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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)
)
PACIFIC LIGHTNET, INC.,)
)
Complainant,)
)
vs.)
)
VERIZON HAWAII INC.,)
)
Respondent.)
_____)

DOCKET NO. 03-0027

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

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ORDER NO. 20716

Filed Dec. 18, 2003
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Karon Dignel.
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
PACIFIC LIGHTNET, INC.,)	Docket No. 03-0027
)	
Complainant,)	Order No. 20716
)	
vs.)	
)	
VERIZON HAWAII INC.,)	
)	
Respondent.)	
_____)	

ORDER

I.

Introduction

VERIZON HAWAII INC. ("Verizon Hawaii") filed a Motion to Dismiss Complaint ("Motion to Dismiss") on April 28, 2003, requesting the commission to dismiss the complaint filed by PACIFIC LIGHTNET, INC. ("PLNI") (Verizon Hawaii and PLNI are collectively referred to as the "Parties"), pursuant to Hawaii Administrative Rules ("HAR") § 6-61-69. By its Motion to Dismiss, Verizon Hawaii asserts that the dispute described in the complaint is subject to a valid and enforceable arbitration provision in the Telecommunication Facility Interconnection Agreement ("Agreement") between GST Telecom Hawaii, Inc., PLNI's predecessor in interest, and Verizon Hawaii. Verizon Hawaii states that Part XXV of the Agreement requires the Parties to resolve disputes arising out of,

relating to, or a breach of the Agreement through the alternative dispute resolution process set forth in the Agreement.

PLNI filed an Opposition to Verizon Hawaii's Motion to Dismiss Complaint ("Opposition") on May 7, 2003, stating that its complaint did not involve a "mere contractual dispute," and "concerns a matter of public policy and regulatory import."¹ PLNI further alleged that Verizon Hawaii's refusal to pay PLNI for its interconnection facilities evidenced an "apparent Verizon [Hawaii] policy decision external to the agreement that contradicts fundamental regulatory principles."²

Verizon Hawaii replied to PLNI's Opposition on June 23, 2003 ("Verizon Hawaii's Reply Statement").³ In its Reply Statement, Verizon Hawaii disputes that there is a "corporate policy" not to pay for interconnection. PLNI replied to Verizon Hawaii's Reply Statement on July 1, 2003.⁴

¹Opposition at 2.

²Id. at 3.

³The commission granted Verizon Hawaii leave to file a reply to PLNI's Opposition on June 16, 2003 by Order No. 20233.

⁴The commission granted PLNI leave to reply to Verizon Hawaii's Reply Statement on July 21, 2003 in Order No. 20345. Order No. 20345 addressed PLNI's Motion for Reconsideration of Commission Order No. 20233, which requested that the commission vacate its Order No. 20233 (granting Verizon Hawaii leave to reply to PLNI's Opposition) and either (1) rule on Verizon Hawaii's dispositive motion based on Verizon Hawaii's original submission and PLNI's Opposition; or (2) alleviated any undue prejudice to PLNI.

On July 25, 2003, PLNI requested a hearing on Verizon Hawaii's Motion to Dismiss, pursuant to Order No. 20345. The commission filed a Notice of Hearing on August 12, 2003, indicating that a hearing on the Motion to Dismiss would be held on September 8, 2003 and a status telephone conference on August 27, 2003. After the status telephone conference was held, the commission issued Order No. 20399, memorializing the discussions of the procedures and scope of the hearing on the Motion to Dismiss.

On September 8, 2003, PLNI, through its counsel, who appeared via telephone conference, requested that the hearing on the Motion to Dismiss be continued for two-weeks to allow PLNI to evaluate a settlement proposal offered by Verizon Hawaii. During the hearing, the commission granted PLNI's request, and continued the hearing until October 7, 2003 at 10:00 a.m.⁵ On October 7, 2003, the commission held a hearing to hear oral arguments presented by the Parties' counsel regarding the Motion to Dismiss.⁶

⁵The commission memorialized the matters addressed at the hearing held on September 8, 2003 in Order No. 20554, filed on October 6, 2003.

⁶On October 17, 2003, Verizon Hawaii filed a letter answering questions posed by the commission at the October 7, 2003 hearing. In addition, Verizon Hawaii filed a letter on October 27, 2003, addressing a "factual inaccuracy" in a statement made by PLNI's counsel in the hearing.

II.

Discussion

Part XXV of the Agreement requires PLNI and Verizon Hawaii to resolve any controversy or claim arising out of or relating to the Agreement, or any breach of the Agreement by using the alternative dispute resolution process set forth in the Agreement. Upon review of the pleadings and arguments made by the Parties, the commission views PLNI's complaint as a "controversy or claim arising out of or relating to the Agreement or its breach," and is subject to the alternative dispute resolution procedures set forth in Part XXV of the Agreement.⁷ Accordingly, based on the plain reading of the Agreement and the applicable authorities cited by Verizon Hawaii, the commission concludes that Verizon Hawaii's Motion to Dismiss should be granted, and the Parties should engage in the alternative dispute resolution procedures described in the Agreement.

⁷The commission's ruling in this instance should not be construed to suggest that it does not have continuing jurisdiction over the Parties' Agreement. On the contrary, the commission will continue to assert its jurisdiction over the Agreement, and in furtherance of its governance over such matters, will instruct the Parties to keep the commission apprised of the Parties' progress toward a resolution of this dispute.

III.

Orders

THE COMMISSION ORDERS:

1. Verizon Hawaii's Motion to Dismiss is granted, and PLNI's complaint is dismissed without prejudice.

2. The Parties shall engage in the alternative dispute resolution procedures described in the Agreement.

3. Within 30 days of this order, the Parties shall provide the commission with a procedural timeline outlining their plan for the resolution of this dispute in accordance with Part XXV of the Agreement ("Procedural Plan"). In addition, the Parties shall provide the commission with a status report of its progress toward the resolution of this dispute, measuring the Parties' progress against their Procedural Plan. Such status report shall be due 90 days following the submission of the Procedural Plan.

DONE at Honolulu, Hawaii this 18th day of December, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni
Catherine P. Awakuni
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

03-0027.oc

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20716 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: December 18, 2003