

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding on)
Communications, Including an)
Investigation of the)
Communications Infrastructure)
of the State of Hawaii.)
_____)

DOCKET NO. 7702

ORDER NO. 21677

Filed March 9, 2005

At 2 o'clock P.M.

Karen Hignel.
Chief Clerk of the Commission

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

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Docket No. 7702

Order No. 21677

ORDER

By this order, the commission will require the current parties to this docket to review and discuss certain outstanding issues in this docket and the effect of recent developments on such outstanding issues, and to file a stipulation, if appropriate, or separate position statements as more particularly described herein.

I.

Background

The current parties to this docket are: (1) VERIZON HAWAII INC. ("Verizon Hawaii"); (2) the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"); (3) AT&T COMMUNICATIONS OF HAWAII, INC. ("AT&T"); (4) TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"); (5) the UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES ("DOD"); (6) PACIFIC LIGHTNET, INC. ("PLNI"); and (7) SPRINT

COMMUNICATIONS COMPANY, L.P. ("Sprint") (referred to collectively as the "Parties").

At this juncture, there are three (3) unaddressed issues in this docket. These issues concern: (1) the establishment of rates for Direct Current ("DC") and backup DC power for adjacent on-site collocation ("DC Power"); (2) the wholesale non-recurring cost ("NRC") study and proposed rates filed by Verizon Hawaii on December 21, 2001, in this docket; and (3) Verizon Hawaii's proposal to recover its Operations Support Systems ("OSS") transition, OSS transaction, and National Market Center ("NMC") shared and fixed costs filed on May 17, 2002, in this docket (collective referred to as "Open Issues").

With regards to DC Power, Verizon Hawaii and AT&T filed separate proposals for the commission's consideration and review on August 2, 2002, in accordance with Order No. 19451, filed on July 3, 2002. In compliance with Order No. 19405, filed on June 7, 2002, comments concerning Verizon Hawaii's NRC, OSS, and NMC filings were submitted by the DOD and AT&T on September 4, and September 5, 2002, respectively. Verizon Hawaii filed its response to the comments of AT&T and DOD on November 4, 2002.

At this time, the commission recognizes that the information currently in the record may be outdated and that one or more of the Open Issues may be affected by recent developments in federal law and telecommunications regulation. For instance, the Federal Communications Commission ("FCC") issued its

*Triennial Review Order*¹ in August 2003, establishing new rules governing the obligations of incumbent local exchange carriers ("ILECs") to make elements of their network available on an unbundled basis to competitive local exchange carriers ("CLECs"). The FCC, in the *TRO*, also delegated to state commissions the task of undertaking proceedings to determine the unbundling obligations of ILECs concerning certain network elements in specific geographic markets, pursuant to section 251(d)(2) of the Telecommunications Act of 1996 (the "Act").² Accordingly, the commission initiated Docket No. 03-0272 to implement the requirements of the *TRO* and named the Parties as parties to the proceeding and invited all interested individuals, entities, and organizations to intervene³ in Order No. 20471, filed on

¹In *Re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*; CC Docket Nos. 01-338, 96-98, and 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; FCC No. 03-36; Adopted February 20, 2003; Released August 21, 2003 ("*Triennial Review Order*" or "*TRO*").

²The Act, Public Law No. 104-104, amended the Communications Act of 1934, Title 47 of the United States Code ("U.S.C."). Section references in this docket are, thus, to those in 47 U.S.C., as amended by the Act.

³Ultimately, the parties to Docket No. 03-0272 consisted of: (1) the Consumer Advocate; (2) AT&T; (3) PLNI; (4) Oceanic; (5) the DOD; (6) Verizon Hawaii; (7) Direct Telephone Company Inc. ("DTC"); (8) Sandwich Isles Communications, Inc. ("SIC"); and (9) MCIMetro Access Transmission Services, Inc. ("MCI") (referred to collectively as the "*TRO Parties*"). In Order No. 20712, filed on December 11, 2003 ("*Order No. 20712*"), the commission, among other things: (1) approved Sprint's request to withdraw from the proceeding; and (2) granted the motions to intervene in this proceeding filed by DTC, SIC, and MCI.

September 29, 2003.⁴ Docket No. 03-0272 was concluded on March 31, 2004, through Order No. 20881, in which the commission: (1) approved the TRO Parties' March 12, 2004 stipulation, which addressed all issues of the docket, in its entirety; and (2) closed the docket.

Nationally, however, certain parties challenged the lawfulness of the TRO. The United States Court of Appeals for the District of Columbia Circuit ("D.C. Court") issued its decision in *United States Telecom Association v. Federal Communications Commission and United States of America*, No. 00-1012 (argued on January 28, 2004 and decided on March 2, 2004), which vacated and remanded portions of the TRO ("USTA II"). The D.C. Court temporarily stayed its own decision for a minimum of sixty (60) days,⁵ and granted the FCC's request for a stay of USTA II through June 15, 2004.⁶ The D.C. Court

⁴In Docket No. 03-0272, the commission addressed its obligation under the TRO through two (2) distinct parts, a 90-day Review (Part I) and a 9-month Review (Part II). The commission decided that a 90-day review would not be undertaken in Order No. 20712, largely due to the unresponsiveness of the Hawaii CLECs who did not request that such a proceeding occur, as ordered. The TRO Parties submitted a stipulated proposed prehearing order on January 12, 2004, setting forth the issues, a schedule of proceedings, and all other procedural matters to govern the 9-month Review in Docket No. 03-0272. The commission issued Prehearing Order No. 20762 approving the TRO Parties' stipulated proposed prehearing order, with one minor technical amendment, on January 15, 2004.

⁵See, USTA II at 62.

