

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
VERIZON HAWAII INC.)
To Reclassify CentraNet Features)
as Fully Competitive.)
_____)

DOCKET NO. 02-0173

DECISION AND ORDER NO. 20171

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DEPT. OF COMMERCE AND
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STATE OF HAWAII

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Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

I.

On July 1, 2002, VERIZON HAWAII INC. (Verizon Hawaii) filed a petition requesting approval for the reclassification of its CentraNet features from noncompetitive to fully competitive. Verizon Hawaii makes its request pursuant to Hawaii Administrative Rules (HAR) §§ 6-61-74, 6-80-26, and 6-80-27.

Copies of the petition were served on the Department of Commerce and Consumer affairs, Division of Consumer Advocacy (Consumer Advocate).¹ On July 22, 2002, Time Warner Telecom of Hawaii, L.P., (TWTC) timely filed a motion to intervene in the instant docket, pursuant to HAR §§ 6-61-55 and 6-61-57.² No other person moved to intervene in this proceeding.

¹Verizon Hawaii and the Consumer Advocate entered into a stipulation for a protective order with regards to the matters of this docket. The commission issued Protective Order No. 19455 on July 3, 2002.

²On July 29, 2002, pursuant to HAR § 6-80-41(c), Verizon Hawaii filed its memorandum in opposition to TWTC's motion.

By Order No. 19552, filed on September 6, 2002, the commission denied TWTC's motion to intervene, but granted TWTC participant status limited to the filing of a statement of its views (Statement), or notification that it adopts its motion to intervene as its Statement, within 10 days of the date of the order. However, TWTC failed to participate in this proceeding in accordance to Order No. 19552.

On August 6, 2002, the Consumer Advocate served Verizon Hawaii with information requests (IRs). On August 19, 2002, Verizon Hawaii filed responses to the IRs. By Statement of Position filed on January 16, 2003, the Consumer Advocate informs the commission that it cannot support Verizon Hawaii's petition to reclassify CentraNet features as fully competitive. Pursuant to HAR § 6-61-41, on January 29, 2003, Verizon Hawaii filed a motion for leave to file a reply to the Consumer Advocate's Statement of Position (Motion), and attached its reply (Reply) to the Motion for the commission's consideration.

II.

In its Motion, Verizon Hawaii contends that the Consumer Advocate's position is based on a misapplication of the commission's rules, among other things. It also states that the Reply is "narrowly tailored" to address the Consumer Advocate's Statement of Position.

Upon review, the commission finds that it is not resistant to accepting the Reply into the record of this docket. Additional information regarding the areas of disagreement can be

helpful to the commission in its deliberations on this matter. We note that the Consumer Advocate did not file an opposition to the Motion.

Based on the above, the commission concludes that Verizon Hawaii's Motion, filed on January 29, 2003, should be granted.

III.

A.

Call transfer, conference calling, call forwarding, database changes, instant call accounting, and automatic call distribution are said to be examples of Verizon Hawaii's CentraNet features.³ These services allow business customers to "distribute calls to various locations, permit abbreviated dialing or speed dialing, allow an employee to forward calls . . . enable a customer to answer calls from another line and let them connect several people on the same call."⁴ CentraNet features are considered to be switch-based services and are generically known as "business multi-line features" or Centrex features.

In the alternative, similar services can be provided through customer premise equipment (CPE)-based systems. CPE-based services are provided through Private Branch Exchange (PBX) and key systems. These systems are provided through customer owned equipment located on the customer premises as

³Petition at 4, footnote 6.

⁴Petition at 4.

opposed to Centrex features which are provided through the central office.

Verizon Hawaii's CentraNet features, set forth in P.U.C. Tariff No. 3, Sections 31, 41, and 42, are currently classified as noncompetitive telecommunications services. Through this petition, Verizon Hawaii seeks to reclassify all of its current and future CentraNet features as fully competitive services. It represents that the features and functionalities of CentraNet services and that of PBX/key systems are "substitutable and virtually indistinguishable". However, Verizon Hawaii contends that it is at a competitive disadvantage since CentraNet is a regulated service while PBX/key systems are unregulated, allowing PBX/key system providers with greater pricing flexibility and faster market response times.

