

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

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

ORDER NO. 22047

Filed Sept. 23, 2005
At 10:20 o'clock A .M.

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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Communications Infrastructure)
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_____)

Docket No. 7702

Order No. 22047

ORDER

By this Order, the commission approves the parties' Stipulation, filed on September 9, 2005 and attached to this Order as Exhibit A, regarding the Open Issues of this proceeding, as identified in Order No. 21677, filed on March 9, 2005 ("Order No. 21677").

I.

Background

HAWAIIAN TELCOM, INC. ("Hawaiian Telcom") formerly known as, Verizon Hawaii Inc.; the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY; TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS; the UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES; and PACIFIC LIGHTNET, INC. (referred to

collectively as the "Parties") are Docket No. 7702 parties who are actively participating in this phase of the docket.¹

The commission, in Order No. 21677, identified the following three (3) issues as unaddressed "Open Issues" of this docket:

1. The establishment of rates for Direct Current ("DC") and backup DC power for adjacent on-site collocation ("DC Power Issue");
2. The wholesale Non-Recurring Cost ("NRC") study and proposed rates filed by Hawaiian Telcom on December 21, 2001 ("NRC Issue"); and
3. Hawaiian Telcom'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 ("OSS/NMC Issue").

In that order, the commission also required Hawaiian Telcom to initiate informal dialogue with other interested parties to this proceeding to discuss, in brief: (1) whether the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO")² and Triennial Review Remand Order

¹AT&T COMMUNICATIONS OF HAWAII, INC. and SPRINT COMMUNICATIONS COMPANY, L.P., also parties to Docket No. 7702, are not active in this phase of the docket.

²In *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.

("TRRO")³ (collectively, "FCC Orders") and the matters of Docket No. 04-0140⁴ affect the Open Issues and filings made in this docket; (2) whether any of the Open Issues still need to be addressed and resolved for the advancement of Hawaii's telecommunications market, at this time; and (3) if so, what are the appropriate procedures to update the filed information for the commission's consideration and resolution of the Open Issues.

Moreover, the commission required the Parties to file a stipulation memorializing any agreements, if any, reached during the informal discussions or file separate position statements setting forth their respective views, within sixty (60) days of the issuance of Order No. 21677.

On April 7, 2005, Hawaiian Telcom filed a letter on behalf of the Parties requesting commission approval to submit, by July 8, 2005, an update on how much additional time the Parties will need to comply with Order No. 21677 ("Extension Request"). The commission approved the Parties' Extension Request in Order No. 21766, filed on April 22, 2005.

On July 8, 2005, the Parties submitted their proposed stipulated order, setting forth their agreement to, among other things, by September 2, 2005: (1) submit their stipulation

³In *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.

⁴In *re Paradise MergerSub, Inc., GTE Corp., Verizon Hawaii Inc., Bell Atlantic Comm., Inc., and Verizon Select Serv. Inc. for Approval of a Merger Transaction and Related Matters*.

regarding the Open Issues, and (2) if the Parties are unable to reach an agreement on one (1) or more of the issues, procedures to address the issue(s) in dispute. The commission approved the Parties' proposed stipulated order on July 15, 2005, by issuing Stipulated Order No. 21917 ("Stipulated Order").

Hawaiian Telcom, on behalf of the Parties, submitted a letter on September 2, 2005, requesting an extension until September 9, 2005, to submit their filing in accordance with the Stipulated Order. The commission approved the Parties' September 2, 2005 extension request through a letter dated September 7, 2005. The Parties filed their stipulation pursuant to the Stipulated Order, addressing the issues and matters of Order No. 21677 on September 9, 2005 ("Stipulation") and requesting that we issue an order adopting the Stipulation.

II.

Stipulation

The Parties inform the commission that they have reached an agreement on the disposition of two (2) of three (3) Open Issues and have come to an agreement regarding the procedures to resolve their disagreement with the third. First, with regards to the DC Power Issue, the Parties agree that neither the FCC Orders nor the matters of Docket No. 04-0140 appear to affect pricing of DC power for adjacent on-site collocation. Among other things, "[t]he Parties stipulate that establishing a generic rate for DC power for adjacent on-site collocation is not recommended at this time because provisioning

for DC power is site-specific, appears to have been used sparingly if at all on the mainland and has not been used to date in Hawaii."⁵ Accordingly, the Parties agree to develop DC power rates for adjacent on-site collocation on a case-by-case basis through the individual case basis ("ICB") process. Moreover, they agree that "if Hawaiian Telcom and the requesting carrier cannot reach agreement on a rate for DC power for adjacent on-site collocation through the ICB process within [one-hundred-twenty] 120 calendar days of Hawaiian Telcom's receipt of a bona fide request for the service or such other timeframe to which the parties may agree, either party may submit the matter to the [c]ommission for resolution."⁶

