

ols
scan

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
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)
_____)

DOCKET NO. 03-0186

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

2003 OCT -8 P 4:11

RECEIVED

PROCEDURAL ORDER NO. 20563

Filed Oct. 7, 2003
At 2:00 o'clock P.M.

Karen Digest.
Chief Clerk of the Commission

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

K. Digest.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
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)
_____)

Docket No. 03-0186
Procedural Order No. 20563

PROCEDURAL ORDER

I.

The commission directed the parties¹ to confer or meet informally to formulate a stipulated prehearing order and submit it to the commission for its consideration and approval on August 7,

¹The parties in this docket are as follows: (1) Ameritech Mobile Communications, LLC, dba Cingular Wireless ("Ameritech Mobile"); (2) Ameritech Wireless Holdings, Inc. ("Ameritech Wireless"); (3) AT&T Wireless PCS, LLC ("AT&T Wireless PCS"); (4) AT&T Wireless Services of Hawaii, Inc. ("AT&T Wireless Hawaii"); (5) Cellco Partnership, dba Verizon Wireless ("Verizon Wireless"); (6) Nextel West Corporation ("Nextel West"); (7) NPCR, Inc. ("NPCR"); (8) SprintCom, Inc., dba SprintPCS ("SprintPCS"); (9) T-Mobile USA, Inc. ("T-Mobile"); (10) General Telcourier, Inc., dba Pager One ("Pager One"); (11) Island Page, Inc. ("Island Page"); (12) Arch Wireless Operating Company, Inc. (fka, Mobile Communications Corporation of America, dba Ram Paging Hawaii) ("Arch Wireless"); (13) Mobile One, Inc. ("Mobile One"); (14) Verizon Hawaii Inc. ("Verizon"); (15) AT&T Communications of Hawaii, Inc. ("AT&T"); and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").

2003.² If the parties were unable to stipulate to such an order, the commission further directed each party to submit its own proposed prehearing order for the commission's consideration. The commission established September 22, 2003, as the submission date of either the stipulated prehearing order or the proposed prehearing orders.

On September 12, 2003, Ameritech Mobile, Ameritech Wireless, AT&T Wireless PCS, AT&T Wireless Hawaii, Verizon Wireless, Nextel West, NPCR, SprintPCS, T-Mobile, Arch Wireless, Verizon, AT&T, and the Consumer Advocate (collectively, "Stipulated Parties")³ filed their Stipulated Procedural Order for the commission's review and approval.

On October 2, 2003, Island Page, by letter dated September 30, 2003, states that it joins with the September 11, 2003 Stipulated Procedural Order.

II.

Upon our review and consideration, we determine that the following issues, schedule of proceeding, and procedures shall control the subsequent course of this proceeding.

²Order No. 20368, filed on August 7, 2003.

³On September 12, 2003, counsel for AT&T Wireless PCS and AT&T Wireless Hawaii represented that the September 11, 2003 Stipulated Procedural Order was filed without the signatures of Pager One's and Mobile One's representative. Since neither Pager One nor Mobile One were signatories to the Stipulated Procedural Order, they will not be construed as Stipulated Parties to the September 11, 2003 Stipulated Procedural Order.

As referenced below, we approve and adopt the Stipulated Parties' proposed issues in part, and procedures set forth in their Stipulated Procedural Order, in part. We also approve and adopt their Stipulated Regulatory Schedule, attached to the Stipulated Procedural Order as Exhibit "A", subject to certain modifications discussed herein.

A.

STATEMENT OF ISSUES⁴

The issues in this docket are:

1. In view of the competitiveness of CMRS and CMRS providers' practices,
 - a. What provisions of Hawaii Revised Statutes ("HRS") Chapter 269, Hawaii Administrative Rules ("HAR") Chapters 6-80 and 6-81, and General Order No. 8 ("G.O. No. 8"), *Standards for Telephone Service in the State of Hawaii* should CMRS be exempted from under HRS § 269-16.9(a)?
 - b. Under HRS § 269-16.9(c), what conditions or limits, if any, should apply to any such exemptions granted to CMRS in this proceeding?

⁴We decline to adopt the Stipulated Parties' proposed preemption issue because HRS § 269-16.9 does not require the preemption issue to be decided in order for the commission to exempt CMRS providers, their services, or both, from any provision of Hawaii Revised Statute, Chapter 269 or its applicable rules.

- c. What provisions of HRS Chapter 269, HAR Chapters 6-80 and 6-81, and G.O. No. 8 should the commission otherwise waive under HRS § 269-16.9(e) for CMRS providers and services?

B.

SCHEDULE OF PROCEEDING

Upon review, we find that the Stipulated Parties' Stipulated Regulatory Schedule attached hereto as Exhibit "A" is as a whole reasonable. However, in light of Island Page's late submission, we also find it necessary to modify the Stipulated Regulatory Schedule as follows: (1) Item 3 is amended from "Monday, October 6, 2003" to "Friday, October 10, 2003," and (2) Item 4 is amended from "14-16" to "10-12". Thus, we conclude that the Stipulated Regulatory Schedule, as modified, should be approved, adopted, and made part of this procedural order. Unless ordered otherwise, the parties shall adhere to the schedule of proceeding set forth in the Stipulated Regulatory Schedule. Notwithstanding the above, the parties shall have the right to amend the Stipulated Regulatory Schedule as may be agreed in writing from time to time, subject to approval by the commission. Subsequent to November 12, 2003, the commission may schedule a status or prehearing conference to determine, among other things, whether other additional procedures are necessary, and if a public or evidentiary hearing needs to be scheduled.

