speculates that *USTA II* would be stayed pending a review by the United States Supreme Court, by a rehearing *en banc* by the D.C. Circuit Court, or affected by further action from the FCC. Among other things, it contends that the Update fails to abide by the procedural requirements of HAR § 6-80-53. AT&T states that no correspondence or discussion has occurred with regards to the issues of *USTA II* and that Verizon Hawaii's failure to abide by the rule's requirements will result in a waste of our resources.

5.

#### Oceanic's Response

Oceanic makes its request for an extension of time to file its response under HAR § 6-61-23(a)(2) since it mistakenly believed that the due date for the filing of its response was April 20, 2004. However, it contends that its response is timely under HAR § 6-61-42 since it is requesting, in part, that the Petition be dismissed as it pertains to Oceanic.

Oceanic represents that under HAR § 6-61-42 "a motion to dismiss may be made any time before a hearing on the merits."<sup>13</sup>

Oceanic contends that the Petition is premature and requests that the commission deny Verizon Hawaii's request for a consolidated arbitration or, at a minimum, dismiss Oceanic as a party from this proceeding. Oceanic represents that it is an improper party to this proceeding since it is actively negotiating an interconnection agreement with Verizon Hawaii, and that its window for arbitration has not expired. If Oceanic is not dismissed from this proceeding, it contends that it will be forced to participate in an arbitration proceeding which may be unnecessary, leading to a waste of its resources.

#### IV.

##### Verizon Hawaii's Objections

Verizon Hawaii filed separate objections to the various requests or motions to dismiss (or deny) filed by Sprint, AT&T, and Oceanic.<sup>14</sup> Verizon Hawaii's oppositions to each of these requests are summarized below.

#### A.

##### Opposition to Sprint's Motion to Dismiss

First, Verizon Hawaii argues that Sprint's claim that Verizon Hawaii failed to negotiate in good faith is false.

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<sup>13</sup>See, Oceanic's Filing at 2.

<sup>14</sup>Verizon Hawaii filed no objections or comments with regards to the responses filed by Verizon Wireless, Level 3, Sandwich Isles, PLNI, KMC Data, and MCI.

It contends that its refusal to accept Sprint's proposals does not constitute bad faith negotiations and also contends, among other things, that it provided a point-by-point response to each of Sprint's proposals prior to the filing of Sprint's Response. Verizon Hawaii also argues that it is unreasonable for the commission to dismiss the Petition as to Sprint or any other CLEC or CMRS provider since it would require Verizon Hawaii to file individual arbitration petitions regarding each carrier. Moreover, it contends that dismissing its Petition as it pertains to Sprint on Sprint's allegations of bad faith is not a basis to dismiss the Petition as to all CLECs and CMRS providers since these allegations only pertain to dealings between Verizon Hawaii and Sprint, and not to any other carrier.

Second, Verizon Hawaii also argues that Sprint's allegation that the Petition did not comply with requirements of § 252(b)(2) and HAR §6-80-53 does not support a dismissal of the Petition. Verizon Hawaii contends that while the requirements of those sections apply for an arbitration of a new agreement, it does not necessarily apply to its petition to amend existing agreements. It represents that neither the FCC nor the commission has held that petitions seeking resolutions of amendments under the *TRO* would need to comply with the formal requirements of a petition for arbitration of a new agreement. Verizon Hawaii also argues that it has complied with the procedural requirements in light of the circumstances of this proceeding. It states that it has set forth the issues as presented in its draft Amendment and explained them in detail,

but that it was unable to set forth the parties' positions on the various issues since it generally did not receive responses to its proposal, or received them too late in the process. Verizon Hawaii further argues that it has complied with the clear purpose of the requirements by setting forth the disputed issues for the commission to resolve. Moreover, it contends that a dismissal of the Petition based on any technical defects of the Petition would be a "disproportionate and inappropriate" response.

Finally, Verizon Hawaii claims that Sprint's request for additional time to respond to the issues related to *USTA II* is untimely and unreasonable. Thus, it recommends that we deny this request. Verizon Hawaii specifically argues, among other things, that the commission established a timetable for the Non-petitioning Parties to respond in Order No. 20846. It contends that no party moved for a reconsideration of that order, and that the time for a reconsideration of the order has expired.

B.