Second, the Parties agree that the FCC Orders and the matters of Docket No. 04-0140 may affect the NRC Issue. However, the Parties contend that: (1) the FCC Orders are still under review and that the Parties are not prepared to state the impacts of the orders on NRCs at this time; and (2) it may be premature to address the effects of Docket No. 04-0140 on NRCs at this time since Hawaiian Telcom is currently operating under the Transition Services Agreement.⁷ In light of these factors, the

⁵See, Stipulation at 3. Footnote omitted.

⁶See, Stipulation at 4.

⁷The Transition Services Agreement was entered into between the buyer-applicant (and associated affiliates) and the seller-applicants (and associated affiliates) of Docket No. 04-0140 for the provision of certain operational services during the interim period between the close of the merger transaction and cut-over from the OSS of seller-applicants to Hawaiian Telcom's new systems.

Parties stipulate to continue to utilize the interim NRCs that the commission approved in Order No. 18230, filed on December 6, 2000, as amended by Order No. 18236, filed on December 8, 2000, and to eliminate the true-up mechanism. The Parties also agree that "any [p]arty may petition the [c]ommission to review the reasonableness of proposed changes necessitated either by the TRO/TRRO or the matters addressed in Docket No. 04-0140 in a separate docket [and that] individual carriers may address this issue in negotiations with Hawaiian Telcom, whether in the context of seeking an amendment to a current interconnection agreement or negotiating a new agreement."⁸

Finally, while the Parties agree that the FCC Orders do not appear to impact the OSS/NMC Issue, they were unable to agree on whether: (1) the commission must address and resolve Hawaiian Telcom's proposal to recover its costs for the establishment and operations of the OSS/NMC for the advancement of competition in Hawaii, at this time, or (2) to what extent, if any, the Docket No. 04-0140 matters affect the OSS/NMC Issue. To address this dispute, the Parties agree to file their respective positions on whether the OSS/NMC Issue needs to be addressed and resolved, at this time, for the advancement of competition in Hawaii, with the commission on or by September 30, 2005. The Parties contend that whether or not the Parties must develop a procedural schedule to substantively address the

⁸See, Stipulation at 4.

OSS/NMC Issue is dependent on the commission's determination of this threshold issue.⁹

III.

Discussion

Upon review, the commission finds the Stipulation to be reasonable. The agreements reached regarding the DC Power and NRC Issues appear to be well reasoned and within the record established in this docket. For example, use of an ICB process as opposed to establishing generic DC power rates for adjacent on-site collocation appears to be sound since, as the Parties contend, provisioning of DC power is site-specific; appears to have been used sparingly on the mainland, if at all; and has not been used to date in Hawaii. Additionally, the Parties' stipulation to continue utilizing already established interim rates for NRCs at this time, since the affects of the FCC Orders and the matters of Docket No. 04-0140 are not yet fully reviewed or known, appears to be prudent and appropriate. Their agreement to file respective position statements regarding the threshold issue of whether a resolution regarding OSS/NMC is necessary at this time for the advancement of competition in Hawaii also appears to be reasonable. Moreover, the commission finds that adoption of the Stipulation: (1) is consistent with the public

⁹If found in the affirmative, the Parties state that their procedural schedule will address the procedures necessary, if any, to update filed information for the commission's consideration.

interest, and (2) should not, we believe, discriminate against carriers who are not a party to this proceeding.

Based on the above, we conclude that the Parties' Stipulation, filed on September 9, 2005 and attached to this Order as Exhibit A, should be approved.

IV.

Order

THE COMMISSION ORDERS:

1. The Parties' Stipulation, filed on September 9, 2005 and attached to this Order as Exhibit A, is approved.

2. Position statements regarding the OSS/NMC Issue, as set forth in the Stipulation, shall be filed with the commission by September 30, 2005.

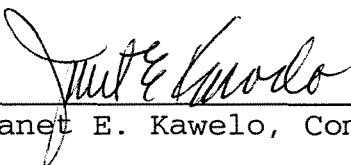
DONE at Honolulu, Hawaii SEP 23 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


J. Sook Kim
Commission Counsel

7702.eh

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

--- In the Matter of the ---

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding on
Communications, Including an
Investigation of the
Communications Infrastructure
of the State of Hawaii.

