

JAN 28 2009

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# A BILL FOR AN ACT

RELATING TO REGULATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that dramatic changes in  
2 technology and the telecommunications industry in the State of  
3 Hawaii have resulted in significant competition to the services  
4 provided by the State's incumbent local exchange carrier,  
5 including its landline telephone services. For example,  
6 wireless services, wireline services offered by competitive  
7 carriers and voice-over internet protocol, and other internet  
8 protocol-based services all provide effective alternatives to  
9 traditional landline telephone service. This availability of  
10 other electronic communications and information services by  
11 other providers have resulted in effective competition  
12 throughout the State and has lessened the scope and type of  
13 regulatory oversight and requirements that may be appropriate  
14 over the incumbent local exchange carrier.

15           The legislature recognizes that consumers benefit from  
16 competition in the marketplace in the form of increased  
17 innovation, faster introduction, and greater selection of new



1 products and services. Competing businesses will also seek to  
2 attract and retain customers by improving customer service,  
3 increasing quality, and encouraging innovative methods of  
4 production. Hawaii's extremely competitive voice service market  
5 provides consumers with the freedom to choose between a  
6 multitude of wireless, internet phone, and competing wireline  
7 providers at competitive prices.

8       The legislature finds that the existing regulatory  
9 framework must be updated or reformed to reflect that the  
10 State's incumbent local exchange carrier is no longer a monopoly  
11 and to provide regulatory parity with its competitors in the  
12 marketplace. Regulatory parity is only achievable if the  
13 incumbent local exchange carrier is allowed to compete on a more  
14 level regulatory playing field with its competitors, which are  
15 either unregulated or do not face the same level of regulatory  
16 oversight. The legislature also finds that many other states  
17 have recognized the existence of these competitive pressures and  
18 have appropriately granted incumbent local exchange carriers  
19 wide discretion and flexibility in setting their rates.

20       The purpose of this Act is to update chapter 269, Hawaii  
21 Revised Statutes, by providing the incumbent local exchange  
22 carrier with a more level playing field and regulatory parity



1 with its various competitors in this ever-evolving industry by  
2 allowing the carrier to modify its rates and offer new products  
3 and services immediately. The public utilities commission shall  
4 still retain the authority to oversee service quality standards  
5 for basic telecommunications services, carrier of last resort  
6 obligations, as well as other existing consumer safeguards.

7 SECTION 2. Section 269-16, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§269-16 Regulation of utility rates; ratemaking**  
10 **procedures.** (a) All rates, fares, charges, classifications,  
11 schedules, rules, and practices made, charged, or observed by  
12 any public utility or by two or more public utilities jointly  
13 shall be just and reasonable and shall be filed with the public  
14 utilities commission. The rates, fares, classifications,  
15 charges, and rules of every public utility shall be published by  
16 the public utility in [~~sueh~~] the manner as the public utilities  
17 commission may require, and copies shall be furnished to any  
18 person on request.

19 To the extent the contested case proceedings referred to in  
20 chapter 91 are required in any rate proceeding to ensure  
21 fairness and to provide due process to parties that may be  
22 affected by rates approved by the commission, the evidentiary



1 hearings shall be conducted expeditiously and shall be conducted  
2 as a part of the ratemaking proceeding.

3 (b) No rate, fare, charge, classification, schedule, rule,  
4 or practice, other than one established pursuant to an automatic  
5 rate adjustment clause previously approved by the commission,  
6 shall be established, abandoned, modified, or departed from by  
7 any public utility, except after thirty days' notice to the  
8 commission as prescribed in section 269-12(b), and prior  
9 approval by the commission for any increases in rates, fares, or  
10 charges. The commission, in its discretion and for good cause  
11 shown, may allow any rate, fare, charge, classification,  
12 schedule, rule, or practice to be established, abandoned,  
13 modified, or departed from upon notice less than that provided  
14 for in section 269-12(b). A contested case hearing shall be  
15 held in connection with any increase in rates, and the hearing  
16 shall be preceded by a public hearing as prescribed in section  
17 269-12(c), at which the consumers or patrons of the public  
18 utility may present testimony to the commission concerning the  
19 increase. The commission, upon notice to the public utility,  
20 may:

21 (1) Suspend the operation of all or any part of the  
22 proposed rate, fare, charge, classification, schedule,



