LATE TESTIMONY

SB 603, SD1

RELATING TO PUBLIC UTILITIES

JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL

HAWAIIAN TELCOM

March 18, 2009

Chair Herkes and members of the House Consumer Protection and Commerce Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on SB 603, SD1-Relating to Public Utilities. Hawaiian Telcom strongly supports the bill and would like to offer clarifying amendments for your consideration.

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 classify the State's local exchange intrastate telecommunications services as fully competitive.

As we have all witnessed, dramatic changes in technology and the telecommunications industry have resulted in significant competition for 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.

Hawaiian Telcom is currently subject to many State 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.

Immediate regulatory relief is needed now and will help to provide Hawaiian Telcom a degree of regulatory parity with our competitors by enabling us to offer consumers a more timely and greater selection of products, services, and bundled offerings at competitive prices in the same 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.

Based on the aforementioned, we would like to recommend that the current language related to price caps 269- (b) beginning on **page 5, line 6-9** be **deleted**. We offer the following amendment to 269- (a) (in bold) to clarify that a cap on basic residential rates shall be set at the filed tariff rate and only apply to the incumbent local exchange carrier (Hawaiian Telcom) for your consideration and approval:

"**§269- Local exchange intrastate services; fully competitive.** (a) 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 fully competitive under the commission's classifications of services related to costs, rates, and pricing. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; **provided that with respect to basic residential service the local incumbent exchange carrier, except upon obtaining commission approval, shall not charge any rate for a service above the rate for the service included in the local incumbent exchange carrier's filed tariff.** All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.

[c](b) This section shall apply to retail rates charged for service to end-user consumers only and shall not apply to wholesale rates charged for services 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.

[d](c) 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."

Hawaiian Telcom supports this measure with the suggested amendments and respectfully requests your favorable consideration. Thank you for the opportunity to testify.

LATE TESTIMONY

TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
MARCH 18, 2009

MEASURE: S.B. No. 603 S.D. 1
TITLE: Relating to Public Utilities.

Chair Herkes and Members of the Committee:

DESCRIPTION:

This bill proposes to add a new section to chapter 269, Hawaii Revised Statutes ("HRS"), that would require the Public Utilities Commission ("Commission") to: 1) classify the state's local intrastate telecommunications services as fully competitive; 2) require telecommunications carriers to submit "informational only" filings for rates, fares, charges, and bundled service offerings; and 3) cap retail telecommunication service rates at June 30, 2009 levels.

POSITION:

The Commission opposes the proposed amendment to chapter 269, HRS, contained in this bill, and offers the following comments for consideration.

COMMENTS:

- 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 any other factors deemed relevant by the Commission in determining whether and to what extent competition exists.

- The Commission would seriously caution against the blanket declaration that the State's local exchange intrastate telecommunications services are fully competitive with respect to all retail rates, fares, charges, and bundled service offerings. This provision would apply across the board to all telecommunications service providers including landline, wireless, and voice over internet protocol ("VoIP") providers. As mentioned in the paragraph above, there are many factors involved in determining the level of competitiveness within the industry and a blanket declaration that the market is fully competitive could have dire unintended consequences for the ratepayer as well as the service providers.

- The Commission would also seriously caution against this bill's proposed rate cap imposed on all telecommunications providers' charges for any retail telecommunications services. This cap would limit the charge for any retail provider at its rate charged for the same service as of June 30, 2009.

- Numerous factors may be taken into consideration when a provider establishes any particular rate for any particular retail service provided, including, but not limited to cost of providing the service, rate of return on its investment, competition, etc. Again, this proposed amendment to chapter 269, HRS, is fraught with unintended consequences that could dampen competition in the industry and increase rates for ratepayers.

- For these reasons, the Commission opposes this bill.

Thank you for the opportunity to testify.

at&t

Dan Youmans
Director
External Affairs

AT&T Services, Inc.
P.O. Box 97061
RTC1
Redmond, WA 98073-9761

T: 425-580-1833
F: 425-580-8652
daniel.youmans@att.com
www.att.com

LATE TESTIMONY

March 18, 2009

The Honorable Rep. Robert Herkes
Chair, Committee on Commerce and Consumer Protection
Hawaii House of Representatives

RE: Clarifying amendments to Senate Bill 603 S.D.1

Dear Rep. Herkes and Members of the Committee:

AT&T takes a neutral position on Senate Bill 603 S.D. 1, however, we are requesting a clarifying amendment in sub-paragraph (c) to ensure that the price cap would not apply to services in which pricing is not regulated by the Public Utility Commission. We believe this is the intent of the existing bill language, but it is not clear in the way it is written.

AT&T requests the paragraph to be rewritten as follows, which the changes underlined:

(c) This section shall apply to retail rates charged for service to end-user consumers only and shall not apply to <u>(i)</u> wholesale rates charged for services provided by a telecommunications carrier to another telecommunications provider, **<u>(ii) rates charged by</u>** a wireless communications provider, **<u>(iii) rates charged by</u>** a voice over internet protocol communications provider, or **<u>(iv) rates charged by</u>** other similar communications providers <u>for services not subject to the jurisdiction of the public utilities commission</u>.

This change will ensure that the price cap in this legislation is properly applied. Thank you for considering this important change to the Senate Bill 603 S.D. 1.

Respectfully Submitted,

Dan Youmans
AT&T

LATE TESTIMONY

tw telecom

March 18, 2009

The Honorable Robert N. Herkes, Chair
The Honorable Glen Wakai, Vice Chair
House Committee on Consumer Protection & Commerce

Re: SB 603, SD 1, Relating to Public Utilities - Oppose
CPC Committee, Wednesday, March 18, 2009, 3:00 pm – Room 325

Aloha Chair Herkes, Vice Chair Wakai 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 would require the Public Utilities Commission ("PUC") to treat land line telephone services as "fully competitive" with regard to costs, rates and pricing, to require filing of rates for informational purposes only, and to statutorily cap retail telecommunications rates at June 30, 2009, levels. 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.

3. Retail Price Caps. TWTC also strongly objects to the price caps contained in the bill, which would apply to all telecommunications carriers and all services. When price caps are utilized, it is generally to protect "captive" ratepayers, generally residential customers in hard to serve areas, from having their rates increased to subsidize the rates of competitive services. TWTC and other competitive carriers do not have any such "captive" ratepayers. If costs increase, competitive carriers should be permitted to increase their rates, subject to market pressures.

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

tw telecom
(AZ, CA, CO, HI, ID, NM, OR, UT, WA)
Office: 760-832-6275
Email: Lyndall.Nipps@twtelecom.com