DOCKET NO. 7702

PUBLIC UTILITIES
COMMISSION

2005 SEP -9 P 3:40

FILED

STIPULATION

and

CERTIFICATE OF SERVICE

Filed _____, 2005

At _____ o'clock _____ M.

Chief Clerk of the Commission

Exhibit A

BEFORE THE PUBLIC UTILITIES COMMISSION
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PUBLIC UTILITIES COMMISSION)	
)	
Instituting a Proceeding on)	DOCKET NO. 7702
Communications, Including an)	
Investigation of the)	
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of the State of Hawaii.)	
_____)	

STIPULATION

Pursuant to Stipulated Order No. 21917 (“Order 21917”), Hawaiian Telcom, Inc. (“Hawaiian Telcom”), the Division of Consumer Advocacy (the “Consumer Advocate”), Time Warner Telecom of Hawaii L.P. dba Oceanic Communications (“Oceanic”), the United States Department of Defense and All Other Federal Executive Agencies (the “DOD”) and Pacific LightNet, Inc. (“PLNI”) (collectively, the “Parties”) held informal telephonic discussions to address the three items set forth in Order 21917¹ with the goal of reaching agreement on the substance of one or more of the Open Issues,² which are:

1. The establishment of rates for Direct Current (“DC”) and backup DC power for adjacent on-site collocation;³

¹ Order 21917 has its origins in Order No. 21677, issued on March 9, 2005, in which the Commission sought recommendation on whether the Federal Communications Commission’s (FCC) Triennial Review Order (“TRO”) and Triennial Review Remand Order (“TRRO”) and the matters raised in Docket No. 04-0140 affect the Open Issues and existing filings; whether any of the Open Issues still need to be addressed and resolved for the advancement of competition in the state of Hawaii, and if yes, what the appropriate procedures are to update the filed information for the Commission’s consideration in resolving the Open Issues.

² Order No. 21677 at 2.

³ Order No. 18451 at 7 *et seq.*

2. The wholesale non-recurring cost (“NRC”) study and proposed rates filed by Verizon Hawaii on December 21, 2002, in this docket;⁴ 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, 2002.⁵

This Stipulation reflects the Parties’ discussion on each of the three Open Issues, the agreement on the disposition of two of the three Open Issues and the proposed process to address their disagreement on the third Open Issue.

I.
**IMPACT OF FCC’S TRO AND TRRO AND MATTERS OF DOCKET NO. 04-0140 ON
THE OPEN ISSUES AND EXISTING FILINGS**

The Parties agree that the TRO/TRRO and the matters of Docket No. 04-0140 affect the Open Issues and existing filings as follows:

1. DC Power. The Parties agree that neither the matters raised in Docket No. 04-0140 nor the FCC’s TRO/TRRO appear to affect the issue of pricing DC power for adjacent on-site collocation. Neither of the referenced FCC orders addresses rates for DC power for adjacent on-site collocation. Similarly, nothing in Docket No. 04-0140 addressed this issue.
2. NRCs. The TRO/TRRO may affect this issue. However, the Parties are still reviewing the orders and are not prepared to state the impact of those orders at this time. The matters in Docket No. 04-0140 ultimately may affect this issue, however, given that Hawaiian Telcom currently is operating under the Transition Services Agreement, addressing what those effects may be is premature at this time. Therefore, the Parties propose below how to address the disposition of this Issue at this time.

⁴ Decision and Order No. 19018 at 14 *et seq.*

⁵ Order No. 19405.

3. OSS/NOMC. The Parties were unable to reach agreement on the third Open Issue, whether the Commission must address and resolve Hawaiian Telcom's proposal to recover its costs for the establishment and operations of the OSS/NOMC for the advancement of competition in the state of Hawaii at this time, or to what extent, if any, the matters raised in Docket No. 04-0140 affect this Open Issue. In addition, the Parties agree that the TRO/TRRO does not appear to impact this Issue. Therefore, the Parties propose below their method for addressing their disagreement.

II. DC POWER

The Parties stipulate that establishing a generic rate for DC power for adjacent on-site collocation⁶ is not recommended at this time because provisioning for DC power is site-specific, appears to have been used sparingly if at all on the mainland and has not been used to date in Hawaii. Furthermore, there does not appear to be an immediate need to develop rates for DC power for adjacent on-site collocation at this time because to date requests for collocation within Hawaiian Telcom's central offices have not exceeded capacity. Therefore, rather than develop generic rates the Parties agree that the rates for DC power for adjacent on-site collocation shall be developed on a case-by-case basis via the ICB (individual case basis) process. Using the ICB process will allow carriers interested in this means of collocation an opportunity to negotiate a rate for DC power that is better matched to the cost that will be incurred to provide such power at the specific site(s) for which the collocation is contemplated.

