

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
VERIZON HAWAII INC. )  
For Approval to Amend an Existing )  
Lease for Property at 1177 Bishop )  
Street, Honolulu, Hawaii; Enter )  
Into a New Lease for Space )  
Previously Covered Under the )  
Existing Lease for Property at )  
1177 Bishop Street, Honolulu, )  
Hawaii; and Lease Space at the )  
Kawaihae Central Office, Queen )  
Kaahumanu Road, South Kohala, )  
Hawaii to Verizon Hawaii )  
International Inc. )

DOCKET NO. 02-0180

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

DECISION AND ORDER NO. 21506

Filed Dec. 22, 2004  
At 11:00 o'clock A .M.

Karen Higashi  
Chief Clerk of the Commission

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

K. Higashi

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Docket No. 02-0180  
Decision and Order No. **21506**

DECISION AND ORDER

I.

Background

VERIZON HAWAII INC. ("Verizon Hawaii") requests commission approval of three (3) lease arrangements with Verizon Hawaii International Inc. ("VHI") in its application filed on July 15, 2002 ("Application"). Specifically, Verizon Hawaii requests approval to: (1) amend its existing lease agreement with VHI for space at 1177 Bishop Street (the "Alakea Building"), pursuant to First Amendment to Lease, dated April 29, 2002 ("Alakea Building Lease Amendment"); (2) enter into a new lease with VHI for equipment space on the fifth (5<sup>th</sup>) floor of the Alakea Building, pursuant to Affiliate Lease, dated April 29, 2002 ("Alakea Building 5<sup>th</sup> Floor Lease"); and (3) enter into a

lease agreement with VHI for space at the Kawaihae Central Office, Queen Kaahumanu Road, South Kohala on the island of Hawaii, pursuant to Affiliate Lease, dated April 29, 2002, ("Kawaihae Central Office Lease") (collectively--inclusive of related amendments filed on May 12, 2003--referred to as "Lease Transaction Agreements").<sup>1</sup> Verizon Hawaii makes its requests under Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules § 6-61-105.

Verizon Hawaii served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") with copies of the Application.<sup>2</sup>

The Consumer Advocate served Verizon Hawaii with information requests ("IRs") on January 8, 2003. Verizon Hawaii filed its IR responses on February 6, 2003.

The Consumer Advocate filed its Statement of Position ("SOP") on the matters of this docket on December 18, 2003, informing us that it does not object to the approval of Verizon Hawaii's lease arrangements with VHI, with certain conditions.

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<sup>1</sup>On May 12, 2003, Verizon Hawaii filed certain amendments to the Alakea Building 5<sup>th</sup> Floor Lease (specifically, "First Amendment to Affiliate Lease" dated October 25, 2002; "Second Amendment to Affiliate Lease" approved on February 27, 2003; and "Third Amendment to Lease" dated April 16, 2003) and the Kawaihae Central Office Lease (specifically, "First Amendment to Lease" dated April 16, 2003) to reflect certain updates to the agreements.

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

## II.

### Description of Lease Transactions

Verizon Hawaii first seeks to amend its lease with VHI for the use of certain floors of Verizon Hawaii's Alakea Building. The original lease agreement allowed VHI to use nine thousand two hundred and fifty-one (9,251) square feet of office space on portions of the second (2<sup>nd</sup>), fifth (5<sup>th</sup>), eighth (8<sup>th</sup>), ninth (9<sup>th</sup>), thirteenth (13<sup>th</sup>), and seventeenth (17<sup>th</sup>) floors of the building (the "Original Lease"). The commission approved the Original Lease in Decision and Order No. 19666, filed on September 23, 2002, in Docket No. 02-0025. After entering into the Original Lease, VHI surrendered use of the second (2<sup>nd</sup>), eighth (8<sup>th</sup>), and ninth (9<sup>th</sup>) floors of the Alakea Building, and entered into a new agreement for the use of the 5<sup>th</sup> floor of the building, as described below. Through its Alakea Building Lease Amendment, filed in this docket, Verizon Hawaii redefines "Premises" to mean "[f]loor area on a portion of the [thirteenth] 13<sup>th</sup> and [seventeenth] 17<sup>th</sup> floors, consisting of [seven thousand four hundred and four (]7,404[)] square feet, and as adjusted from time to time."<sup>3</sup>

