TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
MARCH 18, 2009

MEASURE: H.B. No. 254 H.D.1
TITLE: Relating to Public Utilities.

Chair Fukunaga and Members of the Committee:

DESCRIPTION:

This bill proposes to add a new section to chapter 269, Hawaii Revised Statutes ("HRS"), to require the Public Utilities Commission ("Commission") to treat the State's switched access telephone (incumbent) service as fully competitive, and to apply all Commission rules in accordance with that treatment. The bill also replaces references to "switched access service," or like terms, with "local exchange intrastate service," or like terms, to clarify that this bill is not intended to cover local exchange carrier services for long distance carriers.

POSITION:

The Commission takes no position on this bill, but offers the following concerns and comments.

COMMENTS:

- Requiring the Commission to treat switched access or landline telephone service as fully competitive as provided by this bill, would result in removing rate or price regulation for such telecommunications services enacted to protect consumers.

- Under subchapter 3, chapter 6-80, Hawaii Administrative Rules ("HAR"), all telecommunications services are classified as either 1) fully competitive, 2) partially competitive, or 3) noncompetitive, based on an analysis of numerous factors including, but not limited to: whether there are multiple providers of the service who can enter or exit the particular market with ease and without being dominant in that market; whether there is access available to all customers relating to information about prices and service quality; the extent to which service of comparable quality is readily available from more than one carrier in the relevant market; the ability of alternative carriers to make equivalent or substitute services available at competitive rates, terms, and conditions, and other factors relevant in determining whether and to what extent competition exists. It does not appear that a similar analysis has been completed in this case.

Thank you for the opportunity to testify and provide comments and recommendations.

HB 254, HD1

RELATING TO PUBLIC UTILITIES

JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL

HAWAIIAN TELCOM

March 18, 2009

Chair Fukunaga and members of the Senate Committee on Economic Development and Technology Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on HB 254, HD1-Relating to Public Utilities. Hawaiian Telcom strongly supports this bill.

The stated purpose of this bill is to help level the regulatory playing field in voice services by requiring the Public Utilities Commission (PUC) to treat the State's local exchange intrastate services as fully competitive as a result of Hawaii's robust telecommunications market. Passage of this measure will help to provide Hawaiian Telcom some regulatory parity by enabling it to offer consumers a more timely and greater selection of products and services at competitive prices in a similar manner as other service providers such as wireless and VoIP, which are either unregulated or do not face the same level of regulatory oversight that Hawaiian Telcom currently faces.

Dramatic changes in technology and the telecommunications industry have resulted in significant competition to Hawaiian Telcom. For example, competition from wireless, internet phone (VoIP), and other wireline providers all provide competitive alternatives to the traditional landline. The Federal Communications Commission (FCC) has confirmed this competitive transformation in Hawaii's telecommunications marketplace. According to the FCC, the number of access lines for Hawaii's incumbent local exchange carrier (Hawaiian Telcom) decreased from 735,000 in 2001 to only 541,000 in 2007. The number of local wireless subscribers, however, soared to 1,100,000 over the same period. In addition, the number of VoIP customers jumped from zero to 65,000 over the same period.

In Hawaii, Hawaiian Telcom is currently subject to many laws and requirements that were enacted long ago, some as early as 1913 when the incumbent local exchange carrier was a monopoly with no other service providers. These laws and requirements have not been adapted to recognize that Hawaiian Telcom is no longer a monopoly and is now subject to significant competition in the services it provides. Today consumers have the freedom to choose between a wide array of wireless, internet phone, and competing wireline providers.

Hawaiian Telcom supports this effort to provide the incumbent local exchange carrier with a move towards a more level regulatory playing field which will help our company to provide consumers with what they demand: more innovation, competitive pricing, timely introduction, and greater selection of new products and services.

Based on the aforementioned, Hawaiian Telcom supports this measure and respectfully requests your favorable consideration. Thank you for the opportunity to testify.

tw telecom

March 18, 2009

The Honorable Carol Fukunaga, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Senate Committee on Economic Development and Technology

Re: HB 254 HD 1, Relating to Public Utilities - Oppose
EDT Committee, Wednesday, March 18, 2009, 1:45 pm – Room 016

Aloha Chair Fukunaga, Vice Chair Baker and Committee members:

On behalf of tw telecom ("TWTC") which has operated in Hawaii since 1994 and manages approximately 25,000 access lines in the State of Hawaii, thank you for the opportunity to submit testimony today. I am Lyndall Nipps, Vice President of Regulatory Affairs.