C.

COPIES OF DOCUMENTS

Each party shall file and serve copies of all position statements, pleadings and all other documents to the commission and the parties as follows:

| | |
|------------|--|
| Commission | Original + 11 copies to be filed at the commission's Honolulu office within the time limit prescribed, pursuant to HAR § 6-61-15 |
|------------|--|

| | |
|-------------|---|
| All parties | 2 copies of each document to be served to each party by U.S. mail (postage prepaid), e-mail or facsimile, as set forth in the September 12, 2003 Stipulated Procedural Order or as mutually agreed to by the parties. |
|-------------|---|

Upon request, the parties shall provide electronic versions of all correspondence, pleadings and position statements, if any, by e-mail to the other parties to facilitate the timely receipt and review of the same.

D.

COMMUNICATIONS

HAR § 6-61-29 concerning *ex parte* communications shall govern any communications between a party and the commission.

Communication between the parties should either be through counsel or through the designated and authorized representatives of the parties. All pleadings, papers, and other documents filed in this proceeding shall be served on the opposing parties and their respective counsel or their designated and authorized representative, as provided in Section C. above.

E.

MATTERS OF PUBLIC RECORD

In order to provide a means to reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that any of the parties have filed with the commission, published decisions of this or other commissions, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to utility matters, and specified parts of the record in previous commission dockets shall be admissible in this proceeding without the necessity of reproducing each document, provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the commission and the parties; and further provided that any party has the right to explain, qualify or conduct examination with respect to the identified document. The commission may rule on whether the identified document will be admitted into evidence when a party proffers such document for admission as evidence in this case.

From time to time, the parties may enter into stipulations that such documents, or any portion of such documents, may be introduced into evidence in this case.

F.

GENERAL MATTERS

The commission reserves the right to amend this procedural order prior to the evidentiary hearing, if necessary,

and to hold a status or prehearing conference prior to the evidentiary hearing in order to, among other things, narrow the issues and expedite this proceeding. Pursuant to HAR § 6-61-37, this procedural order shall control the subsequent course of the hearing unless modified by the commission at or prior to the hearing to prevent manifest injustice.

III.

AMERITECH MOBILE'S and AMERITECH WIRELESS' NOTICE OF WITHDRAWAL

On September 15, 2003, Ameritech Wireless and Ameritech Mobile received authorization by the Commission on September 15, 2003⁵ and September 19, 2003⁶, respectively, to surrender their certificates of registration ("CORs"). Consequently, on September 26, 2003, Ameritech Mobile and Ameritech Wireless submitted their Notice of Withdrawal to be parties to the instant docket.

In light of Ameritech Wireless' and Ameritech Mobile's surrender of their CORs and their representations in the Docket Nos. 99-0197 and 01-0110 that they no longer will operate as CMRS providers or facilities-based providers of cellular telecommunications services in Hawaii, we will approve Ameritech Mobile's and Ameritech Wireless' September 26, 2003 Notice of Withdrawal.

⁵Order No. 20435, filed on September 15, 2003, in Docket No. 99-0197.

⁶Order No. 20457, filed on September 19, 2003, in Docket No. 01-0110.

IV.

THE COMMISSION ORDERS:

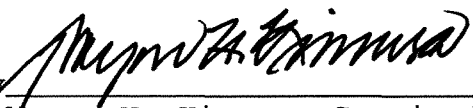
1. The Stipulated Parties' Stipulated Procedural Order, filed on September 12, 2003, is adopted in part, and denied in part, consistent with the terms of this procedural order. The Stipulated Regulatory Schedule, as modified herein and attached hereto as Exhibit "A", is approved, adopted, and made part of this procedural order.

2. Ameritech Mobile's and Ameritech Wireless' September 26, 2003 Notice of Withdrawal is approved.

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


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Kris N. Nakagawa
Commission Counsel

03-0186.eh

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE

Docket No. 03-0186

| | DATE | DURATION (days) | PROCEDURAL STEPS |
|----|--|--------------------|--|
| 1. | Friday, September 12, 2003 | | Stipulated Procedural Order filed |
| 2. | | | PUC issues Stipulated Procedural Order |
| 3. | Friday, October 10, 2003 | | Parties exchange with other parties initial positions in standard matrix format (hard copy and electronic versions to be exchanged to facilitate comparisons of positions prior to first technical meeting) |
| 4. | Monday, October 20, 2003 through Wednesday, October 22, 2003 (if needed) | 10-12 | Technical Meetings among the Parties to reach agreement, if possible. The first meeting will be held on 10/20/03 beginning at 9:00 a.m. at the offices of Verizon Wireless' outside counsel, Goodsill Anderson Quinn & Stifel. Address: 1800 Alii Place (check in with receptionist on the 18 th Floor) 1099 Alakea Street Honolulu, Hawaii 96813 |
| 5. | Monday, November 3, 2003 | 14 | Draft Stipulation, if any, circulated among the Parties |
| 6. | Wednesday, November 12, 2003 | 7 | Stipulation discussions |
| 7. | Wednesday, November 19, 2003 | 7 | Stipulation, if any, submitted to PUC |
| 8. | Wednesday, December 3, 2003 | 14 | Simultaneous Final Position Statement of the Parties on Issues not resolved |
| 9. | | | Decision and Order |

