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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

VERIZON HAWAII INC.)

DOCKET NO. 01-0459

For Approval to Lease Property at)
855 Umi Street, and to License)
Ground Space at Koko Head Radio)
Station, Oahu.)

DECISION AND ORDER NO. 19983

Filed January 24, 2003
At 8:00 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

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DECISION AND ORDER

I.

By application filed on November 30, 2001, VERIZON HAWAII INC. requests commission approval to lease property and license ground space to Craig Wireless Honolulu Inc. Verizon Hawaii Inc. makes its request in accordance with Hawaii Revised Statutes (HRS) § 269-19.

A copy of the application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). Thereafter, Verizon Hawaii Inc. responded to the commission's and Consumer Advocate's information requests (IRs), respectively.¹

By position statement filed on December 13, 2002, the Consumer Advocate does not object to the approval of Verizon Hawaii Inc.'s application, with one recommendation. On January 13, 2003, Verizon Hawaii Inc. responded to the Consumer Advocate's recommendation.

¹See Verizon Hawaii Inc.'s responses, dated May 21, 2002, to the commission's IRs; and Verizon Hawaii Inc.'s responses, dated June 6, July 10, and September 24 and 25, 2002, to the Consumer Advocate's IRs.

II.

Verizon Hawaii Inc. is a public utility and the incumbent telecommunications carrier in the State of Hawaii (State). Craig Wireless Honolulu Inc. (Craig Wireless), a subsidiary of Craig Broadcast Systems Inc., provides wireless digital television service in the State.² Craig Wireless is not an affiliated entity of Verizon Hawaii Inc., or vice versa.

Verizon Hawaii Inc. seeks commission approval to:

1. Lease office space at its 855 Umi Street property, in Honolulu, to Craig Wireless, pursuant to a three-year lease, commencing December 1, 2001; and
2. License ground space at its Koko Head radio station, in Honolulu, to Craig Wireless, pursuant to a five-year license agreement, commencing on a date agreed upon by the parties.

Craig Wireless intends to use the spaces at:

(1) 855 Umi Street, to store materials and situate its operations personnel; and (2) the Koko Head radio station, to construct an equipment hut or cabinet, maintain and operate its equipment, and install a receiving dish.

²Verizon Media Ventures Inc., a provider of wireless cable television service in the State, agreed to sell its business to Craig Wireless. By Decision and Order No. 18973, filed on October 24, 2001, in Docket No. 01-0386, the commission approved Verizon Hawaii Inc.'s assignment of three property leases and amendments thereto, from Verizon Media Ventures Inc. to Craig Wireless.

The subject properties in Docket No. 01-0386 are located at: (1) 319 Koa Street, Wahiawa; (2) Puu Papaa radio station, Oahu; and (3) Tantalus repeater station, Oahu. The properties involved in the instant docket, Docket No. 01-0459, are additional locations Craig Wireless intends to utilize.

III.

A.

The Consumer Advocate states that, in general, it does not object to the terms and conditions of the lease and license agreements, respectively. Among other things, the Consumer Advocate finds reasonable Verizon Hawaii Inc.'s assessment of an administrative fee to recover its real estate and legal expenses associated with the license agreement covering the ground space at the Koko Head radio station site.

Conversely, the lease agreement does not include a comparable provision that assesses an administrative fee to Craig Wireless. As explained by Verizon Hawaii Inc., in its follow-up response to CA-IR-3(b):

Legal and real estate costs were incurred for this lease transaction. However, these costs will not be recovered from the tenant. The lease of office space at Umi Street was handled as a traditional market transaction, where the landlord pays for the legal and real estate costs incurred and does not recover these costs from the tenant.

B.

Because of the legal and real estate expenses incurred by Verizon Hawaii Inc. in this lease transaction, the Consumer Advocate recommends that Verizon Hawaii Inc. charge Craig Wireless an administrative fee of \$1,500 or more, for the leasing of Verizon Hawaii Inc.'s office space at 855 Umi Street. The Consumer Advocate reasons that Verizon Hawaii Inc. is a regulated utility, and not a typical lessor; thus, the resulting administrative costs "should be paid for by the tenant, the cost-causer, and not ratepayers."

The Consumer Advocate also notes that Verizon Hawaii Inc.'s assessment of an administrative fee for the lease transaction is consistent with the commission's Decision and Order No. 16283, filed on April 14, 1998, in Docket No. 97-0239. There, the commission approved GTE Hawaiian Telephone Company Incorporated's (GTE Hawaiian Tel) lease of its Wahiawa base yard property (319 Koa Street) to an affiliated entity, GTE Media Ventures Incorporated, dba Oahu Wireless Cable (OWC), subject to certain conditions, including GTE Hawaiian Tel's assessment of a \$1,500 administrative fee to OWC.³

Furthermore, on a going forward basis, the Consumer Advocate recommends that Verizon Hawaii Inc. charge at least \$1,500 for "future lease arrangements until [it] can show that costs for legal and real estate activities have changed." Such an assessment, the Consumer Advocate reasons, will minimize any appearance of discriminatory practice on Verizon Hawaii Inc.'s part.

