

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
TIME WARNER TELECOM OF HAWAII, )  
L.P., dba OCEANIC COMMUNICATIONS )  
 )  
For a Declaratory Ruling or to )  
Reclassify Certain Services as )  
Partially Competitive. )  
\_\_\_\_\_ )

DOCKET NO. 04-0082

ORDER NO. 21229

Filed August 9, 2004  
At 2 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 04-0082

Order No. **21229**

ORDER

I.

Background

TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"), is a limited partnership organized under the laws of the State of Delaware and is authorized to do business in the State of Hawaii (the "State"). Oceanic is a provider of interstate and intrastate telecommunications services, including dedicated access (private line) and local exchange services in the State.

Oceanic initially requested a declaratory ruling that certain business services it provides are inherently partially competitive, or in the alternative, the reclassification of these services as partially competitive. Oceanic identifies these services as: (1) standard business lines; (2) analog PBX trunk service; (3) digital PBX trunk service; (4) primary rate ISDN service; (5) private line; and (6) the line features associated with these services, such as call forwarding, speed dialing,

multi-way calling, and caller ID (collectively, Oceanic's "Network Services").

Oceanic made its request for declaratory relief in accordance with Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 16. Subsequently, Oceanic: (1) withdrew its request for a declaratory ruling, or in the alternative, the reclassification of its Network Services as partially competitive; and (2) amended its Petition to seek a waiver of the commission's cost study requirement.<sup>1</sup>

Oceanic served copies of its Petition and Amendment upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate")(collectively, the "Parties"). On June 10, 25, 28, 29, and July 9, 2004, Oceanic responded to the Consumer Advocate's information requests.

On June 29, 2004, Verizon Hawaii Inc. (fka GTE Hawaiian Telephone Company Inc. ("GTE Hawaiian Tel")) filed a motion to intervene, in response to Oceanic's Amendment. On July 8, 2004, Oceanic filed its memorandum in opposition to Verizon Hawaii Inc.'s motion to intervene.

On July 9, 2004, the Consumer Advocate filed its position statement, and on July 16, 2004, Oceanic filed its response. Both pleadings were timely filed in accordance with the Parties' agreed-upon procedural schedule.<sup>2</sup>

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<sup>1</sup>Oceanic's Amendment to Petition, filed on June 10, 2004 ("Amendment").

<sup>2</sup>See Order No. 21077, filed on June 23, 2004.

This order addresses Verizon Hawaii Inc.'s motion to intervene. It does not address the merits of Oceanic's pending request.

II.

Verizon Hawaii Inc.'s Motion to Intervene: Timely

Verizon Hawaii Inc. makes its request to intervene pursuant to HAR §§ 6-61-41, 6-61-55, and 6-61-57(3).

In seeking to intervene, Verizon Hawaii Inc. asserts:

1. Oceanic's Amendment withdraws and replaces its initial requests with a "radically different and new one[.]"<sup>3</sup>

2. The commission should treat Oceanic's Amendment "as a new petition and permit prospective parties twenty days after the filing of the amendment to move to intervene. The amendment was filed on June 10, 2004. Therefore, prospective parties should have until June 30, 2004 to file such a motion."<sup>4</sup>

HAR § 6-61-57(3)(A) provides that a motion to intervene shall be served on all parties and the Consumer Advocate no later than twenty (20) days after an application is filed with the commission. HAR § 6-61-2, in turn, defines an "applicant" and "petitioner" as "a person who files an application seeking permission or authorization which the commission may grant under statutory or other authority delegated to it."

It is undisputed that Oceanic, on June 10, 2004, formally: (1) withdrew its initial requests for a declaratory

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<sup>3</sup>Verizon Hawaii Inc.'s motion to intervene, at 1, footnote 1.

