

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
VERIZON HAWAII INC.)
For Approval of Amendment No. 2)
To the Interconnection Agreement)
Between MCImetro Access)
Transmission Services LLC and)
Verizon Hawaii Inc.)
_____)

DOCKET NO. 05-0101

DECISION AND ORDER NO. 21862

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

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Filed June 7, 2005
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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

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DECISION AND ORDER

By this Decision and Order, the commission approves Amendment No. 2 to the Interconnection Agreement between VERIZON HAWAII INC. ("Verizon Hawaii")¹ and MCIMETRO ACCESS TRANSMISSION SERVICES LLC ("MCImetro") (collectively, "the Parties"), as further described herein.

I. Introduction

Verizon Hawaii requests commission approval of Amendment No. 2 to its Interconnection Agreement with MCImetro ("Amendment No. 2") through a letter filed on April 27, 2005, ("Petition"). Verizon Hawaii included a copy of Amendment No. 2 with its Petition. Amendment No. 2 was filed pursuant to

¹Verizon Hawaii is now known as Hawaiian Telcom, Inc. ("Hawaiian Telcom"). See Docket No. 04-0140, *In re Paradise MergerSub, Inc., GTE Corp., Verizon Hawaii Inc., Bell Atlantic Comm., Inc., and Verizon Select Serv. Inc.* However, for consistency within this docket, we will continue to refer to Hawaiian Telcom as Verizon Hawaii, as referenced in its Petition.

Section 252(e) of the federal Telecommunications Act of 1996 ("Act")² and Hawaii Administrative Rules ("HAR") § 6-80-54.

Copies of Verizon Hawaii's Petition and Amendment No. 2 were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate filed its Statement of Position on May 18, 2005, informing the commission that it does not object to the approval of Amendment No. 2 ("Statement of Position").³

II. The Parties and Amendment No. 2

Verizon Hawaii is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii ("State"). It is engaged in the provision of varied telecommunications services to its customers and the general public within Verizon Hawaii's chartered territory in the State. Verizon Hawaii is an incumbent local exchange carrier, as contemplated by Section 252 of the Act. MCImetro is an authorized provider of telecommunications services in the State.⁴

The commission approved MCImetro's adoption of the negotiated interconnection agreement between ICG Telecom Group Inc. and Verizon California for the provision of telecommunication services in Hawaii in Decision and

²The Act amended Title 47 of the United States Code ("U.S.C."). Section references in this decision and order are, thus, to those in 47 U.S.C., as amended by the Act.

³No person moved to intervene or participate in this docket.

⁴See, Decision and Order No. 15898, filed on September 10, 1997, in Docket No. 97-0190.

Order No. 20585⁵ ("Interconnection Agreement"). Amendment No. 1 to the Parties' Interconnection Agreement was approved by the commission in Decision and Order No. 20921, filed on April 22, 2004, in Docket No. 04-0022.

Amendment No. 2 modifies the Interconnection Agreement by establishing new monthly recurring charges that MCImetro agrees to pay Verizon Hawaii for DS0 UNE-P (or unbundled network element-platform) lines in service in the State as of March 10, 2005⁶, and various conditions that govern the application of these charges. The terms and conditions of Amendment No. 2 were negotiated and arrived at voluntarily.

III. Consumer Advocate's Position

The Consumer Advocate notes that "Amendment No. 2 appears to be in response to the Federal Communications Commission's ("FCC") Order on Remand in WC Docket No. 04-313 and CC Docket No. 01-338, released on February 4, 2005 (the "TRO Remand Order") which promulgated regulations governing the availability of certain unbundled network elements [("UNEs")] under Section 251(c)(3) of the" Act.⁷ The Consumer Advocate also notes that the TRO Remand Order phased out UNE switching and UNE-Platform embedded base over a transitional period of twelve

⁵Decision and Order No. 20585 was filed on October 22, 2003, in Docket No. 03-0199.