The Alakea Building 5<sup>th</sup> Floor Lease covers use of approximately two thousand and eighty-nine (2,089) square feet of floor space in the building. The lease is for the purpose of housing communications equipment<sup>4</sup> and has a commencement date of

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<sup>3</sup>See, Application Exhibit I at 1.

<sup>4</sup>See, Application Exhibit II at 3.

December 1, 2001, subject to commission approval, and an expiration date of November 30, 2011.<sup>5</sup>

The Kawaihae Central Office Lease covers the use of nine hundred and fifty (950) square feet of rentable space in an existing building and approximately six hundred (600) square feet of rentable space in a newly constructed building in Verizon Hawaii's central office located on Queen Kaahumanu Road in South Kohala on the island of Hawaii. The lease is for housing communications equipment<sup>6</sup> and has a commencement date of June 1, 1999, subject to commission approval, and has an expiration date of May 31, 2025.<sup>7</sup>

### III.

#### Consumer Advocate's Position

The Consumer Advocate determined that the terms and conditions of the lease agreements were generally acceptable and that the Lease Transaction Agreements were in the public interest. However, it found the lease base rents and charges for direct current ("DC") power and emergency generator set forth in the Alakea Building 5<sup>th</sup> Floor Lease and the Kawaihae Central Office Lease agreements to be unreasonable. Accordingly, the

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<sup>5</sup>Unless extended or terminated in accordance with the provisions of the lease agreement. See, Application Exhibit II at 1.

<sup>6</sup>See, Application Exhibit III at 4.

<sup>7</sup>Unless extended or terminated in accordance with the provisions of the lease agreement. See, Application Exhibit III at 1.

Consumer Advocate states that it does not object to the Lease Transaction Agreements between Verizon Hawaii and VHI, subject to certain conditions.

The Consumer Advocate determined that the overall terms and conditions of the agreements are acceptable since: (1) VHI is contractually required to observe and comply with all laws, governmental rules, regulations, orders, ordinances, and with standards adopted or recommended by governmental entities with jurisdiction over its use and occupation of the leased office and equipment space; (2) the lease agreements contain broad indemnification and insurance requirements protecting VHI, its customers, and the general public from risks associated with VHI's use of the leased space; and (3) provisions have been adopted prohibiting VHI from installing communications equipment that may interfere with Verizon Hawaii's or other tenants' equipment; thus, installation of VHI's telecommunications equipment should not interfere with or impair Verizon Hawaii's ability to provide reliable telecommunications services. The Consumer Advocate also states that "it appears that the lease agreements for space to house VHI's telecommunications equipment is in the public interest" since, among other things, the leases are "expected to generate regulated revenues that will reduce the level of revenue requirements to be recovered from Verizon Hawaii's intra-state ratepayers in future rate proceedings."<sup>8</sup>

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<sup>8</sup>See, SOP at 11.

Nonetheless, the Consumer Advocate recommends that the base lease rents for the Alakea Building 5<sup>th</sup> Floor Lease and the Kawaihae Central Office Lease and additional power and generator charge for the Alakea Building 5<sup>th</sup> Floor Lease be amended to reflect Verizon Hawaii's P.U.C. Tariff No. 19 collocation rates ("Consumer Advocate's Recommendations"). The Consumer Advocate contends that it is unreasonable for Verizon Hawaii to employ office space rates for the Alakea Building 5<sup>th</sup> Floor Lease and the Kawaihae Central Office Lease agreements since the office space lease rates do not account for all costs associated with housing telecommunications equipment.<sup>9</sup> It argues that use of Verizon Hawaii's P.U.C. Tariff No. 19 collocation rates is applicable since: (1) VHI's telecommunications equipment will be physically located on Verizon Hawaii's property and connected to Verizon Hawaii's tandem switch; and (2) these are the charges that Verizon Hawaii would assess any other telecommunications carrier using its property to locate telecommunications equipment.<sup>10</sup>

