

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
VERIZON HAWAII INC.)
For Approval to License and)
Sublicense Property at 29 Locations)
To Metrocall, Inc.)
_____)

DOCKET NO. 04-0348

DECISION AND ORDER NO. 21750

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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.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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VERIZON HAWAII INC.)
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Docket No. 04-0348

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DECISION AND ORDER

By this Decision and Order, the commission approves the request of VERIZON HAWAII INC. ("Verizon Hawaii") for approval to license and sublicense property at twenty-nine (29) locations throughout the State of Hawaii ("State") to Metrocall, Inc. ("Metrocall"), successor-in-interest to Weblink Wireless I, L.P., formerly known as, Weblink Wireless, Inc. ("Weblink").

I. Procedural History

Verizon Hawaii filed its Application requesting commission approval to license and sublicense property at twenty-nine (29) locations throughout the State to Metrocall, successor-in-interest to Weblink on November 30, 2004 ("Application"). Verizon Hawaii makes its request under Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR") § 6-61-105.

Verizon Hawaii served the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") with copies of the Application.

On January 5, 2005, the Consumer Advocate served Verizon Hawaii with information requests ("IRs"). Verizon Hawaii filed responses to the Consumer Advocate's issued IRs on January 26, 2005 ("Response"). On February 7, 2005, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to the approval of the Application ("Statement of Position").

II. Verizon Hawaii's Request

The various properties in question deal with certain sites owned by Verizon Hawaii (set forth in one agreement) and certain sites that are leased to Verizon Hawaii (set forth in individual agreements) (collectively, "License and Sublicense Agreements"). Verizon Hawaii sets forth a summary of the locations being licensed or sublicensed in Exhibit I of its Application, and the various agreements are attached to its Application as Exhibit II through Exhibit XIV.

Verizon Hawaii represents that the licensing and sublicensing of the locations is associated with the sale of certain paging assets to Metrocall. The License and Sublicense Agreements allow Metrocall access to paging transmitters operating on the 929.6625 MHz and 929.7126 MHz frequencies which are part of the sale of paging assets to Metrocall. With regards to the sale of paging assets to Metrocall, Verizon Hawaii contends that an application seeking commission approval of the transfer is unnecessary under Decision and Order No. 20890, filed

on April 7, 2004, in Docket No. 03-0186 ("D&O No. 20890");¹ whereby the commission waived commercial mobile radio service ("CMRS") providers from the requirements of HRS § 269-19.

Verizon Hawaii states that the monthly rates of the License and Sublicense Agreements were negotiated with Metrocall on a multi-state basis since Verizon Hawaii's affiliates are also selling paging equipment to Metrocall in other states, and that all other such agreements contain the same rates.

III. Consumer Advocate's Position

While noting certain concerns with Verizon Hawaii's Application, the Consumer Advocate states that it does not object to the approval of the Application. The Consumer Advocate's position is based on the following findings and determinations. First, the Consumer Advocate states that it believes that the License and Sublicense Agreements do not result in discrimination against other carriers not part of the instant agreements since Verizon Hawaii has executed similar agreements with Island Page, Inc.² Accordingly, the Consumer Advocate concludes that the terms and conditions of the agreements in the instant Application are reasonable. Second, while noting a problem, the Consumer Advocate states that it will not object to the monthly

¹*In re 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 Provisions of Hawaii Revised Statutes Chapter 269 ("CMRS Investigation").*

²See, Statement of Position at 3-4.

license fee amount in the instant proceeding (its reservation with the monthly fee amount is detailed below). Finally, the Consumer Advocate finds that the License and Sublicense Agreements, described in the Application, to be in the public interest. The Consumer Advocate reasoned, among other things, that Verizon Hawaii would gain additional revenues through the agreements with Metrocall which would reduce overall regulated revenue requirements in future rate proceedings, and that the License and Sublicense Agreements will aid Metrocall in provisioning paging services to subscribers in the State--"enhancing the benefits of competition in the Hawaii telecommunication industry."³

Nevertheless, the Consumer Advocate took issue with the lack of valuation information in the docket regarding the negotiated lease rents for the License and Sublicense Agreements.⁴ The Consumer Advocate contends that the commission required Verizon Hawaii to provide valuation studies, comparable market analyses, and any other information in support of its negotiated lease rents in any future application for the approval of lease agreements in Decision and Order No. 20269, filed on June 27,

³See, Statement of Position at 7.

⁴The Consumer Advocate also took some issue with Verizon Hawaii's purported status as a CMRS provider; however, it states that it will not pursue this matter since Verizon Hawaii's paging assets: (1) are booked in a non-regulated account; (2) were excluded from its intrastate revenue requirement in Verizon Hawaii's 1995 rate case; and (3) were valued at a price of \$37,000 which represents only 0.005% of Verizon Hawaii's regulated rate base. See, Statement of Position at 3.