<sup>4</sup>Id.

ruling or reclassification; and (2) amended its Petition to request a new form of relief, pursuant to HRS § 269-16.9(e). By its Amendment, therefore, Oceanic seeks "permission or authorization . . . the commission may grant under [HRS § 269.16.9(e)]." HAR § 6-61-2. Accordingly: (1) Oceanic's Amendment should be treated as a new application; (2) interested persons should be given twenty (20) days from the filing of the Amendment to file a motion to intervene under HAR § 6-61-57(3)(A); and (3) Verizon Hawaii Inc.'s motion to intervene is timely filed.

### III.

#### Oceanic's Request

Oceanic seeks to introduce in the State certain bundled service offerings that include its Network Services, without submitting supporting cost studies. Hence, Oceanic seeks to "waive the requirement set forth in H.A.R. § 6-80-35(e) that [Oceanic] submit cost studies for its bundled offerings that include its Network Exchange Services[,] . . . pursuant to Section 269-16.9(e), H.R.S."<sup>5</sup>

Oceanic advances numerous arguments in support of its request for waiver, including:

1. The intent of HAR § 6-80-35(e) is to address concerns about cross-subsidization involving the incumbent

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<sup>5</sup>Oceanic's Amendment, at 3. See also *id.* at 5, prayer for relief number 2 (request that the commission grant Oceanic an exemption from the requirement under HAR § 6-80-35(e) that it submit cost support studies for its bundled services that include its Network Services).

telecommunications carrier. These concerns do not apply equally to competitive, non-dominant telecommunications carriers, such as Oceanic.

2. Oceanic faces competition from Verizon Hawaii Inc. and Pacific Lightnet, Inc., for all of its Network Services.

3. Unlike Verizon Hawaii Inc., Oceanic does not offer any rate of return regulated telecommunications services. Oceanic is therefore unable to charge unreasonable rates to customers who have no other choice, or to use rate of return regulated services to subsidize other services.

#### IV.

##### Verizon Hawaii Inc.'s Motion to Intervene

###### A.

##### Verizon Hawaii Inc.'s Position

Verizon Hawaii Inc. addresses Oceanic's request to waive "the requirement in HAR § 6-80-35(e) that [Oceanic] file cost studies to support any bundled offering for which it seeks Commission approval."<sup>6</sup> Verizon Hawaii Inc., in support of its intervention request, contends that:

1. Its interest in this proceeding differs from any other potential party, as Verizon Hawaii Inc. is the only telecommunications carrier that Oceanic expressly requests not be granted an exemption. Thus, by continuing to apply the cost study requirement on Verizon Hawaii Inc., while at the same time

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<sup>6</sup>Verizon Hawaii Inc.'s motion to intervene, at 3.

freeing itself from this regulatory burden, Verizon Hawaii Inc. opposes Oceanic's request.

2. The commission should exempt all telecommunications carriers, including Verizon Hawaii Inc., from the cost study requirement in HAR § 6-80-35(e) because this rule unnecessarily discourages competitive price reductions by adding unneeded and costly administrative burdens on all telecommunications carriers.

3. Verizon Hawaii Inc.'s interest will not be fully and adequately represented unless it is allowed to intervene.

4. Its intervention will not broaden the issues or delay the orderly conduct of this proceeding.

5. It "will meet all scheduled dates established for hearings and submission."<sup>7</sup>

6. Its intervention will assist the commission in developing a sound record.

B.

Oceanic's Reply

Oceanic opposes Verizon Hawaii Inc.'s intervention, asserting that:

1. This proceeding is limited to Oceanic's request for a waiver of the HAR § 6-80-35(e) cost study requirement.

2. There are other means available for Verizon Hawaii Inc. to protect its interests, if any.

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<sup>7</sup>Id. at 6.

3. Verizon Hawaii Inc.'s intervention will unnecessarily and impermissibly broaden the issues and delay this proceeding.

C.

Discussion

Intervention as a party in a proceeding before the commission is not a right but is a matter resting within the commission's sound discretion. *In re Hawaiian Elec. Co., Inc.*, 56 Haw. 260, 535 P.2d 1102 (1975). "Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." HAR § 6-61-55(d).