- 1 rule, or practice or any proposed abandonment or  
2 modification thereof or departure therefrom;
- 3 (2) After a hearing, by order:
- 4 (A) Regulate, fix, and change all [~~sueh~~] rates,  
5 fares, charges, classifications, schedules,  
6 rules, and practices so that the same shall be  
7 just and reasonable;
- 8 (B) Prohibit rebates and unreasonable discrimination  
9 between localities or between users or consumers  
10 under substantially similar conditions;
- 11 (C) Regulate the manner in which the property of  
12 every public utility is operated with reference  
13 to the safety and accommodation of the public;
- 14 (D) Prescribe its form and method of keeping  
15 accounts, books, and records, and its accounting  
16 system;
- 17 (E) Regulate the return upon its public utility  
18 property;
- 19 (F) Regulate the incurring of indebtedness relating  
20 to its public utility business; and
- 21 (G) Regulate its financial transactions; and



1           (3) Do all things that are necessary and in the exercise  
2           of the commission's power and jurisdiction, all of  
3           which as so ordered, regulated, fixed, and changed are  
4           just and reasonable, and provide a fair return on the  
5           property of the utility actually used or useful for  
6           public utility purposes.

7           (c) The commission may in its discretion, after public  
8           hearing and upon showing by a public utility of probable  
9           entitlement and financial need, authorize temporary increases in  
10          rates, fares, and charges; provided that the commission shall  
11          require by order the public utility to return, in the form of an  
12          adjustment to rates, fares, or charges to be billed in the  
13          future, any amounts with interest, at a rate equal to the rate  
14          of return on the public utility's rate base found to be  
15          reasonable by the commission, received by reason of continued  
16          operation that are in excess of the rates, fares, or charges  
17          finally determined to be just and reasonable by the commission.  
18          Interest on any excess shall commence as of the date that any  
19          rate, fare, or charge goes into effect that results in the  
20          excess and shall continue to accrue on the balance of the excess  
21          until returned.



1 (d) The commission shall make every effort to complete its  
2 deliberations and issue its decision as expeditiously as  
3 possible and before nine months from the date the public utility  
4 filed its completed application; provided that in carrying out  
5 this mandate, the commission shall require all parties to a  
6 proceeding to comply strictly with procedural time schedules  
7 that it establishes. If a decision is rendered after the nine-  
8 month period, the commission shall report in writing the reasons  
9 therefor to the legislature within thirty days after rendering  
10 the decision.

11 Notwithstanding subsection (c), if the commission has not  
12 issued its final decision on a public utility's rate application  
13 within the nine-month period stated in this section, the  
14 commission, within one month after the expiration of the nine-  
15 month period, shall render an interim decision allowing the  
16 increase in rates, fares and charges, if any, to which the  
17 commission, based on the evidentiary record before it, believes  
18 the public utility is probably entitled. The commission may  
19 postpone its interim rate decision for thirty days if the  
20 commission considers the evidentiary hearings incomplete. In  
21 the event interim rates are made effective, the commission shall  
22 require by order the public utility to return, in the form of an



1 adjustment to rates, fares, or charges to be billed in the  
2 future, any amounts with interest, at a rate equal to the rate  
3 of return on the public utility's rate base found to be  
4 reasonable by the commission, received under the interim rates  
5 that are in excess of the rates, fares, or charges finally  
6 determined to be just and reasonable by the commission.  
7 Interest on any excess shall commence as of the date that any  
8 rate, fare, or charge goes into effect that results in the  
9 excess and shall continue to accrue on the balance of the excess  
10 until returned.

11 The nine-month period in this subsection shall begin only  
12 after a completed application has been filed with the commission  
13 and a copy served on the consumer advocate. The commission  
14 shall establish standards concerning the data required to be set  
15 forth in the application in order for it to be deemed a  
16 completed application. The consumer advocate may, within  
17 twenty-one days after receipt, object to the sufficiency of any  
18 application, and the commission shall hear and determine any  
19 objection within twenty-one days after it is filed. If the  
20 commission finds that the objections are without merit, the  
21 application shall be deemed to have been completed upon original  
22 filing. If the commission finds the application to be





1 incomplete, it shall require the applicant to submit an amended  
2 application consistent with its findings, and the nine-month  
3 period shall not commence until the amended application is  
4 filed.

5 (e) In any case of two or more organizations, trades, or  
6 businesses (whether or not incorporated, whether or not  
7 organized in the State of Hawaii, and whether or not affiliated)  
8 owned or controlled directly or indirectly by the same  
9 interests, the commission may distribute, apportion, or allocate  
10 gross income, deductions, credits, or allowances between or  
11 among the organizations, trades, or businesses, if it determines  
12 that the distribution, apportionment, or allocation is necessary  
13 to adequately reflect the income of any [~~such~~] of the  
14 organizations, trades, or businesses to carry out the regulatory  
15 duties imposed by this section.