2003, in Docket No. 02-0047⁵ (*In re Verizon Hawaii, Inc. for Approval to License and Sublicense Property at 16 Locations to Island Page, Inc. ("Island Page")*) ("Valuation Filing Requirement"). The Consumer Advocate notes that it was difficult for it to determine the reasonableness of the monthly license fees since Verizon Hawaii "appears to have ignored" the commission's Valuation Filing Requirement. Based on deduction and analyses of monthly licensing fees set forth in *Island Page*, the Consumer Advocate contends that the \$400 monthly license fee of the agreements in the Application "is unreasonably low for Hawaii's market."⁶ However, the Consumer Advocate determined that any increase in the monthly license fee for each of the twenty-nine (29) tower sites in the instant Application "would not result in a material increase in the total regulated intrastate revenues."⁷

Based on its assessment, the Consumer Advocate states that it will not oppose "approval of the monthly license fee amount in this instant proceeding since any adjusted increase

⁵See, Statement of Position at 5.

⁶The Consumer Advocate deduced that the monthly license fee in the instant Application is approximately \$200 to \$450 per month lower than the average monthly fee set forth in the analyses conducted in *Island Page*. See, Statement of Position at 5-6.

⁷According to the Consumer Advocate, "[t]he minimum and annual increase in revenues that could be realized if the monthly license fee were comparable to the rates set forth in the previous market rate analysis amounts to \$69,600 and \$156,600, respectively. Based on Verizon Hawaii's 2003 reported intrastate revenues of \$298,257,000, the difference would amount to an increase of only [0].02% and [0].05% in annual regulated intrastate revenues." See, Statement of Position at 6.

that could be supported would not have a material impact on Verizon Hawaii's annual regulated intrastate revenues for 2003."⁸ Nonetheless, the Consumer Advocate states that it will defer the issue of addressing Verizon Hawaii's failure to adhere to the Valuation Filing Requirement to the commission.

IV. Findings and Conclusions

A. HRS § 269-19 Review

Under HRS § 269-19, a public utility is required to obtain commission approval prior to, among other things, leasing or otherwise disposing of, or encumbering the whole or any part of its road, line, plant, system or other property necessary or useful in the performance of its duties to the public.

Upon review, the commission finds it reasonable and in the public interest to approve Verizon Hawaii's request to license and sublicense the twenty-nine (29) sites to Metrocall, as advanced in the Application. The terms and conditions of the agreements appear to be reasonable and consistent with past commission decisions. While there appears to be some concern with the negotiated monthly license fees for the various properties as argued by the Consumer Advocate, the commission recognizes that the fees for the locations in Hawaii were negotiated with various properties owned and/or controlled by Verizon Hawaii's affiliates in California and Washington, and that the same monthly license fee of \$400 was negotiated for the

⁸See, Statement of Position at 6.

locations in all three (3) states.⁹ Additionally, as the Consumer Advocate noted, any increase of the monthly fee amount for the properties associated with this Application will have an insignificant impact on Verizon Hawaii's annual regulated intrastate revenues.¹⁰ Based on these factors, we find the negotiated monthly license fees for the properties of the instant Application to be acceptable.

Moreover, we find that approval of Verizon Hawaii's request to license and sublicense the various properties to Metrocall to be in the public interest. First, the use of the properties by Metrocall should not adversely impact or interfere with Verizon Hawaii's operations and ability to provide telecommunications services to the public. The agreements contain provisions clarifying that Metrocall's use of the properties shall not interfere, in any manner, with Verizon Hawaii's use of the properties.¹¹ Verizon Hawaii also represents that it does not currently need the facilities being occupied by Metrocall in the License and Sublicense Agreements for the provision or maintenance of regulated services, nor does it anticipate needing these facilities in the near future.¹² Moreover, Version Hawaii makes note of a provision, contained in all the agreements with Metrocall, which allows Verizon Hawaii to

⁹See, Response to CA-IR-3.

¹⁰See, Statement of Position at 6.

¹¹See, Application Exhibit II at 3, for example.

¹²See, Response to CA-IR-4.

relocate Metrocall's licensed premises should Verizon Hawaii need to reconfigure or relocate use of the sites.¹³

Second, the License and Sublicense Agreements with Metrocall will generate additional regulated revenues for Verizon Hawaii which will help alleviate the overall regulated revenue requirements in future rate proceeding. We note that these additional regulated revenues will be derived from properties that Verizon Hawaii currently does not use for the provision and maintenance of regulated services. Finally, the License and Sublicense Agreements advance competition in the State's telecommunications market since they will allow Metrocall to provide paging services in the State.

