

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELCOM, INC.)
For Approval to Convey a Portion)
Of The Property Located at 1177)
Bishop Street, Honolulu, Hawaii)
To 1192 Alakea, LLC)

DOCKET NO. 2007-0379

DECISION AND ORDER NO. 23990

Filed Jan. 30, 2008
At 11 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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Chief Clerk, Public Utilities
Commission, State of Hawaii.
Eleanor R. Luinana

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_____)

Docket No. 2007-0379

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DECISION AND ORDER

By this Decision and Order, the commission grants HAWAIIAN TELCOM, INC.'s ("Hawaiian Telcom") request for approval to convey a portion of real property located at 1177 Bishop Street to 1192 Alakea, LLC ("Alakea").

I.

Background

Hawaiian Telcom is a Hawaii corporation engaged in the provision of varied telecommunications services to its customers and the general public within the State of Hawaii. It is an incumbent local exchange carrier, as contemplated by Section 252 of the federal Telecommunications Act of 1996.

A.

Application

On November 8, 2007, Hawaiian Telcom filed an application for commission approval to convey a portion of real property located at 1141 Adams Lane (commonly known as 1177 Bishop Street),

Honolulu, Hawaii (the "Property"), pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR") § 6-61-105.¹

In its Application, Hawaiian Telcom states that it had granted Pinnacle Honolulu LLC ("Pinnacle"), which is constructing a residential condominium on the property adjacent to Hawaiian Telcom's property, a limited right of entry ("LROE") to the Property to utilize for parking of its vehicles, storing construction equipment and to facilitate activities at the construction site. The Property had been used by Hawaiian Telcom for additional parking spaces for its commercial vehicles and for an air space easement as a direct line of sight for its microwave telecom operations. In exchange for the LROE, Pinnacle agreed to secure alternate parking for Hawaiian Telcom at Pinnacle's expense and to compensate Hawaiian Telcom for its use of the Property. The commission approved the LROE by Decision and Order No. 22665, filed on August 1, 2006, in Docket No. 2006-0106.

According to Hawaiian Telcom, it has since negotiated an agreement with an affiliate of Pinnacle, Alakea, to convey the Property to Alakea in exchange for full warranty deeds to thirty parking stalls in a new nine-story building being constructed by Alakea ("Agreement"). Of the thirty parking stalls, twenty will be on the ground floor of the proposed building and ten parking stalls

¹Application and Certificate of Service, filed on November 8, 2007 ("Application"). Copies of the Application were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

will be on the second floor and will be reserved for Hawaiian Telcom's exclusive use from Monday through Sunday between 6:00 a.m. and 5:30 p.m. As set forth in the Agreement, which is attached as Exhibit I to the Application, Hawaiian Telcom will pay for one-half of the common expenses payable with respect to the ten additional stalls.

Under the terms of the Agreement, Hawaiian Telcom obtained an appraisal of the Property, which described the Property as a "nonconforming site on a stand alone basis" which would have "most utility and value to an adjacent land owner for assemblage to create a larger development parcel with greater utility and development density."² According to Hawaiian Telcom, given the Property's limited marketability and utility on a stand alone basis, a final discounted rounded valuation of \$1,000,000 is justified.

Hawaiian Telcom asserts that the Agreement will not have an adverse impact on its ability to provide telecommunications services since the Property has been only used for excess parking, and under the terms of the Agreement, Hawaiian Telcom will be receiving "significantly greater parking capacity."³ In addition, to protect Hawaiian Telcom's existing microwave circuits pointed at Tantalus, the Agreement limits the height of the proposed parking

²Application at 4.

³Application at 4-5.

building to two hundred forty (240) feet "so as not to interfere with the telecommunications equipment installed on the existing [Hawaiian Telcom] building located at 1177 Bishop Street.'"⁴

As "time is of the essence" under the Agreement, Hawaiian Telcom requests commission approval of the Application by January 31, 2008.

B.

Consumer Advocate's Statement of Position

On January 8, 2008, the Consumer Advocate filed its statement of position stating that it does not oppose commission approval of the Application. According to the Consumer Advocate, conveyance of the Property to Alakea will not have a negative impact on Hawaiian Telcom's ability to provide utility service and is in the public interest, as Hawaiian Telcom will be receiving thirty parking stalls, which is more than the eighteen stalls it would have if it retained the Property. In addition, the Agreement preserves a clear line of sight for Hawaiian Telcom's microwave telecommunications equipment pointed at Tantalus; without the Agreement, there would be no guaranteed line of sight over the adjacent parcel owned by Alakea. Finally, according to the Consumer Advocate, the terms and conditions of the Agreement appear reasonable.

⁴Application at 5.

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 there under . . . 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 and be signed by all parties under commission jurisdiction.

HAR § 6-61-105(a).

Here, Hawaiian Telcom requests approval to convey the Property to Alakea. As asserted by the Consumer Advocate, the conveyance is in the public interest, as it will increase the number of parking spaces currently available to Hawaiian Telcom without requiring Hawaiian Telcom to incur any substantial or material additional expense or investment. In addition, it preserves Hawaiian Telcom's existing line of sight for its telecommunications equipment. Notably, without the Agreement,

there would be no guaranteed line of sight over the adjacent parcel owned by Alakea. Accordingly, the commission grants Hawaiian Telcom's request for approval to convey the Property to Alakea.

III.

Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom's request for commission approval to convey a portion of real property located at 1177 Bishop Street to 1192 Alakea, LLC, is granted.

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

DONE at Honolulu, Hawaii JAN 30 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

Leslie H. Kondo
By Leslie H. Kondo
Leslie H. Kondo, Commissioner

2007-0379.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23990 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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: JAN 30 2008