The stated purpose of this bill is to promote competition in the telecommunications marketplace by requiring the Public Utilities Commission ("PUC") to treat land line telephone services as "fully competitive" with regard to costs, rates and pricing, in essence deregulating these phone services to bolster competition with other forms of telecommunications. TWTC strongly objects to this bill and the assumptions on which it is based.

The PUC's rules relating to Competition in Telecommunications Services (the "Rules") provide for three classifications of service: non-competitive, partially competitive and fully competitive, with corresponding levels of pricing flexibility for each classification.

TWTC believes that the correct way to implement pricing flexibility is under the existing Rules based on factual findings of the extent of competition in various market segments. The legislative process is simply not designed for making the types of detailed factual findings that are required to determine the extent of competition in different market segments, and blanket statements that there is robust or effective competition are simply not supported. For example, TWTC only provides service to business customers only, providing managed network services, specializing in Ethernet, transport data networking, Internet access, local and long distance voice, VoIP, VPN and security, to large organizations and communications services companies in Hawaii. However, for smaller businesses that require fewer lines and services, the only current alternative to Hawaiian Telcom's service is VOIP or wireless, where they are available, and these services don't meet the service quality and reliability needs that many businesses require. There are likely many other market segments that likewise do not have effective competition.

TWTC therefore believes the best way to address the issue of telecommunications pricing flexibility is to require the PUC to investigate and to determine the extent of competition in various market segments. TWTC therefore proposes that this bill be amended as follows:

> No later than July 1, 2011, in accordance with the commission's rules relating to competition in telecommunications services, the commission shall investigate the extent to which telecommunications services provided to residential and business customers are available from multiple providers in Hawaii and whether to reclassify any telecommunications services provided to residential and business retail customers as "partially competitive" or "fully competitive" communications.

TWTC has serious concerns about the bill, as drafted, as it relates to rates for both wholesale and retail services. These include:

1. Wholesale Services, Facilities and Functions. Any bill which seeks to deregulate telecommunications rates must include a complete exception for all wholesale services, functions and facilities. TWTC is a facilities-based competitive provider of local telephone service, also known as a competitive local exchange carrier ("CLEC"). TWTC relies primarily on its own network to provide telephone service, but it also needs certain facilities and services from the Hawaiian Telcom, the incumbent local exchange carrier ("ILEC"). Most importantly, TWTC and other CLECs need to interconnect their networks with Hawaiian Telcom's ("HT") network to enable their customers to make calls to, and receive calls from, one another. TWTC and other CLECs also "collocate" equipment in the incumbents' central offices, both to obtain interconnection and to access certain incumbent facilities and services that the CLECs use to provide service to their own customers. TWTC's ability to obtain interconnection and related services from Hawaiian Telcom is critical to its ability to offer consumers a viable alternative source of telecommunications services.

It is therefore essential that any deregulation bill contains a complete exception for "wholesale" facilities, functions and services provided by one telecommunications carrier to another, and that this exception be technologically neutral, i.e. that it will continue to apply even if HT migrates its services to internet protocol or other "next generation" facilities. While this bill contains a limited exception for switched and special access, that language doesn't cover all necessary services and facilities. TWTC requests that any bill which deregulates telecom rates contain the following exception:

> Subsection ____ shall apply to retail rates charged for services to end-user consumers only and shall not apply to wholesale rates charged for services, functions or facilities provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider, including, without limitation switched network access rates or other intercarrier compensation rates for interexchange services, special access, or interconnection and other wholesale obligations, and the commission shall continue to have authority to regulate such wholesale rates, interconnection rights and traffic exchange obligations without regard to the technology used to provide such services, functions or facilities.

2. Retail Rates. TWTC also has concerns about the complete deregulation of retail rates proposed in this bill. By way of background, price regulation for the ILEC prior to the existence of full competition is necessary both to ensure that prices are not too low and that they are not too high. The ILEC is in the unique position of having "captive customers" who do not have other options to obtain telephone service. Without regulation, the ILEC can raise its rates for services to these customers, and use the revenues from these rates to subsidize any losses it incurs from its more competitive services. Thus, some level of regulation is required to ensure that prices are not too high. There are also concerns with pricing that is two low.