Hawaiian Telcom is in the process of finalizing its general ICB process that will apply to all wholesale orders. In the interim, and after Hawaiian Telcom's general wholesale ICB process

⁶ Adjacent on-site collocation occurs only when no physical collocation space is available.

is finalized, for the purposes of pricing DC power, if Hawaiian Telcom and the requesting carrier cannot reach agreement on a rate for DC power for adjacent on-site collocation through the ICB process within 120 calendar days of Hawaiian Telcom's receipt of a bona fide request for the service or such other timeframe to which the parties may agree, either party may submit the matter to the Commission for resolution.

III. NON-RECURRING COSTS (NRCs)

The Parties stipulate to continue using the interim NRCs that the Commission already has established⁷ and eliminate the true-up mechanism. The Parties agree that any Party may petition the Commission to review the reasonableness of proposed changes necessitated either by the TRO/TRRO or the matters addressed in Docket No. 04-0140 in a separate docket. Additionally, individual carriers may address this issue in negotiations with Hawaiian Telcom, whether in the context of seeking an amendment to a current interconnection agreement or negotiating a new agreement.

IV. OPERATIONS SUPPORT SYSTEMS (OSS) AND NATIONAL OPEN MARKET CENTER (NOMC) COST RECOVERY

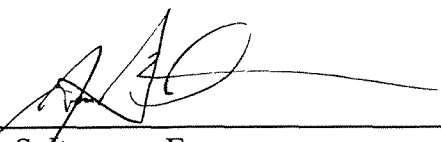
The Parties agree to file with the Commission on or before September 30, 2005, their respective positions on whether the issue needs to be addressed and resolved at this time for the advancement of competition in Hawaii. Whether thereafter the Parties must develop a procedural schedule to address the issue substantively will depend on the Commission's resolution of this threshold issue. In this regard, should a determination be made in the affirmative, the procedural schedule will address what procedures, if any, are necessary to update the filed information for the Commission's consideration.

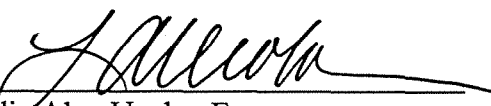
⁷ See, Order No. 18230, filed on December 6, 2000, as amended by Order No. 18236, filed on December 8, 2000.

V.
CONCLUSION


The Parties respectfully request that the Commission issue an order adopting the stipulated agreement reached on DC power and the interim NRCs and disposition of the true-up requirement. Furthermore, the Parties will submit, for the Commission's consideration, their respective positions on whether the OSS/NOMC matter requires resolution.


DATED: Honolulu, Hawaii, September 9, 2005.

By 
Jon S. Itomura, Esq.
Attorney for the Division of Consumer
Advocacy

By 
Leslie Alan Ueoka, Esq.
Attorney for Hawaiian Telcom, Inc.

By _____
Stephen S. Melnikoff, Esq.
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By 
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By 
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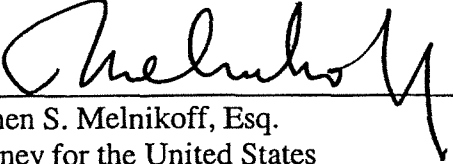
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The Parties respectfully request that the Commission issue an order adopting the stipulated agreement reached on DC power and the interim NRCs and disposition of the true-up requirement. Furthermore, the Parties will submit, for the Commission's consideration, their respective positions on whether the OSS/NOMC matter requires resolution.

DATED: Honolulu, Hawaii, September 9, 2005.

By _____
Jon S. Itomura, Esq.
Attorney for the Division of Consumer
Advocacy

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Leslie Alan Ueoka, Esq.
Attorney for Hawaiian Telcom, Inc.

By  _____
Stephen S. Melnikoff, Esq.
Attorney for the United States
Department of Defense and All Other
Federal Executive Agencies

By _____
Laura Mayhook, Esq.
Attorney for Pacific LightNet, Inc.

By _____
J. Douglas Ing, Esq.
Pamela J. Larson, Esq.
Attorneys for Time Warner Telecom of
Hawaii L.P. dba Oceanic Communications

APPROVED AND SO ORDERED this _____ day of _____, 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:

Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
STIPULATION 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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Dated: _____

Chief Clerk

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22047 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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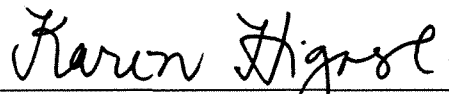
Page 2

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Karen Higashi

DATED: SEP 23 2005