

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
PACIFIC LIGHTNET, INC.)
For Waiver of the Number)
Utilization Threshold Requirements)
In the Honolulu, Wailuku, Hilo and)
Lihue Rate Centers.)
_____)

Docket No. 05-0324
Decision and Order No. 22295

DECISION AND ORDER

By this Decision and Order, the commission approves PACIFIC LIGHTNET, INC.'s ("PLNI") request for waiver of the number utilization and months-to-exhaust ("MTE") requirements in the Honolulu, Wailuku, Hilo and Lihue rate centers and overturns the National Pooling Plan Administrator's ("Pooling Administrator") ruling denying PLNI's applications for a new numbering plan area-central office code ("NPA-NXX") in each of the four rate centers.

I.

Background

A.

Application

PLNI is a Hawaii corporation authorized to provide intrastate telecommunications services in the State of Hawaii pursuant to Decision and Order No. 18868, filed on August 31, 2001, in Docket No. 01-0157. By a request for waiver, filed on

December 22, 2005, PLNI asks that the commission waive the number utilization and MTE requirements (which are described below) in the Honolulu, Wailuku, Hilo and Lihue rate centers.¹

PLNI plans to expand its facilities-based network in Hawaii by deploying a new switch. The switch will be physically located in Honolulu, but will serve customers throughout the islands of Kauai, Oahu, Molokai, Lanai, Maui and Hawaii. For purposes of facilitating local number portability as required by the Telecommunications Act of 1996, PLNI must comply with certain number utilization and MTE requirements. PLNI must obtain and assign within the new switch a unique Location Routing Number ("LRN"), each consisting of a unique NPA-NXX for each of the four (4) rate centers in Hawaii.² When applying for a new NPA-NXX, the Federal Communications Commission ("FCC") requires that a carrier show that it has a minimum utilization rate of seventy-five (75) percent, or less than a six (6)-month inventory of numbers in the relevant rate center.³

On December 16, 2005, PLNI submitted four (4) applications to the Pooling Administrator for a new NPA-NXX for LRN purposes in each of the four (4) rate centers. On December 20, 2005, the Pooling Administrator denied PLNI's

¹Request for Waiver, Verification, Exhibits "A" through "H" and Certificate of Service, filed December 22, 2005 ("Application"). Additionally, PLNI served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to Hawaii Revised Statutes § 269-51 and Hawaii Administrative Rules § 6-61-62.

²Application at 1.

³Id. at 2.

applications, citing PLNI's inability to meet the utilization and MTE requirements in each of the rate centers.⁴ As such, PLNI requests that the commission overturn the Pooling Administrator's decision to withhold numbering resources.

B.

Consumer Advocate's Statement of Position

On January 13, 2006, the Consumer Advocate filed its statement of position in which it stated that it does not oppose PLNI's request. It recommends that the commission overturn the Pooling Administrator's denial of PLNI's request for a new NPA-NXX for the above-noted rate centers, on the condition that only the 1,000 numbers necessary in each rate center to establish new LRNs be retained, and all other numbering resources in the new NPA-NXX be returned to the Pooling Administrator. The Consumer Advocate's recommendation is based upon the following:

1. PLNI has demonstrated a need for the requested new NPA-NXXs and has exhausted all other available remedies;
2. Granting PLNI's request for waiver will facilitate competition in Hawaii's telecommunications industry, which is in the public interest;

⁴In this regard, the Pooling Administrator found that for the Wailuku rate center, Applicant had an MTE of 15.424 and a utilization rate of 67.867 percent; the Honolulu rate center had an MTE of 17.570 and a utilization rate of 61.566 percent; the Lihue rate center had an MTE of 90.680 and a utilization rate of 9.320 percent; and the Hilo rate center had an MTE of 77.800 with a utilization rate of 22.200 percent.

3. PLNI is not attempting to abuse the waiver process or hoard numbers; and
4. A commission waiver is consistent with similar waivers granted by the commission in the past.⁵

II.

Discussion

State public utility commissions have been given the authority by the FCC to "overturn the [Pooling Administrator's] decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies."⁶ PLNI notes that the FCC expressly recognizes that the deployment of new switches, as in the instant case, may create a need for additional numbering resources.⁷ In that regard, the FCC recognizes the importance of additional numbering resources for carriers to stay in or expand a business, and thus has authorized state commissions to provide relief from

⁵The Consumer Advocate cites to In re Verizon Hawaii Inc., Docket No. 02-0355, Decision and Order No. 19733, filed on October 25, 2002; In re Sandwich Isles Communications, Inc., Docket No. 02-0085, Decision and Order No. 20236, filed on June 18, 2003; and In re MCImetro Access Transmission Services, Inc., Docket No. 04-0166, Decision and Order No. 21325, filed on August 27, 2004. See Consumer Advocate Statement of Position at 8.

⁶See 47 C.F.R. § 52.12(g)(4)(2005).

⁷Application at 2.

the utilization requirements on a case-by-case basis and directed them to do so in an expedited fashion.⁸

In the instant case, the commission is satisfied that PLNI has sufficiently demonstrated that it has a verifiable need for numbering resources and that it has exhausted all other available remedies. In order for PLNI to realize the expansion of its facilities-based network in Hawaii by employing a new switch, it must obtain and assign within the new switch new NPA-NXX for these rate centers. Given the Pooling Administrator's denial of PLNI's request for numbering resources, the commission's reversal of the Pooling Administrator's decision is PLNI's only option.

Accordingly, the commission concludes that the Pooling Administrator's denial of PLNI's applications for new NPA-NXX for its rate centers should be overturned, provided that only the 1,000 block numbers necessary in each rate center be retained, and all other numbering resources in the new NPA-NXX be returned to the Pooling Administrator.

⁸See In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability; CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No. 95-116; Adopted December 12, 2001; Released December 28, 2001, ("Although new numbering resources are used by carriers to activate new switches, we encourage carriers to pursue other alternatives, such as pooling, to activate those switches and to prevent numbering resources from becoming stranded as the result of installing multiple switches in the same rate center. The safety valve mechanism should be narrowly applied to meet specific customer requests or to meet a carrier's immediate numbering needs. We nevertheless will allow states to consider requests from carriers with multiple switches in a given rate center to determine whether relief is warranted on a case-by-case basis.").

III.

Orders

THE COMMISSION ORDERS:

1. PLNI's request for waiver of the number utilization and MTE requirements in the Honolulu, Wailuku, Hilo and Lihue rate centers is granted.

2. The Pooling Administrator's denial of PLNI's December 16, 2005 applications for a new NPA-NXX for LRN purposes in each of the four (4) rate centers is overturned, provided PLNI keeps only the 1,000 numbers necessary in each rate center to establish new LRNs.

3. This docket is closed, unless otherwise ordered by the commission.

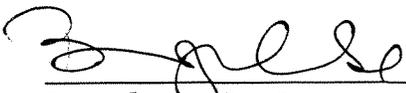
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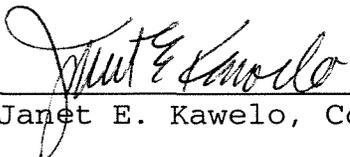
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

By 
Janet E. Kawelo, Commissioner

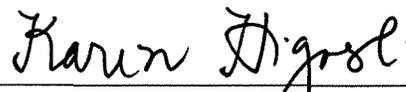
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22295 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: FEB 23 2006