With regards to the proposed additional power and emergency generator charge of \$12,000/month for the Alakea Building 5<sup>th</sup> Floor Lease, the Consumer Advocate contends that this rate is unreasonable since it is based on market information from Seattle and Los Angeles.<sup>11</sup> The Consumer Advocate contends that Verizon Hawaii failed to explain how rates based on market

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<sup>9</sup>See, SOP at 9.

<sup>10</sup>Ibid.

<sup>11</sup>See, SOP at 10.

information from Seattle and Los Angeles relate to DC power and emergency generator costs in Hawaii.

IV.

Findings and Conclusions

HRS § 269-19 requires a public utility to obtain commission approval prior to, among other things, leasing, or otherwise disposing of or encumbering the whole or any part of the utility's road, line, plant, system, or other property necessary or useful in the performance of its duties to the public.

Upon review, it appears that implementation of the Lease Transaction Agreements will not adversely impact or interfere with Verizon Hawaii's ability to provide telecommunications services. We agree with the Consumer Advocate's assessment that the Lease Transaction Agreements appear to be in the public interest.

Additionally, we find the Consumer Advocate's Recommendations to be reasonable. Verizon Hawaii's response to CA-IR-3(a) regarding why it is using equipment space lease rents instead of rates set forth in the collocation agreements is insufficient. VHI will be locating its telecommunications equipment in Verizon Hawaii's property and some of this equipment will be connected to Verizon Hawaii's network.<sup>12</sup> While VHI may not be a competitive local exchange carrier, it is a

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<sup>12</sup>See, SOP at 9.

telecommunications carrier desiring to locate its telecommunications equipment on Verizon Hawaii property.

Verizon Hawaii also did not provide a rationale for not using the DC power collocation rates set forth in its P.U.C. Tariff No. 19. It failed to sufficiently explain in its various IR responses why use of its collocation rates, rates that would be assessed to any other telecommunications carrier desiring to locate its telecommunications equipment on Verizon Hawaii's property, is not applicable.

Based on the above, the commission concludes that the Lease Transaction Agreements should be approved. The commission also concludes that the Consumer Advocate's Recommendations should be adopted, and that Verizon Hawaii should implement the recommendations and provide the commission and the Consumer Advocate with copies of amendments to the affected lease agreements or a detailed explanation of its efforts to implement them, within sixty (60) days of the date of this decision and order.

V.

Orders

THE COMMISSION ORDERS:

1. The Lease Transaction Agreements between Verizon Hawaii and VHI are approved, subject to the conditions set forth below.
2. Verizon Hawaii shall comply with the Consumer Advocate's Recommendations, as set forth in section III of this

decision and order. Within sixty (60) days of the date of this decision and order, Verizon Hawaii shall provide the commission and the Consumer Advocate with copies of amendments to the affected lease agreements or a detailed explanation of its efforts to implement the Consumer Advocate's Recommendations.

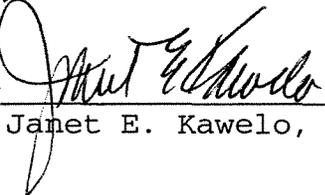
3. Verizon Hawaii shall conform to all of the commission's orders, set forth above. Failure to adhere to our orders constitutes cause for the commission to void this decision and order, and may result in further regulatory actions as authorized by law.

DONE at Honolulu, Hawaii DEC 22 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

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21506 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  
Honolulu, HI 96841

  
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Karen Higashi

DATED: DEC 22 2004