In Verizon Hawaii Inc.'s view, Oceanic expressly requests that Verizon Hawaii Inc. not be granted the same waiver sought by Oceanic. On this basis, Verizon Hawaii Inc. opposes Oceanic's request for waiver.

The commission finds that Verizon Hawaii Inc. mischaracterizes Oceanic's prayer for relief. Oceanic seeks its requested waiver on behalf of itself. The commission, in this proceeding, intends to solely address Oceanic's request for waiver.

Verizon Hawaii also asserts that the commission, ostensibly in this proceeding, should waive all telecommunications carriers from the cost study requirement, and not just Oceanic. The commission, in response, notes that the issue in this proceeding, as briefed by the Parties, is limited

to Oceanic's request for waiver. The commission declines to broaden the scope of this issue to include Verizon Hawaii Inc., or all other telecommunications carriers. Verizon Hawaii Inc., at its option, is free to independently seek the same or similar relief as that of Oceanic.

The commission: (1) in this instance, finds that Verizon Hawaii Inc.'s intervention will unreasonably broaden the scope of the issue in this proceeding; and (2) denies Verizon Hawaii Inc.'s motion to intervene.<sup>8</sup>

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<sup>8</sup>The commission recognizes that in Docket No. 95-0329, it allowed GTE Hawaiian Tel to intervene in Oceanic's application to: (1) amend its certificate of public convenience and necessity, limited to dedicated transport services, to include direct and resold local exchange services; and (2) exempt itself from certain provisions of HRS chapter 269, including cost-based, rate of return regulation. Concomitantly, the commission stayed Oceanic's application, pending the promulgation of the commission's rules governing competition for telecommunications services. See Order No. 14430, filed on December 27, 1995. Ultimately, following the promulgation of HAR chapter 6-80, the commission dismissed as moot Oceanic's application. See Order No. 14842, filed on August 5, 1996.

Unlike Docket No. 04-0082, in Docket No. 95-0329, Oceanic did not affirmatively oppose GTE Hawaiian Tel's intervention by filing a memorandum in opposition to GTE Hawaiian Tel's motion. In addition, HAR chapter 6-80, once promulgated, directly addressed Oceanic's prayer for relief. See HAR §§ 6-80-17(e), 6-80-39, 6-80-40(a), and 6-80-136. Thus, Oceanic's application in Docket No. 95-0329 was dismissed as moot and GTE Hawaiian Tel's participation as an intervenor, from the outset, was limited to the filing of its motion to intervene.

Moreover, in Docket No. 04-0082, the commission is not reviewing a request by Oceanic to expand its operating authority. Instead, as noted in Section IV.C, above, Docket No. 04-0082 is limited to Oceanic's request for a waiver. The commission reiterates that Verizon Hawaii Inc. is independently able to seek the same or similar relief.

V.

Order

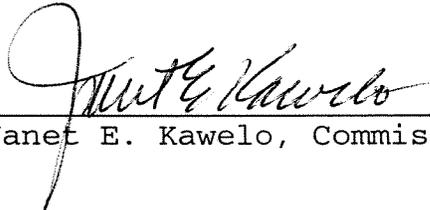
THE COMMISSION HEREBY DENIES Verizon Hawaii Inc.'s motion to intervene.

DONE at Honolulu, Hawaii AUG 09 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:

  
Michael Azama  
Commission Counsel

04-0082.s13

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21229 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

ROCHELLE D. JONES  
VICE PRESIDENT - REGULATORY AFFAIRS, HAWAII  
OCEANIC COMMUNICATIONS  
2669 Kilihau Street  
Honolulu, HI 96819

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

Counsel for OCEANIC COMMUNICATIONS

JOEL K. MATSUNAGA  
VICE PRESIDENT, EXTERNAL AFFAIRS  
VERIZON HAWAII INC.  
P. O. Box 2200  
Honolulu, HI 96841

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

  
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Karen Higashi

DATED: AUG 09 2004