

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN TELCOM, INC. )  
For Approval of a Grant of )  
Easement to Hawaiian Electric )  
Company, Inc. at Hawaiian Telcom, )  
Inc.'s Property Known as "Puu )  
Papaa" at Malae and Aikahi, )  
Kaneohe, Koolaupoko, Oahu, Hawaii )  
Tax Map Key: (1)4-4-012:002 )  
\_\_\_\_\_ )

DOCKET NO. 2007-0315

DECISION AND ORDER NO. 23978

Filed Jan. 24, 2008  
At 11:30 o'clock A .M.

Karen Higashi.  
Chief Clerk of the Commission

RECEIVED  
2008 JAN 25 A 8:45  
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.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
                  HAWAIIAN TELCOM, INC.          )  
For Approval of a Grant of                  )  
Easement to Hawaiian Electric              )  
Company, Inc. at Hawaiian Telcom,          )  
Inc.'s Property Known as "Puu              )  
Papaa" at Malae and Aikahi,               )  
Kaneohe, Koolaupoko, Oahu, Hawaii        )  
Tax Map Key: (1)4-4-012:002               )  
\_\_\_\_\_)

Docket No. 2007-0315  
Decision and Order No. 23978

DECISION AND ORDER

By this Decision and Order, the commission approves HAWAIIAN TELCOM, INC.'s ("HT") grant of an easement to Hawaiian Electric Company, Inc. ("HECO") at HT's property known as "Puu Papaa" on the island of Oahu, as described herein.

I.

Background

A.

Application

On September 14, 2007, HT filed an application seeking commission approval of an after-the-fact grant of an easement to HECO at HT's property located on a hilltop known as "Puu Papaa," located at Malae and Aikahi, Kaneohe, Koolaupoko, Oahu, Hawaii, and having Tax Map Key No. (1)4-4-012:002 ("Application").<sup>1</sup>

<sup>1</sup>HT served copies of the Application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

HT filed its Application pursuant to HRS § 269-19 and HAR § 6-61-105.

Pursuant to the Grant of Easement, attached as Exhibit 1 to the Application, for the sum of \$10.00, HT granted two easements -- "Easement A" and "Easement B." -- to HECO. HT represents that these easements extend an original easement that existed on the property prior to HT acquiring the property.<sup>2</sup> HT further represents that HECO currently provides service to several companies at the Puu Papaa site via a line extension that is constructed through Easement A and Easement B, and that the Grant of Easement was executed to ensure that HECO will be able to continue serving all companies at the location.<sup>3</sup>

B.

Consumer Advocate's Position

On September 25, 2007, the Consumer Advocate issued information requests to HT regarding, among other things: (1) what facilities HT currently has at the site of the easement; (2) HT's future plans for facilities at the site; (3) whether HECO's facilities at the site can or will have any adverse effects on HT's operations; and (4) how the Grant of Easement addresses correction by HECO of any adverse effects on HT's operations. HT provided its responses to the Consumer Advocate's information requests on October 5, 2007.

---

<sup>2</sup>HT provided a copy of the grant of the original easement in response to CA-IR-1d.

<sup>3</sup>See Application at 2.

On October 19, 2007, the Consumer Advocate filed its Statement of Position ("CA's SOP"), informing the commission that it does not object to the commission's approval of the Application. Based on its review, the Consumer Advocate concluded: (1) the proposed Grant of Easement will not have an adverse effect on HT's operations at Puu Papaa; (2) the terms and conditions of the proposed Grant of Easement are reasonable;<sup>4</sup> and

---

<sup>4</sup>The Consumer Advocate found that the Grant of Easement lacked specific terms and conditions that address the issue of HECO's responsibility for the correction of any future adverse effects from its facilities at the site. However, the Consumer Advocate stated that it would not object to the approval of the Application based on this issue, in this instance, because:

- (1) An assessment that HT performed of HECO's facilities at the site could not identify any adverse effects that HECO's facilities would have on HT's operations;
- (2) HT currently has no future plans for expansion of its facilities at the easement site;
- (3) HECO's facilities at the site consist of only two poles, guy wires, and a pole mounted transformer, all of which would presumably remain stationary in their installed positions, and all of which could be relocated at somewhat reasonable costs if required to be reconfigured for interference issues;
- (4) Section 1 of the Grant of Easement requires that HECO use due care and diligence to maintain the lines, appliances, and equipment owned by HECO in a good and safe condition, and exercise its rights in a manner that will occasion only such interference with the use of the land as is reasonably necessary. This section could indirectly be used to address any interference issue that arises in connection with HECO's facilities.
- (5) It is presumed that both major utilities, HT and HECO, would cooperate in resolving any correction issue since the Grant of Easement provides benefits for both parties at the site.

(3) the proposed charge of \$10.00 associated with the Grant of Easement appears reasonable.

## II.

### Discussion

HRS § 269-19 states:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

Upon review of the entire record, the commission finds that HT's Grant of Easement to HECO is reasonable and in the public interest. The record indicates that the Grant of Easement should not interfere with HT's ability to service the public, and that the easement is necessary to ensure that HECO will be able to continue to serve all of its customers at the Puu Papaa site. Moreover, the terms and conditions of the Grant of Easement appear reasonable. Accordingly, the Application should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. HT's grant of an easement to HECO, as described in the Application and Exhibit 1 attached thereto, is approved, effective as of the date of this Decision and Order.

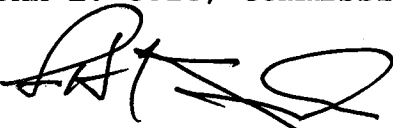
2. This docket is closed, unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JAN 24 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:

  
Kaiulani Kidani Shinsato  
Commission Counsel

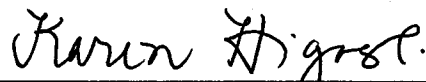
2007-0315.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23978 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

JOEL K. MATSUNAGA  
VICE PRESIDENT-EXTERNAL AFFAIRS  
HAWAIIAN TELCOM, INC.  
P.O. Box 2200  
Honolulu, HI 96841

  
\_\_\_\_\_  
Karen Higashi

DATED: JAN 24 2008