Verizon Hawaii argues that reclassification of CentraNet features to fully competitive is warranted since it meets the guidelines for this classification under HAR § 6-80-25(c) which states that a service is fully competitive if: (1) there are multiple service providers who can enter and exit the market with ease, with none of the providers being dominant in terms of sales; (2) all customers for the service have access to information about prices and service quality; and (3) all customers have the ability and incentive to obtain service from the most efficient provider at a price equal to the economic cost of the service. Among other thing, Verizon Hawaii represents that: (1) there are approximately 35 firms providing

CPE for telecommunications equipment manufacturers in Hawaii⁵; (2) the costs associated with the entry into and exit out of the CPE-based market is relatively low⁶; (3) many competitive local exchange carriers in Hawaii can provide Centrex features easily and with minimal effort⁷; (4) no provider has market dominance in this field since any attempt to raise prices above a competitive level will result in significant losses⁸; (5) the market for these types of services is extremely competitive with numerous providers able to easily enter and exit the market⁹; (6) various sources (i.e., CPE distributors and filed tariffs) provide customers with pricing and other information regarding PBX/key and Centrex systems¹⁰; and (7) with the information available customers are able to evaluate the benefits of the various options and they have a strong incentive to obtain the most efficient provider.¹¹

B.

In its Statement of Position, the Consumer Advocate states that it "does not dispute that the market for CentraNet

⁵Petition at 6.

⁶Petition at 7.

⁷Ibid.

⁸Petition at 8.

⁹Petition at 9.

¹⁰Petition at 9 and 10.

¹¹Petition at 10.

features reflects competition;"¹² however, it questions whether this market is fully competitive. Arguing that Verizon Hawaii has not met its burden of proving that the market for CentraNet features is fully competitive, the Consumer Advocate says that it is opposed to: (1) supporting the reclassification of Verizon Hawaii's CentraNet features as fully competitive; and (2) finding that future CentraNet features are competitive. However, it does not "oppose reclassifying current CentraNet features as partially competitive at this time."¹³

1.

In its review of Verizon Hawaii's reclassification request, aside from considering the characteristics for a fully competitive service set forth in HAR § 6-80-25(c), the Consumer Advocate also considered the factors of HAR § 6-80-25(d). HAR § 6-80-25(d) states that:

In determining whether a service is fully competitive or partially competitive, the commission shall consider the following factors:

- (1) The identity, number, and size of any alternative carriers offering the same or equivalent service;
- (2) The extent to which service of comparable quality is readily available from more than one carrier in the relevant market;
- (3) The ability of alternative carriers to make equivalent or substitute services readily available at competitive rates, terms, and conditions;

¹²Statement of Position at 21.

¹³Statement of Position at 21.

- (4) Other indicators of market power, including the various carriers' shares of the relevant market, the growth or shifts in market share, the ease of market entry and exit, and any affiliation between or among alternative carriers providing the same or similar service;
- (5) Benefits to the public interest; and
- (6) Any other factors deemed relevant by the commission.

Among other things, while the Consumer Advocate states that there appears to be alternative carriers that can provide CentraNet feature-like services at comparable rates, terms, and conditions, it was unable to conclude whether a sufficient number of companies of appropriate size exist in Hawaii to constitute a fully competitive market, due to lack of sufficient data on the actual number and size of companies providing these types of services. Additionally, the Consumer Advocate states that it is unable to conclude whether or not Verizon Hawaii's share of the market is dominant or non-dominant and alludes that Verizon Hawaii may still have considerable influence in this market. The Consumer Advocate cautions that if CentraNet features is reclassified as fully competitive at this time, it might later be difficult to rescind this decision and may also possibly establish precedent regarding the reclassification of other telecommunications services since evidence presented to support Verizon Hawaii's position to-date is insufficient and appears to be mostly anecdotal or estimated. The Consumer Advocate contends that it is premature and impossible to conclude whether or not this market is fully competitive.

In response, Verizon Hawaii first contends that that the Consumer Advocate misapplied the standard set forth in the rules. It argues that the HAR § 6-80-25(d) factors are "ancillary" and that the Consumer Advocate was incorrect in applying these factors in determining whether or not CentraNet features warrant reclassification to fully competitive. The commission disagrees.

HAR § 6-80-25(d) is clear; "[i]n determining whether a service is fully competitive or partially competitive, the commission shall consider" the factors set forth in this subsection (emphasis added). This subsection also states that "[t]he degree and extent of competition determines whether the telecommunications service is fully [or partially] competitive . . . [and that partial] competition constitutes a classification that is transitional to full competition." Thus, the Consumer Advocate's application of the HAR § 6-80-25(d) factors is correct and appropriate.