Opposition to AT&T's Motion to Dismiss

Verizon Hawaii disagrees with AT&T's allegations that the issues set forth in the Update are not ripe since *USTA II* is not yet effective, and that the "change of law" provision of their interconnection agreement must be used to implement changes resulting from *USTA II*. First, it contends that the commission already determined that it was reasonable for Verizon Hawaii to

file the Update in Order No. 20846. Verizon Hawaii asserts that the Update was crafted to accommodate potential further legal developments in the wake of *USTA II*--making accommodations for the possibility that the stay will be lifted; the possibility that it will not be lifted; and even the possibility that the U.S. Supreme Court will reverse the D.C. Circuit Court's decision. Given this flexibility, Verizon Hawaii argues that its proposed changes are not controversial and that it is reasonable to address the Update at this time since it eliminates the need for additional multiple arbitrations in the future.

Verizon Hawaii also contends that the "change of law" provision in its interconnection agreement with AT&T is not applicable to the *USTA II* issues since the change of law triggering this proceeding is the *TRO*. It contends that *USTA II* does not trigger the "change of law" provision since it merely modifies the requirements of the *TRO*. Verizon Hawaii reiterates that it filed the Petition under the requirements of the *TRO* and that the FCC directed carriers to use the § 252(b) timetable. Verizon Hawaii further contends that the commission has a duty under federal law to make determinations on any unresolved issue within the timetable prescribed.

With regards to AT&T's assertion that Verizon Hawaii failed to adhere to the requirements of HAR § 6-80-53, Verizon Hawaii reiterates its arguments and representations filed in its opposition to Sprint's similar claim.

C.

Opposition to Oceanic's Filing

Verizon Hawaii states that while it does not oppose Oceanic's request for an extension of time to file its response, it does oppose Oceanic's motion to be dismissed from this proceeding. It argues that Oceanic must remain a party to this proceeding to amend its existing interconnection agreement to implement the provisions of the *TRO*. It insists that the on-going negotiations between Verizon Hawaii and Oceanic are separate from this proceeding. Verizon Hawaii also states that it is uncertain whether or not Verizon Hawaii and Oceanic can come to an agreement on a new interconnection agreement, including *TRO* terms, without proceeding to arbitration. Verizon contends that it would be agreeable to a voluntary dismissal of Oceanic from this proceeding once Oceanic and Verizon Hawaii have negotiated and executed an agreement in conformity with the *TRO*.

V.

Discussion

Upon review of the record, we find that Verizon Hawaii's Petition, filed on February 20, 2004, requesting the commission to initiate a consolidated arbitration proceeding to amend its interconnection agreements with the various named CLECs and CMRS providers, as applicable, and as amended by its Update, filed on March 19, 2004, should be denied, without prejudice. Our determination is based on the following.

First, as purported by Sprint and various other respondents, Verizon Hawaii's Petition fails to conform to the requirements of § 252(b)(2) and HAR § 6-80-53(a). These sections of federal law and commission rules are clear--a petition for arbitration before a state commission, must set forth: (1) the unresolved issues; (2) the position of each party relating to those issues; and (3) any other issues discussed and resolved by the parties. Verizon Hawaii's Petition is clearly deficient with regards to this matter since it fails to set forth the position of each party on the unresolved issues. Additionally, under HAR § 6-80-53(a), a petition for arbitration before the commission must include, among other things, all relevant documents and materials relating to the unresolved issues, the position of each of the parties with respect to those issues, and any other issue discussed and resolved by the parties. Instead, Verizon Hawaii merely attached its Amendment to its Petition, informed the commission that few carriers responded to its request for negotiations, and stated that it filed its Petition under an "arbitration window".

Verizon Hawaii's arguments against a dismissal due to its failure to adhere to federal law and commission rules are unpersuasive. For example, while it contends that the FCC required carriers to use the § 252(b) timetable, Verizon Hawaii appears to argue that the requirements of § 252(b)(2) and the commission's rules in HAR § 6-80-53(a), which reflect the federal law, are not applicable for this proceeding. We disagree. The FCC, in its *TRO*, specifically states that it "will rely on

state commissions to be vigilant in monitoring compliance with the provisions of sections 251 and 252.”<sup>15</sup> (Emphasis added.) We believe that the § 252(b)(2) requirements are included in this FCC request. Furthermore, among other things, Verizon Hawaii contends that a dismissal of the Petition due to any technical defects would be a “disproportionate and inappropriate” response. However, we believe that Verizon Hawaii’s failure to comply with these requirements necessitate the commission to deny its Petition; especially since we are only given until July 2, 2004, to complete our review, make our determinations, and issue an order. The form in which Verizon Hawaii filed its Petition makes it impracticable, if not virtually impossible for the commission to meet this deadline.

