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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
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PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding of )  
Commercial Mobile Radio )  
Service ("CMRS") Providers in )  
The State of Hawaii, Including )  
An Investigation to Determine )  
Whether it is Consistent with )  
The Public Interest to Exempt )  
CMRS Providers, their )  
Services, or Both, from Any )  
Provision of Hawaii Revised )  
Statutes Chapter 269 )  
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DOCKET NO. 03-0186

ORDER NO. 20264

Filed June 26, 2003  
At 2:30 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

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DIV. OF CONSUMER AFFAIRS  
DEPT. OF COMMERCE  
CONSUMER AFFAIRS  
STATE OF HAWAII

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

K. Higashi

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 PUBLIC UTILITIES COMMISSION ) Docket No. 03-0186  
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 The State of Hawaii, Including )  
 An Investigation to Determine )  
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 The Public Interest to Exempt )  
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 Services, or Both, from Any )  
 Provision of Hawaii Revised )  
 Statutes Chapter 269 )  
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I.

**State preemption.** (A) Notwithstanding [47 United States Code ("U.S.C.") §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service[.] 47 U.S.C. § 332(c)(3) (emphasis added).

<sup>1</sup>Pub. L. No. 103-66, Title VI, § 6002, 107 Stat. 312, 392 (1993) (codified in principal part at 47 U.S.C. § 332).

the OBRA amended the Communications Act of 1934 to preempt state and local (collectively referred to as "States") rate and entry regulation of commercial mobile radio services ("CMRS")<sup>2</sup>, the OBRA expressly reserved to the States the authority to regulate the "other terms and conditions" of CMRS.<sup>3</sup>

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<sup>2</sup>As used in this order, CMRS shall have the same meaning as defined in 47 U.S.C. §§ 153 and 332(d)(1).

47 U.S.C. § 332(d)(1) provides, in relevant part:

[T]he term "commercial mobile service" means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the [Federal Communications] Commission[.]

47 U.S.C. § 153(27) provides:

The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the [Federal Communications] Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

CMRS includes cellular, paging, and personal communications services. Hawaii Administrative Rules § 6-80-4. CMRS providers are also commonly known as wireless telecommunications carriers.

<sup>3</sup>*In the Matter of Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii*, PR Docket No. 94-103, Report and Order, FCC 95-194 (rel. May 19, 1995)

In light of the OBRA and the FCC's ruling in 1995, the commission has continued to assert jurisdiction, pursuant to its authority granted under Hawaii Revised Statutes ("HRS") Chapter 269, over "other terms and conditions" of CMRS in the State of Hawaii ("State" or "Hawaii") including, without limitation, customer billing information and practices, billing disputes and transfers of control. The commission, in regulating the "other terms and conditions" of CMRS in Hawaii, as well as other utilities under its purview, is statutorily mandated under HRS Chapter 269 to ensure that the "public interest" is protected.

In recent years, the commission recognizes that there has been an expansion in the development and deployment of wireless telecommunications technologies and services internationally, nationally and locally, and that developing and promoting investment in new and innovative wireless telecommunications technologies will continue to impact the economy, education, health, safety, leisure, general welfare, and prosperity of the State and its people in the future. The commission is also aware that during the just concluded 2003 Hawaii legislative session, various commission-registered wireless telecommunications carriers that provide CMRS in Hawaii supported measures intended to streamline the regulation of CMRS providers in Hawaii by amending HRS Chapter 269 to make only certain state regulatory requirements applicable to CMRS providers.

In light of the above, the commission believes that it should examine whether it is consistent with the public interest to streamline the regulation of the wireless telecommunications

industry in Hawaii by exempting CMRS providers, their services, or both, from any provision of HRS Chapter 269.

## II.

HRS §§ 269-7 and 269-15 and Hawaii Administrative Rules ("HAR") § 6-61-71 authorize the commission to examine and institute proceedings on any matter relating to a utility's practices and services or otherwise affecting the relations and transactions between the utility and the public. Furthermore, HRS § 269-16.9(a)<sup>4</sup> provides, in relevant part, the following:

[T]he commission, upon its own motion . . . and upon notice and hearing, may exempt a telecommunications provider<sup>5</sup> or a telecommunications service<sup>6</sup> from any or all of the provisions of [HRS Chapter 269], except the provisions of [HRS § 269-34], upon a determination that the exemption is in the public interest. In determining whether an exemption is in the public interest, the commission shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable

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<sup>4</sup>See also, HAR § 6-30-135.

<sup>5</sup>CMRS providers are deemed to be "public utilities," telecommunications providers or telecommunications carriers providing intrastate telecommunications services within the State within the meaning set forth under HRS § 269-1. See also, HAR § 6-80-2.

<sup>6</sup>"Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit or any closed transmission medium, and does not include cable service as defined in [HRS § 440G-3]. HRS § 269-1.

rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry. Among the specific factors the commission may consider are:

- (1) The responsiveness of the exemption to changes in the structure and technology of the State's telecommunication industry;
- (2) The benefits accruing to the customers and users of the exempt telecommunications provider or service;
- (3) The impact of the exemption on the quality, efficiency, and availability of telecommunications service;
- (4) The impact of the exemption on the maintenance of fair, just, and reasonable rates for telecommunications services;
- (5) The likelihood of prejudice or disadvantage to ratepayers of basic local exchange service resulting from the exemption;
- (6) The effect of the exemption on the preservation and promotion of affordable, universal, basic telecommunications services as those services are determined by the commission;
- (7) The resulting subsidization, if any, of the exempt telecommunications service or provider by nonexempt services;
- (8) The impact of the exemption on the availability of diversity in the supply of telecommunications services throughout the State;
- (9) The improvements in the regulatory system to be gained from the exemption, including the reduction in regulatory delays and costs;
- (10) The impact of the exemption on promoting innovations in telecommunications services;
- (11) The opportunity provided by the exemption for telecommunications providers to respond to competition; and

- (12) The potential for the exercise of substantial market power by the exempt provider or by a provider of the exempt telecommunications service.