⁶Specifically, the Parties agree to increase the monthly recurring charge "by: (a) \$2.75 between March 11, 2005 and May 31, 2005 and (b) \$1.00 between June 1, 2005 and March 10, 2006." See, Amendment No. 2 at 1.

⁷See, Statement of Position at 3.

(12) months in all markets including local mass markets served through DS0. Furthermore, the Consumer Advocate notes that both incumbent and competitive local exchange carriers are to "work jointly toward converting all embedded UNE-P interconnections to alternative arrangements"⁸ and that the FCC is permitting competitive carriers continued access to "DS0 mass market local circuit switching which may be priced at the higher of: (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004, plus one [(1)] dollar; or (2) the rate the state public utility commission established for UNE-P, if any, between June 16, 2004 and the effective date of the TRO Remand Order (i.e., March 11, 2005), plus one [(1)] dollar."⁹ The Consumer Advocate finds that Amendment No. 2 reflects compliance with the FCC directive set forth in its TRO Remand Order. While the Consumer Advocate notes that the Parties did not adopt the FCC's proposed transition mechanism, it notes that the proposed mechanism is a default process and that carriers are free to negotiate alternative arrangements. It concludes that "Amendment No. 2 is in accordance with the requirements of the FCC's TRO Remand Order, and is a voluntarily negotiated agreement by the Parties to meet the conditions of the TRO Remand Order."¹⁰

While the Consumer Advocate contends that "it would be somewhat premature to conclude that the proposed rates reflected

⁸See, Statement of Position at 3.

⁹See, Statement of Position at 4.

¹⁰Ibid.

in the agreement for the transition period are discriminatory"¹¹ since the amendment is one of the first filings to address the provision of DS0 UNEs under the TRO Remand Order, it concedes that "[a]t this time, the terms reflected in this amendment do not appear to adversely affect any other carrier not a party to the amendment."¹² Furthermore, the Consumer Advocate contends that Amendment No. 2 appears to be "consistent with the public interest, convenience, and necessity objectives of promoting competition in the telecommunications industry."¹³ Moreover, the Consumer Advocate acknowledges that Amendment No. 2 was negotiated in good faith and that MCImetro will be allowed to continue its provision of telecommunications services in the State in accordance with its commission issued authority through the amendment.

IV. Findings and Conclusions

In our review of Amendment No. 2, we are governed by 47 U.S.C. § 252(e) and HAR § 6-80-54. These sections provide that we may reject a negotiated agreement only if:

- (1) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or
- (2) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.

¹¹See, Statement of Position at 5.

¹²Ibid.

¹³Ibid.

Our review indicates that Amendment No. 2 does not discriminate against other telecommunications carriers, at this time, and that implementation of Amendment No. 2 is consistent with the public interest, convenience, and necessity. The Consumer Advocate agrees with our assessment of Amendment No. 2.¹⁴ Amendment No. 2 also appears to be in compliance with the directives set forth in the FCC's TRO Remand Order. Moreover, approval of Amendment No. 2 will promote competition in the State's telecommunications market by, among other things, allowing MCImetro to continue to provide telecommunications services in the State's mass market sector.

Based on the above, we conclude that Amendment No. 2 should be approved.

V. Orders


THE COMMISSION ORDERS:


1. Amendment No. 2 to the Interconnection Agreement between Verizon Hawaii and MCImetro, filed on April 27, 2005, is approved.
2. This docket is closed.

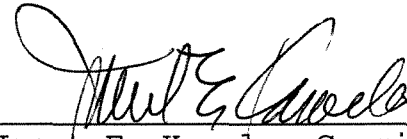
¹⁴See, Statement of Position at 6.

DONE at Honolulu, Hawaii JUN - 7 2005.

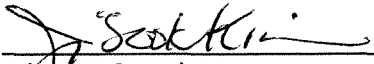
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

05-0101.ah

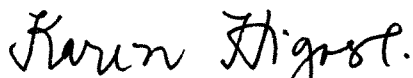
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21862 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DIVISION OF CONSUMER ADVOCACY
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DATED: JUN - 7 2005