Second, the D.C. Circuit Court in *USTA II* vacated and remanded certain portions of the *TRO* back to the FCC. In the order, the D.C. Circuit Court temporarily stayed the issue of the mandate until the latter of (1) a denial of any petition for rehearing or rehearing *en banc*; or (2) sixty (60) days from the issuance of the order (on or about May 1, 2004). Soon thereafter, the D.C. Circuit Court granted the FCC’s request for an extension of the stay for forty-five (45) days. Thus, the *USTA II* mandates will not be issued until on or about June 15, 2004, at this time. Clearly, the implications of the *TRO* are not settled. The filing of Verizon Hawaii’s Update and its May 7,

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<sup>15</sup>See, *TRO* at ¶ 703.

2004 Motion for Abeyance<sup>16</sup> provides further evidence of the current uncertain legal conditions surrounding the *TRO*. Additionally, there is no assurance that another stay or a rehearing of the issues by any court will not be granted. We believe that it would be inappropriate, untimely, and a waste of the parties' and commission's resources to grant Verizon Hawaii's request for a consolidated arbitrated proceeding, at this time. Verizon Hawaii's contention that its Update was structured to accommodate future legal developments is unpersuasive since the legal environment at this time is too uncertain.

Moreover, there are certain aspects of Verizon Hawaii's Petition that we find questionable. For instance, while Verizon Hawaii insists that the FCC in the *TRO* requires carriers to employ the § 252(b) timetable, it fails to elaborate that the FCC set this timetable as a "default timetable for modification for interconnection agreements that are silent concerning change of law and/or transition timing."<sup>17</sup> (Emphasis added.) Based on the filings, it appears that "change of law" provisions do exist in the interconnection agreements between Verizon Hawaii and certain Non-petitioning Parties including, but not limited to,

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<sup>16</sup>In its Motion for Abeyance, Verizon Hawaii requests that we hold this proceeding until June 15, 2004 (the day the *USTA II* mandates are expected to be issued) to conserve the resources of the commission and the parties. Furthermore, it requests that we toll the time for the completion of the arbitration and that it will propose a procedural schedule for the recommencement and completion of the arbitration proceeding on or shortly after June 15, 2004.

<sup>17</sup>See, *TRO* at ¶ 703.

Level 3, MCI, and AT&T. Thus, it is questionable whether or not the § 252(b) timetable is applicable to this proceeding, at this time, and with every named Non-petitioning Party.

Further, we are troubled about the extent of the number of CLECs and CMRS providers listed by Verizon Hawaii as parties to this proceeding in Exhibit 1 of the Petition. Verizon Hawaii explained that it only seeks to amend those agreements that require Verizon Hawaii to provide UNES and that it included some carriers in Exhibit 1 that may not be needed to be listed as a party to this proceeding "[o]ut of an abundance of caution".<sup>18</sup> It also reserved its right to amend Exhibit 1 to remove any carrier with an agreement that it determines does not require an amendment. However, since the filing of the Petition, approximately more than three (3) months ago, Verizon Hawaii did not once attempt to pare down Exhibit 1 to those carriers that "need" to participate in this proceeding. We also note that Verizon Hawaii listed US Cellular as a party to this proceeding. We find this action to be unnecessary and questionable since US Cellular (a.k.a. USCOC of Hawaii 3, Inc.) has not held a certificate of registration (or a certificate of public convenience and necessity ("CPCN")) to provide wireless telecommunications services in any portion of the State since

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<sup>18</sup>See, Verizon Hawaii's Petition at 1, footnote 1.

approximately October 2000.<sup>19</sup> Verizon Hawaii's inaction with regards to tailoring Exhibit 1 indicates to the commission that it may not be giving our rules proper consideration and due regard. Its failure to fully tailor its Petition to carriers with interconnection agreements that "require" amendment has already unnecessarily diverted the resources of the commission and the parties involved.

