

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
PACIFIC LIGHTNET, INC.)
Petition for Arbitration Pursuant)
to 47 U.S.C. § 252(b) of)
Interconnection Rates, Terms, and)
Conditions with Verizon)
Hawaii, Inc.)
_____)

DOCKET NO. 03-0197

ORDER NO. 23369

Filed April 16, 2007
At 1 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

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Hawaii, Inc.)
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Docket No. 03-0197

Order No. 23369

ORDER

By this Order, the commission dismisses PACIFIC LIGHTNET, INC.'s ("PLNI") untimely filed Request for Clarification, or, in the Alternative, Motion for Reconsideration of Decision and Order No. 23304, filed on March 28, 2007 ("PLNI's Motion").

I.

PLNI's Motion

On March 15, 2007, the commission issued Decision and Order No. 23304 ("Decision and Order") in this proceeding, addressing the open issues of PLNI's Petition for Arbitration of Interconnection Rates, Terms, and Conditions for arbitration of the rates, terms, and conditions for interconnection with VERIZON HAWAII INC., now known as HAWAIIAN TELCOM, INC. ("Hawaiian Telcom"). In the Decision and Order, the commission directed PLNI and Hawaiian Telcom to incorporate the commission's resolution of the open issues, as set forth in the Decision and

Order, into a draft interconnection agreement and file it with the commission and the DIVISION OF CONSUMER ADVOCACY of the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")¹ within thirty (30) days of the date of the Decision and Order.

On March 28, 2007, PLNI filed its Motion requesting clarification, or, in the alternative and pursuant to HAR § 6-61-137, reconsideration of the Decision and Order. PLNI contends that the text of the commission's Decision and Order appears to differ materially from the contractual language the commission directs PLNI and Hawaiian Telcom to incorporate with regards to Issue Nos. 7 and 11. On these two (2) issues, PLNI requests that the commission provide guidance in preparing the draft conforming interconnection agreement, or, a revised decision and order that conforms the contractual language to the text of the Decision and Order. Alternatively, PLNI moves the commission to reconsider its decisions if the "discrepancies" were an intended result of the commission's deliberations.²

II.

Discussion

The filing of PLNI's Motion is governed by HAR § 6-61-137. This section requires, among other things, that a

¹The Consumer Advocate is an ex-officio party to all proceeding before the commission. See Hawaii Revised Statutes § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

²No reply or response to PLNI's Motion was filed by the other parties to this proceeding.

motion seeking any change in a commission's decision, order, or requirement must be filed within ten (10) days after the decision or order is served upon the party. Moreover, HAR § 6-61-15 requires the following:

All pleadings, briefs, and other documents required to be filed with the commission shall be filed at the office of the commission within the time limit prescribed by statutes, rules, or by order of the commission. Unless otherwise ordered, the date on which the papers are received shall be regarded as the date of filing.

HAR § 6-61-15.

The Decision and Order was properly served on the parties, by mail, on March 15, 2007. As a result, the last permissible day for proper filing of PLNI's Motion was March 27, 2007. PLNI's Motion was filed on March 28, 2007, one day after the last permissible filing day.

PLNI contends that its Motion was properly filed. It reasons that the "10-day [filing] period set forth in . . . [HAR] § 6-61-137 ended on Sunday, March 25, which pursuant to [HAR] § 6-61-22, actually falls on the following business day, which is Monday, March 26."³ PLNI represents that the proper filing day is, thus, March 28, 2007, through the application of HAR § 6-61-21, which allows for two (2) additional days when service is made by mail. It further asserts that the "undersigned" (i.e., PLNI's attorney of record) received actual mail service on Thursday, March 22, 2007.⁴ The commission disagrees with PLNI's interpretation of the commission's rules.

³See PLNI's Motion at 1 n1.

⁴Id.

First, HAR § 6-61-21(d) states that service upon a party, other than the commission, shall be deemed complete when, among other occurrences, "[t]he document is properly stamped, addressed, and mailed to the last known address of the party on file with the commission or to its attorney." Thus, actual date of receipt of service on PLNI's attorney of record is not relevant. Additionally, the commission's records indicate that aside from PLNI's attorney, the Decision and Order was concurrently served on PLNI at a local Hawaii address.

Finally, HAR § 6-61-21(e) states that whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a document, and the document is served upon the party by mail, two (2) days shall be added to the prescribed period ("2-day Mail Rule"). Thus, applying the 2-day Mail Rule, since service of the Decision and Order was by mail, rather than the ten-day period set forth under HAR § 6-61-137, PLNI had twelve (12) days to file its Motion, which, in this case, was March 27, 2007. PLNI filed its Motion on the 13th-day, as opposed to the 12th-day, the proper day for the filing of PLNI's Motion. With regards to PLNI's calculation, PLNI first attempted to determine the 10th-day, applied the HAR § 6-61-22 provision,⁵ and then applied the 2-day Mail Rule, which is improper. In this case, HAR § 6-61-22 would only be applied

⁵HAR § 6-61-22 provides, among other things, that "[t]he last day of the period so computed shall be included unless it is a Saturday, Sunday, or holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday."

if (and when) the 12th-day falls on a Saturday, Sunday, or holiday.⁶

Based on the above, the commission finds PLNI's Motion to be untimely since PLNI failed to adhere to the filing requirements of HAR § 6-61-137 and the commission's procedural rules set forth in HAR Chapter 6-61. Accordingly, the commission concludes that PLNI's Motion should be dismissed as untimely.

III.

Order


THE COMMISSION ORDERS:

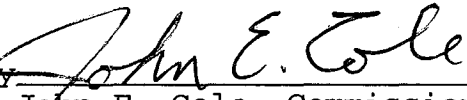
PLNI's Motion filed on March 28, 2007, is dismissed as untimely.

⁶See Robert's Tours & Transportation, Inc., Citation Order No. 342, filed on January 31, 2002, in which the commission similarly applied its filing rules. Upon appeal, the Supreme Court of the State of Hawaii confirmed that HAR § 6-61-21(e) gave a party two (2) additional days to file a motion for reconsideration "for a total twelve-day period" and found that the commission correctly dismissed the filed motion for reconsideration as untimely. See In re Robert's Tours and Transportation, Inc., No. 24960 at 2 (Haw. May 30, 2002) (order dismissing appeal).

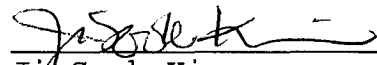
DONE at Honolulu, Hawaii APR 16 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

03-0197.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23369 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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Certificate of Service
Page 2

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DATED: APR 16 2007