

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN TELCOM, INC.)
)
For Approval to Grant Limited)
Right of Entry to a Portion of the)
Property Located at 1177)
Bishop Street, Honolulu, Hawaii.)
_____)

DOCKET NO. 2006-0106

DECISION AND ORDER NO. 22665

Filed August 1, 2006
At 11 o'clock A.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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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

approximately 5,000 square-foot portion of its parcel at 1141 Adams Lane (commonly known as 1177 Bishop Street), Honolulu, Hawaii (the "LROE Area").¹ Hawaiian Telcom makes its request pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules § 6-61-105.

Hawaiian Telcom states that the LROE would be granted to Pinnacle Honolulu LLC ("Pinnacle"), a California corporation, which is currently constructing a residential condominium on the property adjacent to Hawaiian Telcom's property. Because of the LROE Area's proximity to the construction site, Pinnacle requested use of the LROE Area to aid in the construction of Pinnacle's residential condominium project.² Pinnacle will utilize the LROE Area for parking its vehicles, storing construction equipment and to facilitate activities at the construction site. Pinnacle will have access to the LROE Area for a term of at least three months, but for no longer than twelve months, plus the additional time required to restore the LROE Area to its original condition. The term of the agreement between Hawaiian Telcom and Pinnacle is effective May 1, 2006, and shall continue for an initial period of 90 days ("Initial

¹Application and Certificate of Service, filed on May 2, 2006 ("Application"). On May 2, 2006, Hawaiian Telcom served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") with a copy of the Application.

²Pinnacle made its request to Hawaiian Telcom on February 28, 2006.

Term"), renewable automatically for nine additional one-month extension periods ("Extension Term") ("Agreement").³

Currently, the LROE Area is used by Hawaiian Telcom for additional parking spaces for its commercial vehicles. Pinnacle has agreed to secure alternate parking for Hawaiian Telcom at Pinnacle's expense.⁴ Additionally, Pinnacle has agreed to compensate Hawaiian Telcom for its use of the LROE Area in the amount of \$6,000 monthly, for the Initial Term, and \$7,500 monthly for the Extension Term.⁵

For the safety of the construction crew on the adjacent parcel, Hawaiian Telcom has allowed Pinnacle immediate access to the LROE Area. If, however, the commission denies Hawaiian Telcom's request for approval of the Application, Hawaiian Telcom will terminate such access.

Hawaiian Telcom states that at no time will it be relinquishing any ownership in the LROE Area. Hawaiian Telcom also states that the Agreement will not affect its ability to provide telecommunication services to its customers.

³See Application, Exhibit II at 2.

⁴Pinnacle has secured twelve parking spaces at Mark's Center Garage in Honolulu for Hawaiian Telcom's use during the term of the Agreement.

⁵See Application, Exhibit II at 3.

C.

Consumer Advocate's Statement of Position

On May 15, 2006, the Consumer Advocate filed a statement of position stating that it does not object to commission approval of the Application ("Statement of Position"). The Consumer Advocate asserts that the terms and conditions of the Agreement between Hawaiian Telcom and Pinnacle, and the monthly rent to be paid by Pinnacle to Hawaiian Telcom are reasonable. It also states that the proposed Agreement between Hawaiian Telcom and Pinnacle is in the public interest and does not interfere in any way with Hawaiian Telcom's provision of telecommunications services to the general public.

II.

Discussion

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

Here, the commission finds that Hawaiian Telcom's request is reasonable and that it is in the public interest to approve Hawaiian Telcom's request to grant to Pinnacle a LROE to a portion of the property located at 1177 Bishop Street. The terms and conditions of the Agreement between Hawaiian Telcom and Pinnacle appear to be reasonable, and as the Consumer Advocate observes, are consistent with the terms and conditions

of other similar agreements approved by the commission.⁶ Also, the monthly rental of \$6,000 for the Initial Term and \$7,500 for the Extended Term appear to be reasonable.⁷

Approval of the Agreement, moreover, is not expected to negatively impact the public interest. It is anticipated that Pinnacle's use of the property would not adversely impact or interfere with Hawaiian Telcom's operations and ability to provide telecommunications services to the public. Hawaiian Telcom represents that it currently utilizes the LROE Area for parking spaces and the air space easement as a direct line of sight for the microwave telecom operations, neither of which will be affected by the Agreement, and that it "has a significant need to preserve ownership of the parcel to ensure its telecom operations and the ground use (parking) of the parcel."⁸

Based on the above, the commission concludes that Hawaiian Telcom should be allowed to grant a LROE to a portion of its 1177 Bishop Street property, as described in the Application.

III.

⁶See, e.g., In re Verizon Hawaii, Inc. (nka Hawaiian Telcom), Docket No. 02-0047 and In re Verizon Hawaii, Inc. (nka Hawaiian Telcom), Docket No. 04-0348.

⁷A historical review of the LROE Area was conducted for Hawaiian Telcom by a commercial brokerage firm. The review showed two appraisals for the LROE Area, one in the year 2000 and one in the year 2004. Based on the results of these appraisals, the Consumer Advocate calculated monthly payments of between \$6,700 and \$8,700 for the LROE Area. See Statement of Position at 6. See also Application, Exhibit III.

⁸Application, Exhibit III at 2.

Orders

THE COMMISSION ORDERS:

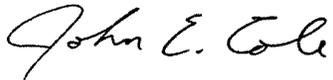
1. Hawaiian Telcom's Application, filed on May 2, 2006, for commission approval to allow Pinnacle a LROE to a portion of Hawaiian Telcom's parcel located at 1177 Bishop Street, is approved.

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

DONE at Honolulu, Hawaii AUG - 1 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

2006-0106.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22665 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
HAWAIIAN TELCOM, INC.
P. O. Box 2200
Honolulu, HI 96841



Karen Higashi

DATED: AUG - 1 2006