

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM, INC.)

DOCKET NO. 2007-0233

For Approval of Changes to its)
Tariff. Transmittal No. 07-16.)
_____)

ORDER NO. 23963

Filed Jan. 10, 2008

At 11 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.

Karen Higashi

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DIV. OF PUBLIC UTILITIES
HAWAIIAN TELCOM, INC.
STATE OF HAWAII

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Docket No. 2007-0233

Order No. **23963**

ORDER

By this Order, the commission grants HAWAIIAN TELCOM, INC.'s ("Hawaiian Telcom") Motion for Modification or Clarification, filed on December 28, 2007.¹ Accordingly, the commission modifies Procedural Order No. 23895, filed on December 18, 2007, by clarifying Procedural Steps No. 8 and No. 11, as described in this Order.

I.

Background

Hawaiian Telcom and the Consumer Advocate (collectively, the "Stipulating Parties") reached agreement on

¹Motion for Modification or Clarification; and Certificate of Service, filed on December 28, 2007 (collectively, "Motion for Modification or Clarification"). The Parties are Hawaiian Telcom, TIME WARNER TELECOM OF HAWAII, L.P. ("Time Warner" or "TWTC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate" or "CA"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

a proposed procedural order, but were unable to reach an agreement with TWTC. Thus, on November 19, 2007: (1) the Stipulating Parties' Proposed Procedural Order was filed by Hawaiian Telcom;² and (2) TWTC filed its Proposed Procedural Order. On December 18, 2007, the commission issued Procedural Order No. 23895. Pages 9 and 10 of Procedural Order No. 23895 set forth the procedural steps established by the commission to govern this proceeding:

<u>Procedural Steps</u>	<u>Date</u>
1. Procedural Order issued	
2. HT submits confidential responses to CA's informal information requests ("IRs") to the CA and TWTC; subject to Protective Order No. 23816	by December 21, 2007
HT submits confidential information filed thus far, to TWTC; subject to Protective Order No. 23816	by December 21, 2007
3. Parties' issuance of IRs, 1 st set	by January 2, 2008
4. Parties' responses to IRs, 1 st set	by January 16, 2008
5. Parties issuance of clarifying IRs, 2 nd set	by January 23, 2008
6. Parties' responses to clarifying IRs, 2 nd set	by February 6, 2008

²See Hawaiian Telcom's letter, dated November 19, 2007; and Hawaiian Telcom's letter, dated November 20, 2007, transmitting an executed copy of the Stipulating Parties' Proposed Procedural Order.

<u>Procedural Steps</u>	<u>Date</u>
7. TWTC and CA's position statements*	by February 22, 2008
8. Parties' issuance of IRs, 3 rd set, in response to position statements	by February 29, 2008
9. Parties' responses to IRs, 3 rd set	by March 14, 2008
10. HT's reply position statement*	by March 24, 2008
*To the extent applicable, the position statements and reply position statement shall identify the witness or witnesses who are sponsoring the subject-matter contained in each section of the respective position statements, consistent with Section IV.C, Witnesses, below.	
11. TWTC to notify the commission and other parties on whether it waives the evidentiary hearing**	by March 31, 2008
**In the event that TWTC does not waive the evidentiary hearing, the commission may, on its own motion, amend this Procedural Order by requiring the Parties to file written testimonies prior to the evidentiary hearing.	
12. Prehearing conference (if necessary)	To be scheduled by the commission
13. Evidentiary hearing (if necessary)	To be scheduled by the commission
14. Parties' post-hearing briefs (if necessary)	Three weeks following the filing of the official transcripts

On December 28, 2007, Hawaiian Telcom timely filed its Motion for Modification or Clarification, seeking to modify Procedural Order No. 23895 by clarifying Procedural Steps No. 8 and No. 11, above.

II.

Discussion

HAR § 6-61-137 states:

Motion for reconsideration or rehearing.
A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall be filed within ten days after the decision or order is served upon the party, setting forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137 (emphasis added).

Hawaiian Telcom seeks to modify Procedural Order No. 23895 by clarifying Procedural Steps No. 8 and No. 11. Specifically:

1. With respect to Procedural Step No. 8, Hawaiian Telcom "seeks clarification of Step 8 to the extent that it is intended or could be interpreted to mean that the Consumer Advocate and Time Warner would have an opportunity to submit further IRs upon Hawaiian Telcom Instead, Hawaiian Telcom respectfully asks that the Commission clarify that the IRs set forth in Procedural Step No. 8 are limited to: (a) Hawaiian Telcom's submitting IRs to the Consumer Advocate or Time Warner, and (b) Time Warner's and the Consumer Advocate's submitting IRs to . . . each other on their respective position statements."³

³Motion for Modification or Clarification, at 3.