In its written response, Verizon Hawaii Inc. relies on the customary, business practice of each party in real estate transactions being responsible for their respective

³The commission noted:

GTE Hawaiian Tel ordinarily charges both GTE and non-GTE companies an administrative reimbursement fee for transactions such as the lease proposed in this application. No such fee is included in this case. To maintain consistency, we determine that GTE Hawaiian Tel must charge OWC an administrative reimbursement fee of \$1,500.

administrative costs. In addition, Verizon Hawaii Inc. states that:

1. The leasing of its vacant properties benefits ratepayers "by generating revenues that help recover [the utility's] revenue requirement."
2. Where demand is non-existent for a particular property, it does not have the leverage to require the potential tenant to pay an administrative fee.
3. Market forces and the parties' negotiations "should be allowed to dictate the final rates without a requirement for a particular fee amount to be paid by every lessee."

Moreover, it is competing with other property owners that do not include such a requirement.

4. It "should have the flexibility to offer rate arrangements that it believes will be attractive to potential tenants."

C.

According to Verizon Hawaii Inc., the purpose of assessing the administrative fee is to reimburse itself "for real estate and legal fees associated with leasing property."⁴ That said, Verizon Hawaii Inc. states that "[l]egal and real estate costs were incurred for this lease transaction."⁵ Nonetheless, in its follow-up response to CA-IR-3(b), Verizon Hawaii Inc. explains why, in this instance, it assessed Craig Wireless, a

⁴Verizon Hawaii Inc.'s response to CA-IR-11(a), in Docket No. 02-0025.

⁵Verizon Hawaii Inc.'s follow-up response to CA-IR-3(b). At the same time, unlike Docket No. 02-0039, Verizon Hawaii Inc. does not distinguish whether such costs were incurred externally or internally. At a minimum: (1) Verizon Hawaii Inc. utilized the services of a commercial real estate broker; and (2) legal counsel (Troy & Gould) for Verizon Hawaii Inc. reviewed the lease and approved it as to form.

non-affiliate, an administrative fee for the license only, and not the lease.⁶

Upon careful review, the commission finds reasonable Verizon Hawaii Inc.'s rationale for charging Craig Wireless an administrative fee for the license only.⁷

IV.

HRS § 269-19 states that no public utility corporation shall sell, lease, assign, 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, without having first secured the commission's approval.

Upon review, the commission finds that the property lease and license agreements, respectively, are reasonable and

⁶Verizon Hawaii Inc. explains that its practice of passing administrative costs on to the tenant when licensing tower space, as opposed to its leasing of office or industrial space scenario, is undertaken:

1. Primarily due to the transaction's low value in relationship to the associated administrative costs incurred.
2. Because "most tower licenses are done to accommodate the tenant (i.e., the transaction provides more benefit to the tenant than to the Company since the tenant avoids the need to install additional towers)."

⁷At the same time, the commission makes clear that its decision on this issue is limited to the facts and circumstances of this case. Also, this decision does not in any way affect the commission's review of licensing arrangements, where Verizon Hawaii Inc. has consistently assessed administrative fees upon the licensee.

consistent with the public interest.⁸ The commission, thus, will approve both agreements.

V.

THE COMMISSION ORDERS:

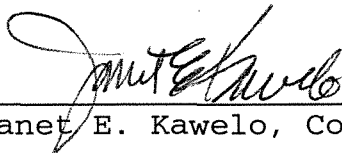
1. The lease and license agreements filed by Verizon Hawaii Inc. on November 30, 2001, to lease property (855 Umi Street) and license ground space (Koko Head radio station) to Craig Wireless Honolulu Inc., are approved.

2. This docket is closed.

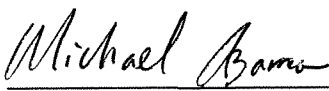
DONE at Honolulu, Hawaii this 24th day of January, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

By (RECUSED)
Gregg J. Kinkley, Commissioner

01-0459.sl

⁸Verizon Hawaii Inc. represents that:

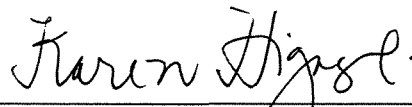
1. "Allowing Craig Wireless Honolulu to utilize these properties in no way interferes with Verizon Hawaii's operations[.]"
2. "The leasing and licensing of these spaces will not affect the Company's ability to continue providing telecommunications services."

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19983 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, A-17
Honolulu, HI 96841



Karen Higashi

DATED: January 24, 2003