

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
GTE HAWAIIAN TELEPHONE COMPANY)
INCORPORATED, nka VERIZON)
HAWAII INC.)

DOCKET NO. 98-0092

For Approval to Commit Funds in)
Excess of \$500,000 for the)
Construction of Feeder Facilities)
in the Lower Mapunapuna and)
Airport Industrial Areas, and to)
Include the Related Expenditures)
in its Rate Base.)

DECISION AND ORDER NO. 21493

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

2004 DEC 20 A 8:19

RECEIVED

Filed Dec. 17, 2003
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.

chapter 269, as amended, and Hawaii Administrative Rules ("HAR") § 6-80-90.

Verizon served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). On April 7, 1998, the Consumer Advocate served Verizon with information requests ("IRs").

Verizon filed responses to the IRs on April 30, 1998. On June 15, 1998, the Consumer Advocate filed its statement of position ("Statement of Position") recommending that the commission deny Verizon's request for approval to include funds for the Project in Applicant's rate base. On June 17, 1998, pursuant to commission request, Verizon submitted a status of its negotiations to execute a long-term sublease of Kelly's Hut.²

On June 18, 1998, Verizon requested that the 90-day review period specified in HAR § 6-80-90 be extended to July 18, 1998.³ On June 19, 1998, the commission approved this request. By letter filed on July 7, 1998 ("July 7, 1998 Letter"), Verizon urged the commission to reject the Consumer Advocate's recommendation and approve its application. On July 16, 1998, the Consumer Advocate filed a response to Verizon's July 7, 1998

²Kelly's Hut is the name of the structure located at the site of the former Kelly's Coffee Shop, 2908 Kamehameha Highway, in Honolulu. Kelly's Hut serves as the cross-connect point for Verizon's feeder cables and cables serving the Honolulu International Airport and the surrounding areas and is the subject of the instant docket ("Existing Feeder Facilities").

³HAR § 6-80-90 provides, in relevant part, that if the commission does not act upon a proposed expenditure within 90 days of the submission of an application, the applicant may include the costs for the Project in its rate base without a determination by the commission.

Letter, and re-affirmed its position set forth in its Statement of Position to deny Verizon's request for approval to include funds for the Project in Verizon's rate base.

By Order No. 16416, filed on July 16, 1998, the commission suspended the instant Application, pending the issuance of a decision and order in this proceeding. On May 4, 1999, Verizon submitted an executed Amendment and Extension of Lease between Kellyco, Limited ("Kellyco"), and Verizon, for Kelly's Hut, dated March 3, 1999 and continued to urge the commission to approve the instant Application.

By letter filed on September 28, 2001 ("September 28, 2001 Letter"), Verizon stated that the Proposed Project was complete and that approximately 62.10 per cent of the 3,000 pairs of cables were used in the provision of telecommunications services. It also noted that (1) capital costs for the completed Project came in at 2.15 per cent less than the original estimate, at \$934,968 and (2) informed the commission of its long-term lease agreement with Kellyco, giving it an extension on its sublease of the Kelly's Hut property through December 31, 2008, with the option to renew the sublease for two (2) additional 10-year periods.

In response to the September 28, 2001 Letter, the Consumer Advocate, in a letter filed on January 14, 2003 ("January 14, 2003 Letter"), affirmed its earlier recommendation that the commission deny Verizon's request to include the entire \$934,968 in its rate base. In the alternative, the Consumer Advocate proposed that only a portion of the Project costs

be included in Verizon's rate base, with the commission reserving the right to set the appropriate level at Verizon's next rate proceeding.

II.

A.

Verizon's Project Justification

In light of the uncertainties surrounding Verizon's lease negotiations with the new owners of Kellys Hut site, Verizon seeks commission approval to include in its rate base \$934,968 for the construction and installation of: (1) 3,000 pairs of various sized cable along Mapunapuna Street, from the Moanalua Central Office to the Kelly's Hut area; (2) 465 feet of four (4) four-inch conduits between Manholes 2455 and 2456 along Puuloa road, to install the 3,000-pair cable in (1); and (3) the transfer of 3,000 of the 8,100 distribution pairs cross-connected in Kelly's Hut to the newly placed 3,000-pair cable, as described in (1) above.

Kelly's Hut serves as the existing cross-connect point for 6,450 feeder pairs extending from the Moanalua Central Office and 8,100 distribution pairs serving customers in the lower Mapunapuna and Airport Industrial areas and the Honolulu International Airport. It was initially established to facilitate the transfer of the airport area's working circuits from the Kalihi Central Office to the Moanalua Central Office. However, in light of the uncertainties of whether Kelly's Hut would be able

to continue to serve as a cross-connect point facility, as described in more detail below in Section II.B., Verizon decided to proceed with the Project.

Initially, Verizon estimated costs for the Project to be \$468,100, and based upon this estimate, which is less than the \$500,000 threshold, proceeded with the Project without seeking commission approval pursuant G.O. No. 8 and HAR § 6-80-90. However, unanticipated costs and additional work on the Project increased costs to over \$500,000, or \$955,500, prompting Verizon's request for commission approval pursuant to G.O. No. 8 and HAR § 6-80-90. The actual capital cost of the Project was \$934,968.⁴ The Project was completed in September 1998, notwithstanding the ongoing lease negotiations with the owners of the Kelly's Hut site.⁵

B.