Based on the above, we conclude that Verizon Hawaii's petition for a consolidated arbitration proceeding, as set forth in its Petition filed on February 20, 2004, as amended by its Update, filed on March 19, 2004, should be denied, without prejudice. Due to our decision, above, we find and conclude that the various filed motions and requests in this proceeding to be moot including, but not limited to, Sprint's request for a dismissal of the Petition or a stay of the proceedings, AT&T's Motion to Dismiss, Verizon Hawaii's Motion for Abeyance, and MCI's Opposition.<sup>20</sup> The commission is not forestalling the filing of a consolidated proceeding in the future.

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<sup>19</sup>By Decision and Order No. 17795, filed on June 15, 2000, in Docket No. 00-0116, the commission authorized AT&T Wireless Services of Hawaii, Inc.'s acquisition of US Cellular's assets. Additionally, by Order No. 18153, filed on October 23, 2000, in Docket No. 6684, the commission approved US Cellular's voluntary surrender of its CPCN, effective as of the date of the order.

<sup>20</sup>With regards to Oceanic's Filing, its request for an enlargement of time to file its response and motion to dismiss under HAR § 6-61-23(a)(2) is questionable since its mistaken belief that the filing date for its response is April 20, 2004, as opposed to April 13, 2004, does not appear to constitute "excusable neglect" under the rule. Additionally, its interpretation of HAR § 6-61-42 and the applicability of the rule at this point in the proceedings is also somewhat suspect. However, we find that this procedural issue is not a matter that needs to be further addressed or resolved in this order.

A consolidated proceeding may benefit, in some respects, all involved. However, any petition for arbitration before this state commission must be in conformity with all applicable federal and state laws and commission rules and requirements.

VI.

Orders

THE COMMISSION ORDERS:

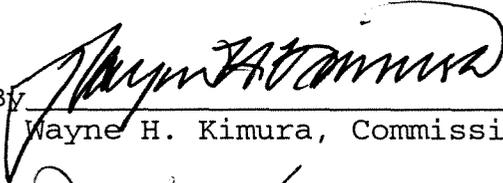
1. Verizon Hawaii's request for a consolidated arbitrated proceeding, as set forth in its Petition filed on February 20, 2004, as amended by its Update, filed on March 19, 2004, is denied, without prejudice.

2. This docket is closed.

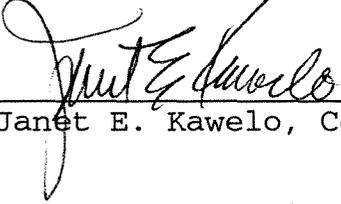
DONE at Honolulu, Hawaii this 2nd day of June, 2004.

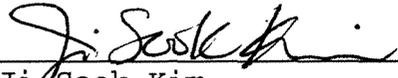
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By   
Janet E. Kawelo, Commissioner

  
Ji Sook Kim  
Commission Counsel

04-0040.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21022 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  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

LESLIE ALAN UEOKA  
ASSISTANT GENERAL COUNSEL  
VERIZON HAWAII INC.  
1177 BISHOP STREET  
HONOLULU, HI 96813

DENNIS KELLEY  
DIRECTOR OF OPERATIONS (PROVISIONING)  
1-800-RECONEX INC.  
2500 Industrial Avenue  
Hubbard, OR 97032

WILLIAM E. BRAUN  
VICE PRESIDENT AND GENERAL COUNSEL  
1-800-RECONEX INC.  
2500 Industrial Avenue  
Hubbard, OR 97032

ROBERT E. HEATH  
AMERICAN FIBER NETWORK INC.  
9401 Indian Creek Parkway, Suite 140  
Overland Park, KS 66210

VP-NETWORK PLANNING  
AMERITECH WIRELESS HOLDINGS INC.  
2000 W. Ameritech Center Drive, 3F28  
Hoffman Estates, IL 60195-5000

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VP & GENERAL COUNSEL  
AMERITECH WIRELESS HOLDINGS INC.  
2000 W. Ameritech Center Drive, 3H78  
Hoffman Estates, IL 60195-5000

ALAN M. OSHIMA, ESQ.  
MICHAEL H. LAU, ESQ.  
OSHIMA CHUN FONG & CHUNG  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