First, if the ILEC prices its services too low, it will drive away its competition. The ILEC is in a unique position to charge prices for more competitive services below its costs, and to subsidize any losses it incurs from its competitive services with rates charged to customers of non-competitive services. Because CLECs face competition for all of their services, they do not have this same opportunity to cross-subsidize services, and must cover all of their costs through the prices for their services if they are to survive. Thus, this can drive away competition.

Second, if the ILEC prices its service too low, it will not have sufficient funds to maintain its network, which is of critical importance to the State. For example, "technical difficulties with Hawaiian Telecom caused a phone outage" for about 2-1/2 hours this past New Year's Eve. This caused flights in and out of Honolulu International Airport to be disrupted for several hours because airlines were unable to electronically process and check in customers.

Third, this bill would classify all services as fully competitive, virtually deregulating rates. TWTC believes that this simply goes too far too fast. If there is to be deregulation of retail rates, certain protections must remain in effect, including price floors and continued commission jurisdiction over rates. TWTC thus proposes that the language of the bill be amended to classify retail services as "partially competitive" under the Rules. This classification would eliminate two requirements that HT has objected to: providing cost studies for all of its services and obtaining prior approval for bundled offerings. With this change, HT would essentially have regulatory parity with CLECs with respect to retail rates. However, such rates would continue to be subject to tariff filings, price floors, and commission oversight. Further, HT would still have the ability under the Rules to request greater pricing flexibility where it can demonstrate that a particular market is "fully competitive". To provide this flexibility we suggest including the following language in the bill:

> **"§269- Local exchange intrastate services; partially competitive.** (a) All rates, fares, charges, classifications, schedules, rules and practices made, charged, or observed by any telecommunications carrier or by two or more telecommunications carriers jointly shall be just and reasonable, shall be set forth in tariffs filed with the commission in accordance with the commission's rules.
>
> (b) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall classify the State's local exchange intrastate telecommunications services as partially competitive under the commission's

classifications of services related to costs, rates, and pricing. In addition, unless otherwise ordered by the commission, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to bundle any service offerings into a single or combined price package.

(c) Subsection c shall apply to retail rates charged for services to end-user consumers only and shall not apply to wholesale rates charged for services, functions or facilities provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider, including, without limitation switched network access rates or other intercarrier compensation rates for interexchange services, special access, or interconnection and other wholesale obligations, and the commission shall continue to have authority to regulate such wholesale rates, interconnection rights and traffic exchange obligations without regard to the technology used to provide such services, functions or facilities.

(d) Nothing herein shall modify any requirements of a telecommunications carrier to provide lifeline telephone service, comply with carrier of last resort obligations, or comply with applicable service quality standards.

For these reasons, we respectfully request that you consider deferring action on this bill. Should you decide to move this bill forward, we respectfully request that you include the suggested amendments to this bill.

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs

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The Chamber of Commerce of Hawaii
The Voice of Business in Hawaii

Senate Committee on Economic Development and Technology
Wednesday, March 18, 2009
1:15 p.m.
Conference Room 016
State Capitol

RE: HB 254 HD1 relating to Public Utilities

Aloha Chair Fukunaga, Vice Chair Baker and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports HB 254, HD1- Relating to Public Utilities. We believe that this measure will promote competition in the telecommunications marketplace which will benefit Hawaii's economy and our consumers.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Over the past several years, we have all been able to observe first hand the explosion of new products and services in the communications marketplace. Consumers now have the freedom to choose between numerous wireline, wireless, or VoIP providers for their phone service needs. Competition has driven down the price of phone service, increased innovation, and improved customer service.

The Chamber believes that the time has come to update Hawaii's regulatory framework by removing unnecessary regulatory barriers in telecommunications and allowing true competition to take hold. In a true open and competitive environment, the marketplace will determine the winners and losers with the major winner being Hawaii's consumers.

For these reasons, the Chamber of Commerce of Hawaii respectfully requests that the Committee approves HB 254, HD1. Thank you for the opportunity to provide testimony.