2. With respect to Procedural Step No. 11,
Hawaiian Telcom states:

Although the Consumer Advocate and Hawaiian Telcom have stated that no hearing is required in this docket, that [statement] was submitted on the presumption that if the Commission were to require a hearing or to leave open the issue of whether to have a hearing, they would have the opportunity to be heard on the issue. Time Warner should not be permitted to have the sole decision-making authority on whether to hold a hearing. If the Commission is inserting a procedural step allowing Time Warner to submit its position on the issue, due process calls for Hawaiian Telcom and the Consumer Advocate to have the same right. The issue is not solely a question of waiver; it is a question of what type of hearing is needed, if one will be held. On that question, neither the Consumer Advocate nor Hawaiian Telcom has had the opportunity to be heard.

Therefore, Hawaiian Telcom respectfully moves the Commission to provide all Parties with the opportunity to participate in Procedural Step No. 11 and to include in that step the question of the type of hearing that should be held, if one should be held at all.

Motion for Modification or Clarification, at 5-6
(emphasis added).

Here, Hawaiian Telcom represents that the Consumer Advocate does not object to its motion, while Time Warner does not object to the relief requested in the motion.⁴ Thus, in essence, the Parties agree on the relief requested by Hawaiian Telecom. Under the circumstances, the commission will grant Hawaiian Telcom's Motion for Modification or Clarification, and approve the movant's request to modify Procedural Order No. 23895, by clarifying Procedural Steps No. 8 and No. 11, as set forth above.

⁴See Motion for Modification or Clarification, at 1.

III.

Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom's Motion for Modification or Clarification, filed on December 28, 2007, is granted.

2. Procedural Order No. 23895, filed on December 18, 2007, is modified by clarifying Procedural Steps No. 8 and No. 11, consistent with the terms of this Order. Accordingly, the Procedural Steps are hereby clarified to read as follows:

<u>Procedural Steps</u>	<u>Date</u>
1. Procedural Order issued	
2. HT submits confidential responses to CA's informal information requests ("IRs") to the CA and TWTC; subject to Protective Order No. 23816	by December 21, 2007
HT submits confidential information filed thus far, to TWTC; subject to Protective Order No. 23816	by December 21, 2007
3. Parties' issuance of IRs, 1 st set	by January 2, 2008
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5. Parties issuance of clarifying IRs, 2 nd set	by January 23, 2008
6. Parties' responses to clarifying IRs, 2 nd set	by February 6, 2008
7. TWTC and CA's position statements*	by February 22, 2008
8. HT's issuance of IRs, 3 rd set, to the Consumer Advocate, TWTC, or both, and TWTC's and the CA's issuance of IRs to each other, in response to position statements (i.e., no issuance of IRs upon HT)	by February 29, 2008

Procedural Steps

Date

- | | |
|---|-------------------|
| 9. Parties' responses to IRs, 3 rd set | by March 14, 2008 |
| 10. HT's reply position statement* | by March 24, 2008 |

*To the extent applicable, the position statements and reply position statement shall identify the witness or witnesses who are sponsoring the subject-matter contained in each section of the respective position statements, consistent with Section IV.C, Witnesses, below.

- | | |
|---|-------------------|
| 11. Parties to notify the commission and other parties on: (A) whether it waives the evidentiary hearing; and (B) if a hearing is held, the type of hearing that should be held** | by March 31, 2008 |
|---|-------------------|

**In the event that one party does not waive the evidentiary hearing, the commission may, on its own motion, amend the Procedural Order by requiring the Parties to file written testimonies prior to the evidentiary hearing. Moreover, the commission, based on its review of the Parties' filings that are due by March 31, 2008, reserves the right to amend the remainder of the Procedural Order, to the extent necessary.

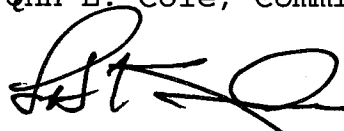
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| 12. Prehearing conference (if necessary) | To be scheduled by the commission |
| 13. Evidentiary hearing (if necessary) | To be scheduled by the commission |
| 14. Parties' post-hearing briefs (if necessary) | Three weeks following the filing of the official transcripts |

DONE at Honolulu, Hawaii JAN 10 2008.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2007-0233.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23963 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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Karen Higashi

DATED: JAN 10 2008