

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM  
SERVICES COMPANY, INC.

DOCKET NO. 2006-0482

For Approval of a Bundled Service  
Arrangement with KC Rainbow  
Development LLC for the Moana  
Pacific Development.

DECISION AND ORDER NO. 23314

Filed March 21, 2007

At 11 o'clock A .M.

Karen Higashi  
Chief Clerk of the Commission

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

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

Karen Higashi

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Development LLC for the Moana )  
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DECISION AND ORDER

By this Decision and Order, the commission approves HAWAIIAN TELCOM SERVICES COMPANY, INC.'s ("HTSC") sale of a bulk rate bundle of services, including Hawaiian Telcom Go Local<sup>SM</sup>, provided by HTSC's affiliate, Hawaiian Telcom, Inc. ("HTI"), and Voicemail and High Speed Internet ("HSI") provided by HTSC, to KC Rainbow Development LLC ("Owner"), developer of the Moana Pacific, a multiple dwelling unit ("MDU") residential project (collectively, the "Moana Pacific Package").

I.

## Background

A.

## Application

HTSC holds a certificate of authority to provide intrastate telecommunications services in the State of Hawaii

("State") as a reseller<sup>1</sup>, and a certificate of registration to provide wireless telecommunications services on a resold basis.<sup>2</sup> It was formed upon the merger transaction between certain subsidiaries of Verizon Communications Inc. and an entity now known as Hawaiian Telcom Communications, Inc.<sup>3</sup>

On December 15, 2006, HTSC filed an application for commission approval to offer Owner, the developer of the Moana Pacific, a multi-family project designed to contain seven hundred seventeen (717) residential units, a bulk rate bundle of services that includes Hawaiian Telcom Go Local<sup>SM</sup>, to be provided by HTI, and Voicemail and HSI services to be provided by HTSC, which is referred to as the Moana Pacific Package ("Application").<sup>4</sup>

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<sup>1</sup>See In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696") at 58.

<sup>2</sup>See In re Hawaiian Telcom Services Company, Inc., Docket No. 05-0097, Decision and Order No. 21892, filed on June 24, 2005.

<sup>3</sup>See Decision and Order No. 21696.

<sup>4</sup>The Application was filed pursuant to Hawaii Revised Statutes ("HRS") § 269-16 and Hawaii Administrative Rules ("HAR") § 6-80-35(e). HTSC served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51 and HAR § 6-61-62. No persons moved to intervene or participate without intervention in this docket.

On January 2, 2007, the Consumer Advocate transmitted to HTSC information requests ("IRs") regarding service connection charges, payments to HTI, possible double payment for the same type of service, and service plans that were a part of a subsequently withdrawn application that was the subject of Docket No. 2006-0424. HTSC provided its responses to the IRs on January 9, 2007.

HTSC proposes to provide Owner with the Moana Pacific Package of telecommunications and information services at a monthly total rate that will include the full tariffed rate of \$25.95 for the Go Local<sup>SM</sup> service component ("Per Unit Rate"). According to HTSC, it will begin billing Owner at the Per Unit Rate for the units in the MDU as they close, for the period from Owner's receipt of the Certificate of Occupancy for the MDU through May 2007 ("Phase-in-Charges"). From June 2007 through the end of the initial three-year term of the arrangement, and after an establishment period to allow for initial occupancy of the MDU, Owner will be billed for all seven hundred seventeen (717) units at the Per Unit Rate (hereinafter referred to as the "Monthly Bulk Rate"). HTSC asserts that the Owner "expressly acknowledged and agreed" to pay the Phase-in Charges and the Monthly Bulk Rate without regard to the number of residents in the MDU that actually elect to receive the Moana Pacific Package. Owner further acknowledged and agreed that HTSC and HTI would treat each individual MDU resident that actually elects to receive the Moana Pacific Package as the customer of record for such services. In turn, HTSC and HTI agreed that during the term of the arrangement with Owner, HTSC and HTI would provide the Moana Pacific Package to such individual MDU residents; however the bills would reflect an offsetting credit so that the net charge for the services included under the Moana Pacific Package is \$0.

From the Per Unit Rate paid by Owner, HTI will receive the full tariffed rate for the Hawaiian Telcom Go Local<sup>SM</sup> package

offered by HTI. The balance of the Per Unit Rate will be applied to the Voicemail and HSI services provided by HTSC. Any service discount provided to Owner through the Moana Pacific Package will be borne solely by HTSC on the non-regulated or non-local exchange services that HTSC will provide and will be recorded on HTSC's separately maintained books and accounting records. Because HTI will receive the full tariffed rate for the Hawaiian Telcom Go Local<sup>SM</sup> service, there will be no impact on HTI's regulated revenues or its ratepayers.

In addition to the Hawaiian Telcom Go Local<sup>SM</sup> package, MDU residents who subscribe to the Moana Pacific Package will receive HIS service, a wireless router/modem,<sup>5</sup> McAfee Security Suite, and home voicemail services, which may include mailbox capacity up to fifty (50) messages, up to eight (8) additional mailboxes, and pager notification.

HTSC represents that its bundled offering to Owner will enhance competition in the State of Hawaii. As an example of the level of competition currently existing in the industry, HTSC notes that Oceanic Time Warner Cable ("Oceanic") has been active in working to secure building or project contracts with developers and owners' associations.<sup>6</sup> In the case of multiple dwelling unit projects, developers have an interest in arranging for bulk rate deals in which they can secure lower service rates for the residents in the project. HTSC emphasizes "that the

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<sup>5</sup>This item will be free of charge upon initial installation only.