Accordingly, pursuant to HRS § 269-16.9(a) and HAR § 6-80-135, the commission will, on its own motion, institute a proceeding to examine whether it is consistent with the public interest to exempt CMRS providers, their services, or both, from any provision of HRS Chapter 269.

The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") and all currently registered CMRS providers shall be made parties to this proceeding. As of the date of this order, our records indicate that the following wireless telecommunications providers (which includes providers of cellular, paging and personal communications services) are currently registered with the commission and/or are providing CMRS in the State:

1. Ameritech Mobile Communications, LLC
2. Ameritech Wireless Holdings, Inc.,  
dba Cingular Wireless
3. AT&T Wireless PCS, LLC
4. AT&T Wireless Services of Hawaii, Inc.
5. Cellco Partnership, dba Verizon Wireless
6. Nextel West Corporation
7. NPCR, Inc.
8. SprintCom, Inc., dba Sprint PCS
9. T-Mobile USA, Inc.
10. General Telcourier, Inc., dba Pager One

11. Island Page, Inc.
12. MMLicense/MMCA2, dba Ram Paging Hawaii
13. Mobile One, Inc.

Furthermore, because we also recognize an interrelationship between various telecommunications technologies and services, particularly through our experiences in Docket No. 7702<sup>7</sup>, and to ensure a comprehensive examination of this matter, we will invite all interested telecommunications carriers, business groups, and community groups to participate in this docket as intervenors or participants without intervention ("participants"), so long as these persons or entities satisfy and adhere to the commission's administrative rules (aka, HAR Chapter 6-61, *Rules of Practice and Procedure Before the Public Utilities Commission*) governing intervention and participation in commission proceedings.

### III.

The tentative outline of the issues the commission intends to address in this docket is as follows:

1. Identification of the specific provision(s) of HRS Chapter 269 that should and can be exempted for CMRS providers in Hawaii, pursuant to HRS § 269-16.9.
2. Identification and analysis of the specific relevant factor(s) listed under HRS

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<sup>7</sup>Docket No. 7702 is the commission's ongoing communications infrastructure docket opened in May 1993 to, among other things, investigate the development of the infrastructure necessary to support the introduction, deployment, and use of advanced communications technologies and services in the State.

§ 269-16.9(a) that the commission should consider in determining whether an exemption is consistent with the public interest.

3. Identification of any guidelines, terms or conditions that may need to be adopted, if any, should CMRS providers be exempted from certain provisions of HRS Chapter 269.

The above outline is only a start in identifying the issues that need to be addressed in this docket, and is intended only to assist in expediting the process in determining whether there is merit in exempting CMRS providers, their services, or both, from certain provisions of HRS Chapter 269. Accordingly, subsequent to determining all parties (i.e., CMRS providers, Consumer Advocate, Intervenors, if any) and Participants, if any, in this docket, the commission will issue a prehearing order establishing, among other things, the schedule of proceedings, issues, hearing date(s), if any, and other procedures needed to govern the instant proceedings.

#### IV.

##### THE COMMISSION ORDERS:

1. A proceeding is instituted to examine the issues surrounding whether it is consistent with the public interest to exempt CMRS providers, their services, or both from any provision of HRS Chapter 269 in accordance with HRS § 269-16.9 and HAR § 6-80-135.

2. The following shall be parties to this proceeding:

- a. Consumer Advocate
- b. Ameritech Mobile Communications, LLC
- c. Ameritech Wireless Holdings, Inc.,  
dba Cingular Wireless
- d. AT&T Wireless PCS, LLC
- e. AT&T Wireless Services of Hawaii, Inc.
- f. Cellco Partnership, dba Verizon Wireless
- g. Nextel West Corporation
- h. NPCR, Inc.
- i. SprintCom, Inc., dba Sprint PCS
- j. T-Mobile USA, Inc.
- k. General Telcourier, Inc., dba Pager One
- l. Island Page, Inc.
- m. MMLicense/MMCA2, dba Ram Paging Hawaii
- n. Mobile One, Inc.

Within 20 days from the filing of this order, all of the above-referenced parties, except the Consumer Advocate, shall inform the commission in writing their duly authorized representative(s) for this proceeding in accordance with HAR § 6-61-12.

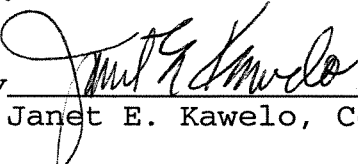
3. Any person desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than 20 days from the filing of this order. Motions to intervene or participate without intervention shall comply with HAR Chapter 6-61, *Rules of Practice and Procedure Before the Public Utilities Commission*.

DONE at Honolulu, Hawaii this 26th day of June, 2003.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Kris N. Nakagawa  
Commission Counsel

cmrs.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20264 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: June 26, 2003