





adjacent to Hawaiian Telcom's Makaha Central Office. According to Hawaiian Telcom, the Property was purchased in March 1970, along with the adjacent property where the Makaha Central Office is located, to accommodate future growth requirements associated with the Makaha Central Office. The Property, which has sat vacant and has never been used for utility purposes, has never been included in rate base or been included for recovery from ratepayers. According to Hawaiian Telcom, it does not foresee any future need for the Property, and seeks to sell the Property with a closing date scheduled for November 14, 2007. Since the Property was never included in Hawaiian Telcom's rate base, Hawaiian Telcom asserts that the gain on the sale of the Property will be recorded "below the line."

Hawaiian Telcom states that it does not believe that commission approval of the sale of the Property is required. However, if the commission determines otherwise, Hawaiian Telcom requests commission approval under Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR") § 6-61-105. To meet the November 14, 2007 closing date, Hawaiian Telcom requests commission approval, if required, by October 31, 2007.

B.

Consumer Advocate's Statement of Position

On October 18, 2007, the Consumer Advocate filed its statement of position stating that it does not oppose a finding that the sale of the Property does not require commission

approval. According to the Consumer Advocate, "the Property does not appear to have ever been deemed to be utility property that is necessary or useful in the performance of Hawaiian Telcom's duties to the public and has thus not been recognized in determining [Hawaiian Telcom's] revenue requirement."<sup>1</sup> In the alternative, if the commission finds that approval is required, the Consumer Advocate does not object to approval of the sale pending Hawaiian Telcom's submission of documents to support the reasonableness of the sale price.

## II.

### Discussion

HRS § 269-19 provides that no public utility corporation shall "sell, lease, assign, mortgage, or otherwise dispose of or encumber 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, or any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

In addition, HAR § 6-61-105(a) states in relevant part:

An application filed by any public utility, water carrier, motor carrier, or by other person subject to commission jurisdiction to sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public or any franchise, permit, or any operating right, . . . shall comply with sections 6-61-15 to 6-61-24 and section 6-61-74

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<sup>1</sup>CA Statement of Position ay 4-5.

and be signed by all parties under commission jurisdiction.

HAR § 6-61-105(a).

Here, Hawaiian Telcom asserts that the Property has always sat vacant, has never been used for utility purposes, is booked in Account 2006, Non-operating plant, and has never been included in rate base or been included for recovery from ratepayers. In addition, "[c]onsistent with the exclusion of the non-operating property from rate base, any expenses associated with the property such as real property taxes, have not been included in the regulated revenue requirements on which ratepayers rates have been based on."<sup>2</sup> Given Hawaiian Telcom's assertions, it appears that commission approval is not required for the sale of the Property. Accordingly, the commission dismisses Hawaiian Telcom's Application.

### III.

#### Orders

##### THE COMMISSION ORDERS:

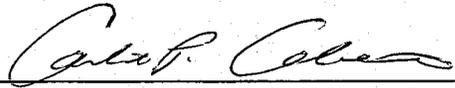
1. Hawaiian Telcom's request for commission approval to sell the property located at 84-1140 Kaulawaha Road is dismissed.
2. This docket is closed unless otherwise ordered by the commission.

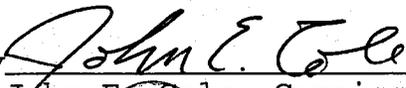
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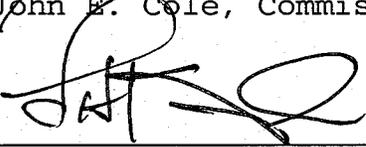
<sup>2</sup>Application at 3.

DONE at Honolulu, Hawaii OCT 30 2007.

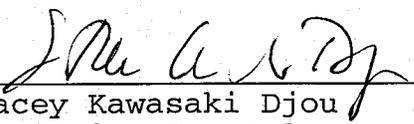
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

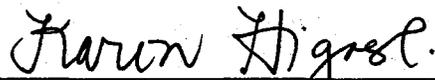
2007-0327.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23787 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
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DIVISION OF CONSUMER ADVOCACY  
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VICE PRESIDENT-EXTERNAL AFFAIRS  
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Honolulu, HI 96841

  
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Karen Higashi

DATED: **OCT 30 2007**