

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
AMERITECH MOBILE COMMUNICATIONS,)
LLC, dba CINGULAR WIRELESS and AT&T)
WIRELESS SERVICES OF HAWAII, INC.)
)
For a Declaratory Order, or in the)
Alternative, an Exemption, Waiver,)
or Approval of the Transaction;)
and to Amend a Certificate of)
Registration.)
_____)

DOCKET NO. 03-0008

DECISION AND ORDER NO. 20010

Filed Feb. 7, 2003
At 9:00 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

OF THE STATE OF HAWAII

AMERITECH MOBILE COMMUNICATIONS,)
LLC, dba CINGULAR WIRELESS and AT&T)
WIRELESS SERVICES OF HAWAII, INC.)

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DECISION AND ORDER

I.

By joint application filed on January 13, 2003, AMERITECH MOBILE COMMUNICATIONS, LLC, dba CINGULAR WIRELESS, and AT&T WIRELESS SERVICES OF HAWAII, INC. (collectively, Applicants), seek an order declaring that the proposed acquisition of operating assets does not require the commission's approval. Applicants make their request in accordance with Hawaii Administrative Rules (HAR) chapter 6-61, subchapter 16.

In the alternative, if the commission's approval is required, Applicants seek a waiver or exemption, pursuant to Hawaii Revised Statutes (HRS) § 269-16.9 and HAR § 6-80-135. If a waiver or exemption is not granted, Applicants request the commission's expedited approval of the subject transaction, no later than March 24, 2003.

Applicants also seek to amend AT&T Wireless Services of Hawaii, Inc.'s certificate of registration (COR) to include the service area of Kauai.

Copies of the application were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). The deadline to timely intervene or participate in this proceeding was February 3, 2003. No persons moved to intervene or participate.

Upon review, the commission may issue a declaratory ruling on the applicability of any statute, administrative rule, or order of the commission. HAR §§ 6-61-159 and 6-61-160. The commission must act on the petition within 45 days after its submission. HAR § 6-61-162. Hence, the 45th day governing timely commission action is on or about February 27, 2003.

The instant decision and order addresses Applicants' request for a declaratory order.

II.

A.

AT&T Wireless Services of Hawaii, Inc., a Wisconsin corporation, holds a Federal Communications Commission (FCC) Block A authorization to construct and operate cellular radio telephone systems in the Honolulu Metropolitan Statistical Area and the Maui and Hawaii Rural Service Areas. It is authorized by the commission to provide cellular communications services in the County of Maui, islands of Oahu and Hawaii, and the immediate

surrounding waters.¹ AT&T Wireless Services of Hawaii, Inc. is a wholly-owned subsidiary of AT&T Wireless Services, Inc., a provider of commercial mobile radio services throughout most of the United States and Puerto Rico.

B.

Ameritech Mobile Communications, LLC, dba Cingular Wireless, a single member Delaware limited liability company, holds a Block A authorization to construct and operate a cellular radio telephone system in the Kauai Rural Service Area. Cingular Wireless' sole member is SBC Wireless, LLC, which is managed by Cingular Wireless LLC.

Cingular Wireless is authorized by the commission to provide cellular communications services on the island of Kauai and the immediate surrounding waters.²

C.

Pursuant to an exchange agreement dated December 18, 2002, between AT&T Wireless Services, Inc. and Cingular Wireless LLC, AT&T Wireless Services of Hawaii, Inc. will acquire

¹See Decision and Order No. 10882, filed on December 10, 1990, in Docket No. 6757 (Maui Cellular Telephone Company: County of Maui); Decision and Order No. 17476, filed on January 14, 2000, in Docket No. 99-0363 (AT&T Wireless Services of Hawaii, Inc.: island of Oahu); Decision and Order No. 17795, filed on June 15, 2000, in Docket No. 00-0116 (AT&T Wireless Services of Hawaii, Inc.: island of Hawaii).