⁶See, *In Re Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; WC Docket No. 04-313, and CC Docket No. 01-338; Order and Notice of Proposed Rulemaking; FCC No. 04-179; Adopted July 21, 2004; Released August 20, 2004 ("Interim Rules Order") at 1, footnote 2 citing United States

denied a further FCC request for stay of *USTA II* on June 4, 2004, and on June 14, 2004, the U.S. Supreme Court denied a petition filed by a group of CLECs for a stay of the D.C. Court's order.⁷ Accordingly, the *USTA II* mandate was issued on June 16, 2004.⁸ As a stop-gap measure, on August 20, 2004, the FCC issued an order adopting interim rules.⁹ On December 15, 2004, the FCC adopted "new" rules concerning an ILEC's obligations to make elements of its network available to competitors in response to *USTA II*.¹⁰

Concurrently, Paradise MergerSub, Inc., now known as Hawaiian Telcom MergerSub, Inc. ("MergerSub"); GTE Corporation ("GTE Corp."); Verizon Hawaii; Bell Atlantic Communications, Inc., dba Verizon Long Distance; and Verizon Select Services Inc. (collectively referred to as "Transfer Applicants") jointly filed on June 21, 2004, an application requesting commission approval of the proposed transfer of Verizon Hawaii and certain other assets, and the financing obligations associated with the

Telecom Ass'n v. FCC, No. 00-1012, Order, (D.C. Cir. April 13, 2004).

⁷See, Interim Rules Order at 5. See also, In Re Request for Stay of Order for the July 2, 2004 Deadline for State Commission Determinations of Impairment Pursuant to the Triennial Review Order; CC Docket No. 01-338; Order; DA 04-2045; Adopted July 7, 2004; Released July 8, 2004 at 1, footnote 4.

⁸See, Interim Rules Order at 5.

⁹Interim Rules Order.

¹⁰In Re Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; WC Docket No. 04-313, and CC Docket No. 01-338; Order on Remand; FCC No. 04-290; Adopted December 15, 2004; Released February 4, 2005 ("Remand Order").

transfer.¹¹ The Transfer Applicants' request became a matter of Docket No. 04-0140. The commission granted motions to intervene filed by the DOD, PLNI, and Oceanic in Order No. 21226, filed on August 6, 2004, in Docket No. 04-0140. Additionally, in that order, Jeremiah C. Genovia; Charles K. Hekekoa, Jr.; and the International Brotherhood of Electrical Workers, Local 1357 were granted participant status to the docket and a Comment Period to solicit public comments was established. The commission held public hearings on the matters of Docket No. 04-0140 on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu to receive further public input and comments on the matters of the docket. The parties and participants of Docket No. 04-0140 completed their discovery and filed their respective position and rebuttal statements in accordance with the procedural requirements set forth in the approved "Stipulated Regulatory Schedule".¹² The matters of Docket No. 04-0140 are currently awaiting commission review and final determination.

¹¹In an Agreement of Merger dated May 21, 2004, MergerSub's parent, MergerSub, GTE Corp. (i.e., the current owner of 100 per cent of Verizon Hawaii's issued and outstanding capital stock), and Verizon HoldCo LLC (a newly formed subsidiary of GTE Corp.) entered into an agreement to transfer control of Verizon Hawaii and certain other related assets through a merger, with MergerSub being the surviving entity.

¹²The "Stipulated Regulatory Schedule" for Docket No. 04-0140 was initially approved in Order No. 21341, filed on September 10, 2004, wherein the commission approved, with certain modifications, the August 23, 2004 filed Stipulated Procedural Order of the parties and participants to the proceeding. Pursuant to the requirements of the approved Stipulated Procedural Order, the parties and participants revised their Stipulated Regulatory Schedule as memorialized for the record on September 23, October 14, and December 29, 2004, respectively.

II.

Parties' Input and Information Update

In light of the above, the commission finds it prudent and necessary, at this time, to first obtain updated information, as necessary, and input from the Parties prior to making a final determination on the Open Issues. Accordingly, we find good cause to require Verizon Hawaii to initiate informal dialogue with the other Parties to this docket to discuss the following:

1. How do the FCC's *Triennial Review Order* and *Remand Order*, and the matters of Docket No. 04-0140 affect the Open Issues and existing filings?
2. Do any of the Open Issues still need to be addressed and resolved by the commission for the advancement of competition in the State's telecommunications market, at this time?
3. If any of the Open Issues are believed to be still pertinent for the advancement of competition in the State's telecommunications market and should be addressed and resolved at this time, given the present conditions, as described above, what are the appropriate procedures to update the filed information for the commission's consideration and resolution of the issues?

Within sixty (60) days of the date of this order, the Parties shall: (1) file a stipulation memorializing any agreements, if any, reached during the discussions regarding each point; or (2) separately file position statements setting forth their respective views on the discussion points set forth above, as necessary.

III.

Orders

THE COMMISSION ORDERS:

1. Verizon Hawaii shall initiate informal discussions with all interested Parties regarding the three (3) discussion-points set forth in section II of this order, as necessary, to meet the sixty (60) -day deadline, set forth below.

2. Within sixty (60) days of the date of this order, the Parties shall: (1) file a stipulation memorializing any agreements, if any, reached during the informal discussions regarding each point; or (2) separately file position statements setting forth their respective views on the discussion points set forth above, as necessary.

DONE at Honolulu, Hawaii MAR - 9 2005.

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:

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

Ji Sook Kim
Ji Sook Kim
Commission Counsel

7702.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21677 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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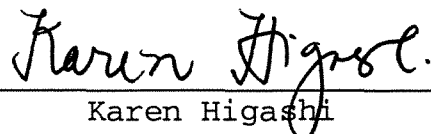
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DATED: MAR - 9 2005