However, our review of our records indicate that Metrocall, to date, has not complied with the requirements of HRS § 269-7.5(a). In the *CMRS Investigation*, the commission waived certain provisions of HRS chapter 269 and HAR chapter 6-80 without conditions, limitations, or clarifications while it waived the requirements of HRS § 269-7.5(a) and various other regulatory laws and commission rules, subject to certain conditions, limitations, or restrictions.¹⁴ HRS 269-7.5(a) requires a public utility, including a CMRS provider, to file for commission certification to provide services in the State prior to commencing services. The commission waived this requirement as it pertains to a CMRS provider, provided that the provider "may give notice of its intent to offer CMRS services in the

¹³Ibid.

¹⁴See, D&O No. 20890.

State on a "registration from" type of application or petition for a certificate of registration" to be agreed upon by a stipulation of the parties to the proceeding and approved by the commission.¹⁵ Since Metrocall intends to use and occupy properties owned or controlled by Verizon Hawaii to provide paging services (a form of CMRS) in the State, we find it reasonable to require Verizon Hawaii (the licensor) to ensure that Metrocall (the licensee) comply with the requirements governing CMRS providers--specifically, HRS § 269-7.5(a), as amended by D&O No. 20890.

Based on the above, the commission concludes that Verizon Hawaii's request for commission approval to license and sublicense property at twenty-nine (29) locations throughout the State to Metrocall should be approved, provided that Verizon Hawaii ensures that Metrocall timely complies with the requirements of HRS § 269-7.5(a), as amended by D&O No. 20890.

B. Non-Adherence to the Valuation Filing Requirement

Based on our review of the specific facts and circumstances of this Application, we find, on our own motion, that a waiver of the Valuation Filing Requirement is warranted in this instance since, among other things: (1) approval of the License and Sublicense Agreements will be in the public interest (see details above); and (2) we find that promotion of competition through approval of the License and Sublicense

¹⁵See, D&O No. 20890 at 18.

Agreements will serve the same purpose as public interest regulation.

Our decision to waive the Valuation Filing Requirement is also based on the following considerations. First, while it was difficult for the Consumer Advocate to conduct its review regarding the reasonableness of the monthly fee for the License and Sublicense Agreements, it was able to make a reasoned opinion with regards to the fees based on Verizon Hawaii's filings in *Island Page*. Second, while valuation studies, comparable market analyses, and other information would be important and beneficial in our review of lease and license agreements in general, it is questionable whether such information would have been as critical for this proceeding since the license fees of these agreements were negotiated together with license fees of Verizon Hawaii's affiliates in California and Washington. Third, as the Consumer Advocate noted, any increase of the monthly fee amount for the properties associated with this Application will have an insignificant impact on Verizon Hawaii's annual regulated intrastate revenues. Finally, while it is clear that Verizon Hawaii failed to adhere to the Valuation Filing Requirement in this proceeding, we believe that requiring the filing of such information at this junction of this proceeding would be unnecessary and that the benefits derived through enforcement of the requirement may not justify the administrative costs incurred to comply with the requirement.

Nevertheless, supportive valuation studies, comparative market analyses, and other data is important in our review of

various types of proceedings before the commission including, but not limited to, applications involving lease and license agreements. Accordingly, we reiterate that "Verizon Hawaii shall provide valuation studies, comparable market analyses, and any other information that supports the negotiated lease rent with any future applications for the approval of a lease [or license] agreement."¹⁶ Further non-adherence to this requirement in any future proceedings involving commission approval of lease and license agreements may result in a delay of the proceedings, among other things, and various regulatory actions as authorized by State laws and commission rules, such as, but not limited to, those authorized under HRS § 269-28.

Based on the above, we conclude that the Valuation Filing Requirement should be waived for the matters of this Application.

V. Orders

THE COMMISSION ORDERS:

1. Verizon Hawaii's Application, filed on November 30, 2004, for commission approval to license and sublicense property at twenty-nine (29) locations throughout the State to Metrocall is approved; provided that Verizon Hawaii ensures that Metrocall timely complies with the requirements of HRS § 269-7.5(a), as amended by D&O No. 20890.

2. The requirement that Verizon Hawaii submit valuation studies, comparable market analyses, and any other

¹⁶See, *Island Page* at 7.

information that supports the negotiated lease rent with any application for the approval of a lease or license agreement is waived for the matters of this Application.

3. Verizon Hawaii's failure to adhere to the Valuation Filing Requirement in any future proceedings involving commission approval of lease and license agreements may result in a delay of the proceedings, among other things, and various regulatory actions as authorized by State laws and commission rules, such as, but not limited to, those authorized under HRS § 269-28.

4. Verizon Hawaii shall timely comply with the regulatory condition set forth in paragraph one (1) above. Failure to timely comply with the condition may constitute cause to void this Decision and Order, and may result in further regulatory actions, as authorized by State law and commission rules and regulations.

DONE at Honolulu, Hawaii APR 14 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
03-0348.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21750 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
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Karen Higashi

DATED: APR 14 2005