

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
 )  
 VERIZON HAWAII INC. )  
 )  
 For Approval of Amendment No. 1 )  
 To the Interconnection Agreement )  
 Between AMERICAN FIBER NETWORK, )  
 INC. and VERIZON HAWAII INC. )  
 \_\_\_\_\_ )

DOCKET NO. 04-0306

DECISION AND ORDER NO. 21501

Filed Dec. 20, 2004  
At 10:00 o'clock A .M.

Karen Higashi  
Chief Clerk of the Commission

RECEIVED  
2004 DEC 22 A 9:02  
DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.  
K. Higashi

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Docket No. 04-0306  
Decision and Order No. **21501**

DECISION AND ORDER

I.

Introduction

VERIZON HAWAII INC. ("Verizon Hawaii") requests commission approval of Amendment No. 1 to its interconnection agreement with AMERICAN FIBER NETWORK, INC. ("AFN") ("Amendment") in a petition filed on October 21, 2004 ("Petition"). Verizon Hawaii included a copy of the Amendment as part of its Petition. The Amendment was filed pursuant to Section 252(e) of the federal Telecommunications Act of 1996 ("Act")<sup>1</sup> and Hawaii Administrative Rules ("HAR") § 6-80-54.

Copies of Verizon Hawaii's Petition and the accompanying Amendment were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate filed its Statement of

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<sup>1</sup>The 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 on November 16, 2004, informing the commission that it does not object to the approval of the Amendment.<sup>2</sup>

## II.

### The Amendment

Verizon Hawaii is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii ("State"). It is engaged in the provision of varied telecommunications services to its customers and the general public within Verizon Hawaii's chartered territory in the State. Verizon Hawaii is an incumbent local exchange carrier, as contemplated by Section 252 of the Act. AFN is an authorized provider of facilities-based and resold telecommunications services in the State.<sup>3</sup>

The commission approved the original interconnection agreement between Verizon Hawaii and AFN in Decision and Order No. 17862, filed on July 27, 2000, in Docket No. 00-0156 ("Original Agreement" or "Interconnection Agreement"). The Amendment modifies the Original Agreement by, among other things, clarifying that Verizon Hawaii is only obligated to provide AFN access to unbundled network elements ("UNEs") and combinations of UNEs to the extent as required by the

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<sup>2</sup>No person moved to intervene or participate in this docket.

<sup>3</sup>The commission granted AFN a certificate of authority to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State through Decision and Order No. 17387, filed on November 24, 1999 (as amended by Order No. 17456, filed on January 7, 2000) in Docket No. 99-0344.

Federal Unbundling Rules.<sup>4</sup> The terms and conditions of the Amendment appear to have been negotiated and arrived at voluntarily, as contemplated by 47 U.S.C. § 252(a).

In its Statement of Position, the Consumer Advocate concluded that the Amendment allows AFN and Verizon Hawaii to amend the Original Agreement on an on-going basis to reflect any changes as may be necessary as a result of the Federal Unbundling Rules. Additionally, the Consumer Advocate states that the Amendment appears to not discriminate against any other telecommunications carrier and that it promotes competition in the telecommunications industry.

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<sup>4</sup>The Amendment defines "Federal Unbundling Rules" as "[a]ny lawful requirement to provide access to unbundled network elements that is imposed upon Verizon by the FCC [(Federal Communications Commission)] pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or pursuant to the Interim Rules Order [*In Re Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; WC Docket No. 04-313 and CC Docket No. 01-338; Order and Notice of Proposed Rulemaking; FCC No. 04-179; Adopted July 21, 2004; Released August 20, 2004] (but only once effective and only to the extent not stayed, vacated, reversed, modified or otherwise rendered ineffective by the FCC or a court of competent jurisdiction). Any reference in this Amendment to "Federal Unbundling Rules" shall not include an unbundling requirement if the unbundling requirement does not exist under both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, or under the Interim Rules Order.

The FCC issued its Interim Rules Order in response to the March 2, 2004 U.S. Court of Appeals for the District of Columbia's decision affirming in part and vacating the FCC's *Triennial Review Order (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).

III.

Findings and Conclusions

In our review of the Amendment, we are 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 the Amendment, filed on October 21 2004, does not discriminate against other telecommunications carriers and that the implementation of the Amendment is consistent with the public interest, convenience, and necessity. The Consumer Advocate agrees with our assessment of the Amendment.<sup>5</sup> Moreover, approval of the Amendment will promote competition in the State's telecommunications market by allowing AFN to continue to provide telecommunications services in the State.

IV.

Orders

THE COMMISSION ORDERS:

1. The Amendment, filed on October 21, 2004, to the Interconnection Agreement between Verizon Hawaii and AFN is approved.

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<sup>5</sup>See, Statement of Position at 4.

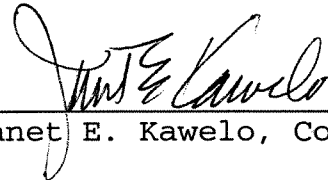
2. This docket is closed.

DONE at Honolulu, Hawaii DEC 20 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

04-0306.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21501 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  
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Karen Higashi

DATED: DEC 20 2004