<sup>6</sup>See Application, Exhibits A, B, and C. See also Application at 5 for a discussion of Oceanic's bundled offerings.

structure of the proposed offer will not affect the regulated revenues of HTI,"<sup>7</sup> as Owner will pay the full tariffed rate for the Hawaiian Telcom Go Local<sup>SM</sup> package. Moreover, as HTSC will fully bear the discounts on the HTSC services and HTSC will properly record those discounts on its separately maintained books and accounting records, the Hawaiian Telcom Go Local<sup>SM</sup> package will not subsidize any of the HTSC services. HTSC asserts that the commission should approve the Moana Pacific Package as it did recently in an application for approval of the myChoice<sup>SM</sup> service plans by Order No. 22985, filed on October 27, 2006, in Docket No. 2006-0367, and for similar plans previously filed by Bell Atlantic Communications, Inc., dba Verizon Long Distance.

B.

Consumer Advocate's Position

On January 18, 2007, the Consumer Advocate filed its Statement of Position ("Statement of Position") in which it stated that it does not object to the approval of HTSC's proposed Moana Pacific Package offering to Owner. According to the Consumer Advocate, the full tariffed rates for the non-competitive Hawaiian Telcom Go Local<sup>SM</sup> service included in the Moana Pacific Package will be paid by Owner and received by HTI to ensure that bundled competitive services will not be subsidized by the non-competitive services of the plan, and any

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<sup>7</sup>Application at 5.

discount provided to Owner will be borne by HTSC and recorded on HTSC's separately maintained books and accounting records.

The Consumer Advocate, however, notes that HAR § 6-80-32(a)(4) requires that pricing for fully competitive services may not be set below the total service long run incremental cost of providing the service, and that without submission of a cost support study for the Moana Pacific Package, it cannot verify compliance with HAR § 6-80-32(a)(4). Thus, the Consumer Advocate presumes that HTSC used a market-based pricing study to support the Monthly Bulk Rate. The Consumer Advocate accepts this presumption on the basis that the entry of many telecommunications service providers in the Hawaii market will provide Hawaii consumers with the option of selecting another service provider should any adverse consequences result; however reserves the right to seek cost support information in the future should it be warranted, and recommends that HTSC be required to provide such documentation, as necessary.<sup>8</sup>

The Consumer Advocate also argues that approval of the Moana Pacific Package to Owner would be in the public interest since:

1. HTI's general ratepayers will not be affected adversely since the competitive services of the plan would not be subsidized by the noncompetitive services of the plan.
2. With the Moana Pacific Package, HTSC's proposal to compete with other providers that offer similar

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<sup>8</sup>Statement of Position at 4.

bundled services will enhance competition in the State's telecommunications market by giving consumers more offerings from which to choose lower priced bundled services to meet their specific needs.

## II.

### Discussion

HRS § 269-16(b) states, in pertinent part:

No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice as prescribed in section 269-12(b) to the commission and prior approval by the commission for any increases in rates, fares, or charges. The commission may, in its discretion and for good cause shown, allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b) . . . .

HRS § 269-16(b) (emphasis added).

In addition, HAR § 6-80-35(e) states:

A telecommunications carrier may not offer a noncompetitive telecommunications service jointly with any fully or partially competitive service or with any interstate, international, or other service not within the jurisdiction of the commission, except upon the commission's express approval. The commission's approval is subject to a satisfactory showing by the telecommunications carrier seeking to offer such joint services that the costs of the fully or partially competitive service or the costs of the interstate, international, or other non-jurisdictional service are not subsidized by the noncompetitive service.



An application for approval to offer any such joint services must be filed with the commission not less than thirty days before the joint services are marketed, sold, or advertised.<sup>9</sup>

HAR § 6-80-35(e) (emphasis added).

Here, given HTSC's representations, it appears that approval of the Moana Pacific Package is reasonable and in the public interest. In particular, it appears that the costs of the competitive services will not be subsidized by the services that are classified as noncompetitive, and, as a result, HTI's ratepayers will not be adversely affected. In addition, Hawaii's telecommunications market should be enhanced as customers will have the benefit of additional options for lower priced bundled services. Accordingly, the commission finds that HTSC's Moana Pacific Package, as described in the Application, satisfies the requirements of HAR § 6-80-35(e).

Based on the above, the commission concludes that HTSC's request to market and provide the Moana Pacific Package should be approved, with the caveat that the Consumer Advocate reserves the right to seek cost support information in the future, should it be warranted, and that HTSC should be required to provide such information, as necessary.

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<sup>9</sup>Also, HRS § 269-39(a) and HAR § 6-80-35(a) specifically prohibit the cross-subsidization of a telecommunications carrier's competitive services by its noncompetitive service offerings. HAR § 6-80-35(b) clarifies that cross-subsidization "is deemed to have occurred if: (1) [a]ny fully competitive or partially competitive service is priced below the total service long run incremental cost of providing the service; (2) [f]ully competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs; or (3) [i]f fully competitive and partially competitive services, taken as a whole, fail to cover the direct and allocated joint and common costs."

III.

Orders

THE COMMISSION ORDERS:

1. HTSC's Moana Pacific Package, as described in the Application, is approved.

2. The Consumer Advocate may seek cost support information, in the future, should it be necessary, and HTSC shall be required to provide such information to the Consumer Advocate, if requested.

DONE at Honolulu, Hawaii MAR 21 2007.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone  
Benedyne S. Stone  
Commission Counsel

2006-0482.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23314 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: MAR 21 2007