

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

KRS DEVELOPMENT, INC. and )  
HALE KANANAI ASSOCIATES, INC. )  
Complainants )  
vs. )  
HAWAIIAN TELCOM, INC. )  
Respondent. )

DOCKET NO. 2008-0017

ORDER NO. 24181

Filed May 7, 2008  
At 12 o'clock P.M.

Karen Higashi.  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
INDUSTRY AFFAIRS  
STATE OF HAWAII  
2008 MAY -8 A 8:53  
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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

KRS DEVELOPMENT, INC. and )  
HALE KANANAI ASSOCIATES, INC. )  
Complainants ) Docket No. 2008-0017  
vs. ) Order No. 24181  
HAWAIIAN TELCOM, INC. )  
Respondent. )

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ORDER

By this Order, the commission extends the time period for the Parties to complete the mediation process for an additional thirty days, from April 30, 2008 to May 30, 2008.<sup>1</sup>

I.

Background

On January 31, 2008, as amended on February 19, 2008, KRS filed their Amended Complaint against HTI.<sup>2</sup>

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<sup>1</sup>The Parties in this proceeding are Complainants KRS DEVELOPMENT, INC., and HALE KANANI ASSOCIATES, LLC (collectively, "KRS"), Respondent HAWAIIAN TELCOM, INC. ("HTI"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to all commission proceedings, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62(a). Here, however, the Consumer Advocate, on February 8, 2008, informed the commission of "its decision to not participate in this proceeding. The Consumer Advocate would, however, appreciate receiving a copy of the documents filed in the proceeding to ensure that the Consumer Advocate's docket file is current." Consumer Advocate's Statement of Position, filed on February 8, 2008, at 2.

On March 17, 2008, as amended on March 18, 2008, HTI filed its Amended Answer to the Amended Complaint.<sup>3</sup> On March 31, 2008, the commission instructed the Parties to: (1) participate in nonbinding mediation, consistent with HRS §§ 269-15.6 and 91-8.5; and (2) report in writing the status of their mediation efforts within twenty days.<sup>4</sup> Thereafter, by letter dated April 21, 2008, the Parties, as part of their status report, seek additional time to complete the mediation period.

## II.

### Discussion

HRS § 269-15.6 provides that "[t]he commission may require the parties in any matter before the commission to participate in nonbinding arbitration, mediation, or other alternative dispute resolution process prior to the hearing." Moreover, HRS § 91-8.5 states:

**Mediation in contested cases.** (a) An agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with this chapter. The agency may suspend all further proceedings in the contested case pending the outcome of the mediation.

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<sup>2</sup>Complaint; Exhibits A - O, filed on January 31, 2008; and Verification and Certificate of Service, filed on February 19, 2008 (collectively, the "Amended Complaint").

<sup>3</sup>Answer to Complaint, filed on March 17, 2008, as amended on March 18, 2008 (collectively, the "Amended Answer").

<sup>4</sup>Order No. 24115, filed on March 31, 2008.

(b) No mediation period under this section shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the agency.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the agency shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the agency, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under section 92-2. Any mediator notes under this section shall be exempt from section 92-21 and chapter 92F. Section 91-10 shall not apply to mediation proceedings.

HRS § 91-8.5 (emphasis added).

The thirty-day mediation period expired on April 30, 2008. Here, however, as explained by HTI:

By this letter, HTI informs the Commission that it has agreed with KRS' recommendation to utilize former Circuit Court Judge John McConnell to mediate the matters in dispute. Based on the parties' respective schedules,<sup>5</sup> as well as the dates in which Mr. McConnell will be available, the mediation has been scheduled for Monday, May 5, 2008 starting at 9:30 a.m. on Maui. May 7th has tentatively been established as a second mediation date if the parties are unable to resolve their differences on May 5<sup>th</sup> AND the parties still wish to continue mediation.

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<sup>5</sup>Footnote 1 states: "HTI was informed that Mr. Kent Smith of KRS is out of town until April 30, 2008. Additionally, former Judge John McConnell was not available to conduct the mediation on May 1<sup>st</sup> or May 2<sup>nd</sup> due to other commitments." HTI's letter, dated April 21, 2008, at 1 n.1.

Because the scheduled mediation date occurs more than 30 days after the Commission's 30-day deadline, HTI, with the concurrence of KRS, respectfully requests Commission approval to allow the mediation to continue until May 5<sup>th</sup>, and possibly May 7<sup>th</sup> (if necessary).

HTI's letter, dated April 21, 2008, at 1-2 (footnote retained) (emphasis added).

Based on the Parties' representations, the commission extends the time period for the Parties to complete the mediation process for an additional thirty days, from April 30, 2008 to May 30, 2008, consistent with HRS § 91-8.5(b).

### III.


#### Orders


#### THE COMMISSION ORDERS:


The time period for the Parties to complete the mediation process is extended for an additional thirty days, from April 30, 2008 to May 30, 2008, consistent with HRS § 91-8.5(b).

DONE at Honolulu, Hawaii MAY - 7 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

2008-0017.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24181 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: MAY - 7 2008