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Procedural Order No. 20563 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

GARY W. SANCHEZ
LEGAL & EXTERNAL AFFAIRS
CINGULAR WIRELESS, LLC
5565 Glenridge Connector, Suite 1710
Atlanta, GA 30342

AMERITECH MOBILE COMMUNICATIONS, LLC
4420 Rosewood Drive
Building 2, 4th Floor
Pleasanton, CA 94588

AMERITECH WIRELESS HOLDINGS, INC., dba
CINGULAR WIRELESS
5565 Glenridge Connector, Suite 520
Atlanta, GA 30342

ALAN M. OSHIMA, ESQ.
MICHAEL H. LAU, ESQ.
OSHIMA CHUN FONG & CHUNG LLP
400 Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

Attorneys for AT&T WIRELESS SERVICES OF HAWAII, INC. and
AT&T WIRELESS PCS, LLC

Certificate of Service (Continued)

BETH K. FUJIMOTO, ESQ.
REGULATORY COUNSEL
AT&T WIRELESS SERVICES, INC.
7277 - 164th Ave. NE, Bldg. 1
Redmond, WA 98052

CELLCO PARTNERSHIP, dba VERIZON WIRELESS
1 Verizon Place
Alpharetta, CA 30004-8511

GARY M. SLOVIN, ESQ.
RUSSELL S. KATO, ESQ.
DARCY L. ENDO-OMOTO, ESQ.
GOODSILL ANDERSON QUINN & STIFEL, LLP
1800 Alii Place
1099 Alakea Street
Honolulu, HI 96813

Attorneys for CELLCO PARTNERSHIP, dba VERIZON WIRELESS

NEXTEL WEST CORP.
2001 Edmund Halley Drive
Reston, VA 20191

NPCR, INC.
4500 Carillon Point
Kirkland, WA 98033

DEAN T. YAMAMOTO, ESQ.
ANDREWS & YAMAMOTO, LLLC
900 Fort Street Mall, Suite 1710
Honolulu, HI 96813

Attorney for NEXTEL WEST CORPORATION and NPCR, INC.

STEPHEN H. KUKTA, SENIOR ATTORNEY
JEFFREY M. PFFAFF, ATTORNEY
SPRINTCOM, INC., dba SPRINTPCS
100 Spear Street, Suite 930
San Francisco, CA 94105

Certificate of Service (Continued)

T-MOBILE USA, INC.
12920 SE 38th Street
Bellevue, WA 98006-7305

R. BRIAN TSUJIMURA, ESQ.
MARIO R. RAMIL, ESQ.
NAOMI U. KUWAYE, ESQ.
JAMIE Y. TANABE, ESQ.
IMANAKA KUDO & FUJIMOTO, LLLC
Topa Financial Center, West Tower
745 Fort Street, 17th Floor
Honolulu, HI 96813

Attorneys for T-MOBILE USA, INC.

DAVID R. WILLIAMS, GENERAL MANAGER
GENERAL TELCOURIER, INC., dba PAGER ONE
238 Sand Island Access Road, #R3
Honolulu, HI 96819

JOE DYDASCO, PRESIDENT
ISLAND PAGE, INC.
1095 Dillingham Boulevard, Suite F2
Honolulu, HI 96817

PAUL H. KUZIA, EXECUTIVE VICE PRESIDENT
JOSEPH F. MULLIN, VICE PRESIDENT
ARCH WIRELESS OPERATING COMPANY, INC.
1800 West Park Drive, Suite 250
Westborough, MA 01581

DAVID R. WILLIAMS, GENERAL MANAGER
MOBILE ONE, INC.
231 Sand Island Access Road, Suite M-3
Honolulu, HI 96819

JOEL MATSUNAGA
VICE PRESIDENT-EXTERNAL AFFAIRS
VERIZON HAWAII INC.
P. O. Box 2200
Honolulu, HI 96841

Certificate of Service (Continued)

LESLIE ALAN UEOKA, ESQ.
BLAINE T. YOKOTA, ESQ.
VERIZON CORPORATE SERVICES GROUP INC.
1177 Bishop Street
P.O. Box 2200
Honolulu, HI 96841

Attorneys for VERIZON HAWAII INC.

JULIAN C.L. CHANG, ESQ.
TERESA ONO
AT&T COMMUNICATIONS OF HAWAII, INC.
795 Folsom Street
San Francisco, CA 94107



Karen Higashi

DATED: October 7, 2003