History of Lease Negotiation at the Kelly's Hut Site

In 1977, Verizon entered into a long-term sublease agreement with the Spencecliff Corporation for a cross-connect facility on the north corner of the property where Kelly's Coffee Shop, or Kelly's Hut, is located. Nittaku Company, Limited, subsequently obtained the master lease, and after an initial one-year sublease agreement, would agree only to sub-lease the property to Verizon on a month-to-month basis. Due to uncertainties regarding its month-to-month lease, Verizon decided

⁴See footnote 1, *supra*.

⁵See Verizon's September 28, 2001 Letter to the commission.

to move its cross-connect facilities from the Kelly's Hut property, and to construct new feeder facilities. In 1998, the master lease on the subject property was conveyed to Kellyco and negotiations began anew between Verizon and Kellyco regarding the possibility of a long-term sublease of Kelly's Hut. On May 3, 1999, and after the Project was completed, Verizon executed the Amendment and Extension of Lease between Kellyco and Verizon for Verizon's sublease of Kelly's Hut ("Amendment"). The Amendment provided Verizon with an extension of the sublease through December 31, 2008, with the option to renew the sublease for two (2) additional ten-year periods. In light of these events, Verizon represents that it had to proceed with the Project, as described in the Application.

III.

Consumer Advocate's Position

In its Statement of Position, the Consumer Advocate recommends that the commission deny Verizon's request for approval, maintaining that the costs of the Project should not be approved for inclusion in Verizon's rate base at this time. The Consumer Advocate questions the necessity of the Project at a time when Verizon was pursuing a parallel course of action via its sub-lease agreement for the Kelly's Hut site. The Consumer Advocate does not consider Verizon's reliance on the fact that the Project, as originally proposed, was to be less than the

\$500,000 threshold for capital improvement projects,⁶ or that it could not anticipate obtaining a long term sub-lease agreement for the Kelly's Hut site, sufficient justification for approving the Project.

In its January 14, 2003 Letter, the Consumer Advocate confirms that it stands by the recommendation in its Statement of Position, notwithstanding events subsequent to the date of the Application. Even given Verizon's representation in its September 28, 2001 Letter that 62.10 per cent of the 3,000 pairs of cables are used in the provision of telecommunications services, in support of a finding that a portion of the Project is used and useful, the Consumer Advocate is not convinced that this percentage of use justifies allowing the entire cost of the Project into Verizon's rate base. In addition, the Consumer Advocate asserts that Verizon's September 28, 2001 Letter did not provide any information to support a conclusion that all four (4) conduits are used and useful. As such, the Consumer Advocate is unable to determine whether any of the conduit costs represent excess capacity.

⁶The current threshold for capital improvement projects has been raised. At this time, pursuant to Decision and Order No. 21008, filed on May 28, 2004, in Docket No 03-0258, the threshold for capital improvement projects is \$2.5 million, i.e., only those capital improvement projects exceeding project costs of \$2.5 million need commission approval prior to initiating the projects. At the time of the instant application, the threshold was \$500,000.

IV.

Discussion

Upon careful review of Verizon's Application, including, but not limited to, its responses to the Consumer Advocate's IRs, the Consumer Advocate's Statement of Position, and subsequent correspondence to the commission from Verizon and the Consumer Advocate, we find the Project to be reasonable and in the public interest solely for the purpose of the commitment of funds relating to the Project.

Although we agree with the Consumer Advocate that there is insufficient evidence in the record to determine, at this time, exactly what portion of the Project costs should be included in Verizon's rate base, we do not find it necessary in this docket to determine whether the commission should disallow Verizon from including all or any portion of the expenditures attributable to the instant Project in rate base. Instead, we believe that it would be more prudent for us to leave to Verizon's next rate case the determination as to what part, if any, of such expenditures should be disallowed from inclusion in Verizon's rate base. In particular, in the context of the next rate case, we will examine, among other things, whether the expenditures made by Verizon in this docket were prudent, and whether the instant capital Project is used and useful for utility purposes. Thus, we conclude that Verizon's application in this docket should be approved, but

limited solely to the commitment of funds of \$934,968, the amount actually expended for the instant Project.⁷

V.

Orders

THE COMMISSION ORDERS:

1. Verizon's application, filed on March 23, 1998, is approved, but limited to the commitment of funds of \$934,968, the amount actually expended for the construction of feeder facilities serving the lower Mapunapuna and Airport Industrial areas, including the Honolulu International Airport; provided that no part of the cost of the Project may be included in Verizon's rate base unless and until the Project has been determined to be used and useful for utility purposes. Such approval is also subject to the commission's and Consumer Advocate's reserved right to review all capital projects, including the instant capital Project, in Verizon's next rate proceeding.

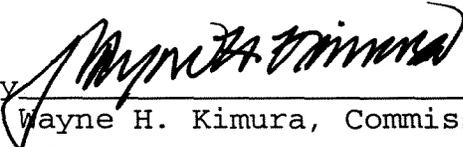
2. No part of the Project may be recovered from ratepayers unless and until the commission grants Verizon recovery in a general rate increase proceeding.

⁷The commission's approval of Verizon's request is limited to the commitment of funds for the project. Accordingly, we do not, by this decision and order, make a finding or conclusion concerning the inclusion of the Proposed Project costs in Verizon's rate base for ratemaking purposes.

DONE at Honolulu, Hawaii DEC 17 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:


Benedyne S. Stone
Commission Counsel

98-0092.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21493 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

JOEL K. MATSUNAGA, VICE PRESIDENT-EXTERNAL AFFAIRS
VERIZON HAWAII INC.
P. O. Box 2200, A-17
Honolulu, HI 96841



Karen Higashi

DATED: DEC 17 2004