Verizon Hawaii further argues that it provided "sufficient support" for the reclassification of CentraNet features to fully competitive under the Consumer Advocate's HAR § 6-80-25(d) analysis and suggests that any implication of "lack of evidence" is due to the function of the market. We again disagree.

In a reclassification proceeding initiated by petition, the petitioner, Verizon Hawaii, bears the burden of demonstrating that its proposed reclassification request is appropriate.¹⁴ Upon

¹⁴See HAR § 6-80-27(e).

review, Verizon Hawaii failed to meet this burden to our satisfaction, and, therefore, we are not persuaded that reclassification of CentraNet features to fully competitive at this time is appropriate. Among other things, we are troubled about Verizon Hawaii's market share information, which appears to be somewhat incongruent with its overall argument of needing reclassification to fully competitive to be competitive. Verizon Hawaii states that "market share is not a reliable indicator of market power" and argues that any conclusion that its market share is growing over time is due to a "statistical quirk resulting from partially missing data".¹⁵ Verizon Hawaii has arguable points; nonetheless, it has failed to provide adequate information to allow the commission to determine whether or not it is dominant or non-dominant in this market to our satisfaction. Moreover, the basis of the Consumer Advocate's position is that insufficient evidence was presented by Verizon Hawaii to support a finding that reclassification of CentraNet features is appropriate at this time. We agree. Thus, we find it prudent, reasonable, and appropriate to refrain from approving Verizon Hawaii's request.

Based on the above, we conclude that Verizon Hawaii's request to reclassify its CentraNet features to fully competitive should be denied. However, as the Consumer Advocate recognized, it appears that certain level of competition does exist in this market. We, thus, believe that the record in this docket supports the reclassification of CentraNet features as partially

¹⁵Reply at 12.

competitive at this time. Reclassifying Verizon Hawaii's CentraNet features from noncompetitive to partially competitive should foster additional competition and benefit consumers. Accordingly, we find and conclude that it would be appropriate, reasonable, and in the public interest to reclassify, sua sponte, CentraNet features to partially competitive at this time.

2.

While the Consumer Advocate states that it would not be opposed to reclassifying current CentraNet features as partially competitive at this time, it appears to be against considering the reclassification of future CentraNet features at all. The Consumer Advocate contends that it would be speculative to make a finding on future CentraNet features without knowing their service parameters, and speculates that certain CentraNet feature-like services in the future may only be available through switch-based carriers. On the other hand, Verizon Hawaii states that current and future CentraNet features must be categorized under the same classification since not doing so would make this offering administratively cumbersome and difficult.

Upon review, we find the Consumer Advocate's concerns on this matter to be reasonable with regards to reclassifying future CentraNet features as fully competitive. Nevertheless, we believe the Consumer Advocate's concerns are substantially lessened under a reclassification of these services as partially competitive. While a tariff for a fully competitive service is effective upon filing with the commission, a tariff for a

partially competitive service must be filed with the commission at least thirty days before the effective date of the service.¹⁶ Among other things, our rules allow the Consumer Advocate or any interested individual with an opportunity to file a protest to the proffered service within a prescribed time.¹⁷ We believe that the commission's current rules on the regulation of partially competitive telecommunication services are sufficient to address any concerns that may arise in the future regarding these types of offerings. Thus, we find and clarify that reclassification of both current and future CentraNet features, at this time, as partially competitive are reasonable and in the public interest.

Based on the above, we conclude that Verizon Hawaii's current and future CentraNet features should be classified as partially competitive telecommunications services, pursuant to HAR § 6-80-27.

IV.

THE COMMISSION ORDERS:

1. Verizon Hawaii's January 29, 2003, motion for leave to file a reply is granted.

2. Verizon Hawaii's request to reclassify its CentraNet features from noncompetitive to fully competitive is denied.

¹⁶See HAR § 6-80-40.

¹⁷See HAR § 6-80-40(c).

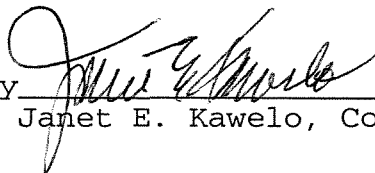
3. At this time, Verizon Hawaii's current and future CentraNet features are classified as partially competitive telecommunications services.

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

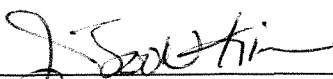
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
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By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

02-0173.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20171 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

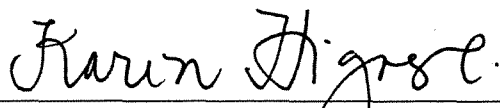
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DATE: May 7, 2003