BRUCE W. COOPER  
REGIONAL VICE PRESIDENT, AT&T  
AT&T COMMUNICATIONS OF HAWAII INC.  
3033 Chain Bridge Road, Room D-325  
Oakton, VA 22185

G. RIDGLEY LOUX  
REGIONAL COUNSEL  
AT&T COMMUNICATIONS OF HAWAII INC.  
3033 Chain Bridge Road, Room D300  
Oakton, VA 22185

JILL MOUNSEY  
DIRECTOR - EXTERNAL AFFAIRS  
AT&T WIRELESS SERVICES INC.  
7277 164<sup>th</sup> Avenue NE  
Redmond, WA 98052

JOHN GIANNELLA  
VICE PRESIDENT - TRANSPORT ENGINEERING  
AT&T WIRELESS SERVICES INC.  
7277 164<sup>th</sup> Avenue NE  
Redmond, WA 98052

C. CLAIBORNE BARKSDALE  
ASSOCIATE GENERAL COUNSEL  
BELLSOUTH CELLULAR  
675 W. Peachtree Street  
Atlanta, GA 30308

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Page 3

RUSSELL S. KATO, ESQ.  
DARCY L. ENDO-OMOTO, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

DIRECTOR - REGULATORY-INTERCONNECTION  
CELLCO PARTNERSHIP  
VERIZON WIRELESS  
1300 I Street NW, Suite 400W  
Washington, DC 20005

DUDLEY UPTON  
DIRECTOR OF INTERCONNECTION  
CELLCO PARTNERSHIP  
VERIZON WIRELESS  
One Verizon Place, GA3B1REG  
Alpharetta, GA 30004-8511

ROBERT LIVINGSTON  
CIERA NETWORK SYSTEMS INC.  
1250 Wood Branch Park Drive  
Houston, TX 77079

SETH L. BLOCK  
PRESIDENT  
DIRECT TELEPHONE COMPANY, INC.  
6300 Richmond Avenue, Suite 301  
Houston, TX 77057

STEPHEN ZAMANSKY  
DSLNET COMMUNICATIONS LLC  
545 Long Wharf Drive, 5<sup>th</sup> Floor  
New Haven, CT 06511

MELISSA SMITH  
VICE PRESIDENT EXTERNAL LEGAL AFFAIRS  
EXCEL TELECOMMUNICATIONS INC.  
1600 Viceroy Drive, 4<sup>th</sup> Floor  
Dallas, TX 75235-2306

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Page 4

THOMAS SAWATZKI  
HIGHSPEED.COM OF HAWAII L.L.C.  
6 W Rose Street, Suite 500  
Walla Walla, WA 99362

LACHARLES KEESEE  
ICG TELECOM GROUP INC.  
161 Inverness Drive West  
Englewood, CO 80112

CHARLES FORTNER  
ISLAND PAGE INC.  
Kokea Center  
1095 Dillingham Boulevard, Suite F2  
Honolulu, HI 96817

GENEVIEVE MORELLI, ESQ.  
HEATHER T. HENDRICKSON, ESQ.  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, NW, Suite 500  
Washington, DC 20036

MARVA JOHNSON  
SR. COUNSEL  
KMC DATA LLC  
1755 North Brown Road  
Lawrenceville, GA 30043

RILEY MURPHY  
SR. VICE PRESIDENT, LEGAL REGULATORY AFFAIRS  
KMC DATA LLC  
1545 Route 206  
Bedminster, NJ 07921

RUSSELL M. BLAU, ESQ.  
MICHAEL P. DONAHUE, ESQ.  
SWIDLER BERLIN SHEREFF FRIEDMAN  
3000 K Street, NW, Suite 300  
Washington, DC 20007

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Page 5

MICHAEL ROMANO  
DIRECTOR - STATE REGULATORY AFFAIRS  
LEVEL 3 COMMUNICATIONS LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021

JUDY A. TANAKA, ESQ.  
COLIN A. YOST, ESQ.  
PAUL JOHNSON PARK & NILES  
ASB Tower, Suite 1300  
1001 Bishop Street  
Honolulu, HI 96813

SENIOR MANAGER - CARRIER AGREEMENTS  
MCIMETRO ACCESS TRANSMISSION SERVICES LLC,  
in care of MCI  
2678 Bishop Drive, Suite 200  
San Ramon, CA 94583