²See Decision and Order No. 19264, filed on March 25, 2002, in Docket No. 01-0110 (Ameritech Mobile Communications, LLC); Decision and Order No. 17124, filed on August 23, 1999, in Docket No. 99-0197 (CyberTel Financial Corporation); and Amended Decision and Order No. 10666, filed on June 15, 1990, in Docket No. 6680 (CyberTel Corporation, dba CyberTel Cellular).

substantially all of Cingular Wireless' operating assets related to the provisioning of cellular communications services on the island of Kauai. Applicants state that the transaction is subject to certain regulatory consents.³ Once obtained, Applicants will proceed with closing.

Upon closing, on the island of Kauai: (1) Cingular Wireless will cease its provision of cellular communications services; and (2) AT&T Wireless Services of Hawaii, Inc. will commence service, including service to Cingular Wireless' existing customers.

III.

A.

Applicants contend that the commission's review of the subject transaction is preempted under 47 United States Code (U.S.C.) § 332(c)(3). Specifically, they assert that section 332(c)(3) of the federal Telecommunications Act prohibits state governments from regulating the entry of commercial mobile radio services. Thus, in this instance, if the commission "withholds approval of the transaction[,]" the commission will effectively prohibit AT&T Wireless Services of Hawaii, Inc.'s entry into the commercial mobile radio service market on the island of Kauai.

³Applicants are concurrently seeking the necessary FCC approvals for the transfer of the cellular and related microwave licenses from Cingular Wireless to AT&T Wireless Services of Hawaii, Inc.

B.

The commission has consistently held that transactions of a similar nature involving providers of commercial mobile radio services are not federally preempted from the commission's review.⁴ In a closely related case, the commission reviewed AT&T Wireless Services of Hawaii, Inc.'s acquisition of U.S. Cellular's operating assets for the provisioning of cellular communications services on the island of Hawaii.⁵ The commission had the requisite jurisdiction to undertake its review pursuant to HRS § 269-7(a) and the "other terms and conditions" proviso of 47 U.S.C. § 332(c)(3).⁶

Upon review of the joint application, the commission will deny Applicants' request for an order declaring that the subject transaction does not require the commission's approval.⁷

⁴See, e.g., Decision and Order No. 18699, filed on July 27, 2001, in Docket No. 01-0210, *In re VoiceStream PCS II Corp. and Deutsche Telekom AG*; Decision and Order No. 17760, filed on May 25, 2000, in Docket No. 00-0116, *In re AT&T Wireless Serv. of Hawaii, Inc. and U.S. Cellular*; Decision and Order No. 17476, filed on January 14, 2000, in Docket No. 99-0363, *In re Honolulu Cellular Tel. Co., et al.*; Decision and Order No. 17090, filed on July 21, 1999, in Docket No. 99-0122, *In re Honolulu Cellular Tel. Co., et al.*; and Decision and Order No. 16729, filed on December 4, 1998, in Docket No. 98-0361, *In re Primeco Personal Comm., L.P. and Sprintcom, Inc.*

⁵See Decision and Order No. 17795, filed on June 15, 2000, in Docket No. 00-0116.

⁶See Decision and Order No. 17760, filed on May 25, 2000, in Docket No. 00-0116.

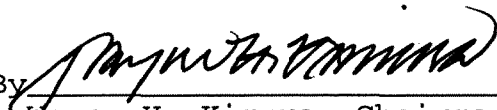
⁷The commission intends to issue its subsequent decision and order on the remaining matters raised by Applicants, following the completion of the Consumer Advocate's investigation and the filing of its position statement.

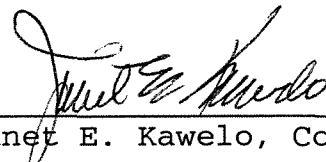
IV.


THE COMMISSION ORDERS that Applicants' request for a declaratory ruling that the subject transaction, as described in the joint application filed on January 13, 2003, does not require the commission's approval, is denied. Further action from the commission will follow.

DONE at Honolulu, Hawaii this 7th day of February, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By 
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

03-0008.sl

CERTIFICATE OF SERVICE

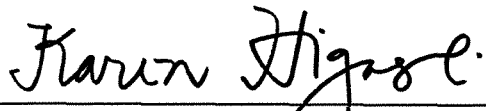
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20010 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: February 7, 2003