

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.)

DOCKET NO. 03-0008

For a Declaratory Order, or in the)
Alternative, an Exemption, Waiver,)
or Approval of the Transaction;)
and to Amend a Certificate of)
Registration.)
_____)

DECISION AND ORDER NO. 20118

Filed April 11, 2003
At 8:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

REV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2003 APR 14 P 4:25

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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 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, as they "hope to close the transaction in the early to mid-second quarter of this year".

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).

By Decision and Order No. 20010, filed on February 7, 2003, the commission denied Applicants' request for a ruling that the commission was federally preempted from reviewing the subject transaction. On February 25, 2003, Applicants filed their responses to the commission's and Consumer Advocate's respective information requests.

By position statement filed on April 4, 2003, the Consumer Advocate does not object to the proposed transaction or to the expansion of AT&T Wireless Services of Hawaii, Inc.'s service area to include the island of Kauai.

The instant decision and order addresses the remaining matters raised by Applicants.

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

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).

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 substantially all of Cingular Wireless' operating assets related to the provisioning of cellular communications services on the island of Kauai.³ The acquired operating assets will include:

1. All cellular sites, including buildings, towers, and the related infrastructure.
2. All cellular systems and equipment, including test equipment, tools, vehicles, supplies, inventories, furniture, and fixtures.
3. Accounts receivable.
4. Certain other tangible and intangible assets.⁴

Applicants state that the transaction is subject to certain regulatory consents.⁵ 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. Following closing, Cingular Wireless intends to surrender its COR.

³By letter dated March 13, 2003, Applicants submitted the exchange agreement under confidential seal.

⁴Applicants' response to CA-IR-1(b).

⁵Applicants 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.

III.

A.

Applicants assert that: (1) the wireless communications industry statewide is highly competitive; and (2) on the island of Kauai, five wireless communications carriers presently offer wireless communications services. Applicants note that the subject transaction will not affect the number of wireless communications carriers that provide service on Kauai.

In addition, Applicants state that: (1) AT&T Wireless Services of Hawaii, Inc.'s entry into the Kauai market will allow it to better compete with other statewide wireless carriers; and (2) AT&T Wireless Services of Hawaii, Inc. "wishes to bring the benefits of [its] wireless services to the citizens of Kauai."

Furthermore, Cingular Wireless intends to provide written notice to its current customers of: (1) the change in ownership and approximate date of such change; (2) any impact that may occur with respect to billing practices, such as changes in the remittance address and rates; and (3) a business telephone number and address that customers are able to utilize "to address any concerns or questions."⁶ Customers will also have "a period of time to discontinue service without incurring penalties, fines, or fees[,] and "are . . . free to migrate to other wireless carriers should they desire."

Upon careful review, the commission finds the subject transaction reasonable and consistent with the public interest,

⁶The contents of Cingular Wireless' proposed written notice are consistent with those ordered by the commission in Docket No. 00-0116, *In re AT&T Wireless Serv. of Hawaii, Inc. and U.S. Cellular*.

under HRS § 269-7(a). Accordingly, the commission will approve the transfer of operating assets from Cingular Wireless to AT&T Wireless Services of Hawaii, Inc., subject to the conditions set forth in Section IV, below. The commission's approval renders moot Applicants' request for a waiver or exemption.

B.

The commission: (1) finds that AT&T Wireless Services of Hawaii, Inc. has fulfilled the requirements of HAR § 6-80-17(d); and (2) will amend AT&T Wireless Services of Hawaii, Inc.'s COR by expanding its service area to include the island of Kauai and immediate surrounding waters.

IV.

THE COMMISSION ORDERS:

1. The subject transaction, as described in the joint application filed on January 13, 2003, is approved.

2. Cingular Wireless shall promptly: (A) comply with the customer notification requirements set forth in section III.A; and (B) file copies of its written notice with the commission, with two copies served upon the Consumer Advocate.

3. AT&T Wireless Services of Hawaii, Inc.'s request to amend its COR by expanding its service area to include the island of Kauai and immediate surrounding waters is approved. Upon the closing of the subject transaction, AT&T Wireless of Hawaii, Inc. shall file its revised tariff sheet incorporating its expanded service area of Kauai.


4. As the holder of a COR, AT&T Wireless Services of Hawaii, Inc. is subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

5. Not later than 30 days after a new service or rates are offered, AT&T Wireless Services of Hawaii, Inc. shall file its revised tariff sheets, consistent with HAR § 6-80-40(a).

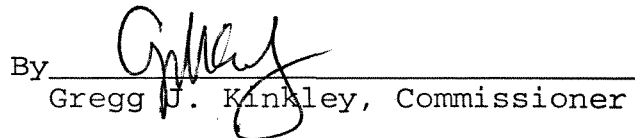
6. Until it files a request for commission approval to surrender its COR and such approval is granted by the commission, Cingular Wireless shall continue to: (A) file its 2002 and 2003 annual financial reports, pursuant to HAR § 6-80-91; and (B) pay its public utility fee, pursuant to HRS § 269-30, i.e., the greater of one-quarter of one per cent of its gross income for the year 2002, or \$30, due on July 31, 2003 and December 31, 2003, and its fee for the year 2003 and any subsequent years.

DONE at Honolulu, Hawaii this 11th day of April, 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. 20118 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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Karen Higashi

DATED: April 11, 2003