CHIEF TECHNOLOGY & NETWORK COUNSEL  
MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
1133 19<sup>th</sup> Street, N.W.  
Washington, DC 20036

VICE PRESIDENT - NATIONAL CARRIER &  
CONTRACT MANAGEMENT  
MCImetro Access Transmission Services LLC  
5055 North Point Parkway  
Alpharetta, GA 30022

COUNSEL - NETWORK & FACILITIES  
MCIMETRO ACCESS TRANSMISSION SERVICES LLC  
22001 Loudoun County Parkway  
Ashburn, VA 20147

R. SCOTT SEAB  
VICE PRESIDENT-REGULATORY AFFAIRS  
NOW COMMUNICATIONS INC.  
711 South Tejon Street, Suite 201  
Colorado Springs, CO 80903

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Page 6

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

HEATHER BRYANT  
VICE PRESIDENT BUSINESS OPERATIONS  
PACIFIC LIGHTNET INC.  
737 Bishop Street, Suite 1900  
Honolulu, HI 96813

ALEX VALENCIA  
REGULATORY COUNSEL  
PREFERRED CARRIER SERVICES INC.  
14681 Midway Road, Suite 105  
Addison, TX 75001

JACQUETTA PEACE  
DIRECTOR - REGULATORY/COMPLIANCE/SPECIAL PROJECTS  
PREMIERE NETWORK SERVICES INC.  
1510 North Hampton Road, Suite 120  
DeSoto, TX 75115

JENNA BROWN  
MANAGER, REGULATORY AFFAIRS  
QUANTUMSHIFT COMMUNICATIONS INC.  
88 Rowland Way  
Novato, CA 94945

PATRICK J. O'CONNOR  
QUANTUMSHIFT COMMUNICATIONS INC.  
GRAY CARY WARE & FREIDENRICH  
1625 Massachusetts Avenue, NW, Suite 300  
Washington, DC 20036

ALAN PEDERSEN  
VICE PRESIDENT - REGULATORY AFFAIRS  
SANDWICH ISLES COMMUNICATIONS, INC.  
Pauahi Tower, Suite 2700  
1001 Bishop Street  
Honolulu, HI 96813

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Page 7

CLIFFORD K. HIGA, ESQ.  
BRUCE NAKAMURA, ESQ.  
KOBAYASHI, SUGITA & GODA  
First Hawaiian Center  
999 Bishop Street  
Suite 2600  
Honolulu, HI 96813

STEPHEN H. KUKTA, ESQ.  
SPRINT COMMUNICATIONS COMPANY, L.P.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

GEOFFREY BLOOM  
TEL-WEST COMPANIES  
2940 St. Joseph Street  
Logandale, NV 89021

J. DOUGLAS ING, ESQ.  
PAMELA J. LARSON, ESQ.  
WATANABE ING KAWASHIMA & KOMEIJI LLP  
999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, HI 96813

TINA DAVIS  
VICE PRESIDENT & DEPUTY GENERAL COUNSEL  
TIME WARNER TELECOM OF HAWAII L.P.  
10475 Park Meadows Drive  
Littleton, CO 80124

ROCHELLE JONES  
TIME WARNER TELECOM OF HAWAII L.P.  
14 Wall Street, 9<sup>th</sup> Floor  
New York, NY 10005

DIRECTOR - CARRIER MANAGEMENT  
T-MOBILE USA INC.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006

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Page 8

GENERAL COUNSEL  
T-MOBILE USA INC.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006

RICHARD MONTO, ESQ.  
SENIOR COUNSEL  
UNIVERSAL ACCESS INC.  
233 South Wacker Drive, Suite 600  
Chicago, IL 60606

JIM NAUMANN  
DIRECTOR OF NETWORK PLANNING AND PURCHASING  
US CELLULAR  
8410 W. Bryn Mawr  
Chicago, IL 60631

MELISSA SMITH  
VICE PRESIDENT EXTERNAL LEGAL AFFAIRS  
VARTEC TELECOM INC.  
1600 Viceroy Drive, 4<sup>th</sup> Floor  
Dallas, TX 75235-2306

PEGGY RUBINO  
Z-TEL COMMUNICATIONS INC.  
601 South Harbour Island Boulevard, Suite 220  
Tampa, FL 33602

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

DATED: June 2, 2004