16 (f) Notwithstanding any law to the contrary, for public  
17 utilities having annual gross revenues of less than \$2,000,000,  
18 the commission may make and amend its rules and procedures to  
19 provide the commission with sufficient facts necessary to  
20 determine the reasonableness of the proposed rates without  
21 unduly burdening the utility company and its customers. In the



1 determination of the reasonableness of the proposed rates, the  
2 commission shall:

3 (1) Require the filing of a standard form application to  
4 be developed by the commission. The standard form  
5 application for general rate increases shall describe  
6 the specific facts that shall be submitted to support  
7 a determination of the reasonableness of the proposed  
8 rates, and require the submission of financial  
9 information in conformance with a standard chart of  
10 accounts to be approved by the commission, and other  
11 commission guidelines to allow expeditious review of a  
12 requested general rate increase application;

13 (2) Hold a public hearing as prescribed in section  
14 269-12(c) at which the consumers or patrons of the  
15 public utility may present testimony to the commission  
16 concerning the increase. The public hearing shall be  
17 preceded by proper notice, as prescribed in section  
18 269-12; and

19 (3) Make every effort to complete its deliberations and  
20 issue a proposed decision and order within six months  
21 from the date the public utility files a completed  
22 application with the commission; provided that all



1 parties to the proceeding strictly comply with the  
2 procedural schedule established by the commission and  
3 no person is permitted to intervene. If a proposed  
4 decision and order is rendered after the six-month  
5 period, the commission shall report in writing the  
6 reasons therefor to the legislature within thirty days  
7 after rendering the proposed decision and order.  
8 Prior to the issuance of the commission's proposed  
9 decision and order, the parties shall not be entitled  
10 to a contested case hearing.

11 If all parties to the proceeding accept the  
12 proposed decision and order, the parties shall not be  
13 entitled to a contested case hearing, and section  
14 269-15.5 shall not apply. If the commission permits a  
15 person to intervene, the six-month period shall not  
16 apply and the commission shall make every effort to  
17 complete its deliberations and issue its decision  
18 within the nine-month period from the date the public  
19 utility's completed application was filed, pursuant to  
20 subsections (b), (c), and (d).

21 If a party does not accept the proposed decision  
22 and order, either in whole or in part, that party



1           shall give notice of its objection or nonacceptance  
2           within the timeframe prescribed by the commission in  
3           the proposed decision and order, setting forth the  
4           basis for its objection or nonacceptance; provided  
5           that the proposed decision and order shall have no  
6           force or effect pending the commission's final  
7           decision. If notice is filed, the above six-month  
8           period shall not apply and the commission shall make  
9           every effort to complete its deliberations and issue  
10          its decision within the nine-month period from the  
11          date the public utility's completed application was  
12          filed as set forth in subsection (d). Any party that  
13          does not accept the proposed decision and order under  
14          this paragraph shall be entitled to a contested case  
15          hearing; provided that the parties to the proceeding  
16          may waive the contested case hearing.

17          Public utilities subject to this subsection shall follow  
18          the standard chart of accounts to be approved by the commission  
19          for financial reporting purposes. The public utilities shall  
20          file a certified copy of the annual financial statements in  
21          addition to an updated chart of accounts used to maintain their  
22          financial records with the commission and consumer advocate



1 within ninety days from the end of each calendar or fiscal year,  
2 as applicable, unless this timeframe is extended by the  
3 commission. The owner, officer, general partner, or authorized  
4 agent of the utility shall certify that the reports were  
5 prepared in accordance with the standard chart of accounts.

6 (g) Any automatic fuel rate adjustment clause requested by  
7 a public utility in an application filed with the commission  
8 shall be designed, as determined in the commission's discretion,  
9 to:

- 10 (1) Fairly share the risk of fuel cost changes between the  
11 public utility and its customers;
- 12 (2) Provide the public utility with sufficient incentive  
13 to reasonably manage or lower its fuel costs and  
14 encourage greater use of renewable energy;
- 15 (3) Allow the public utility to mitigate the risk of  
16 sudden or frequent fuel cost changes that cannot  
17 otherwise reasonably be mitigated through other  
18 commercially available means, such as through fuel  
19 hedging contracts;
- 20 (4) Preserve, to the extent reasonably possible, the  
21 public utility's financial integrity; and



1 (5) Minimize, to the extent reasonably possible, the  
 2 public utility's need to apply for frequent  
 3 applications for general rate increases to account for  
 4 the changes to its fuel costs.

5 (h) Notwithstanding any law to the contrary, none of the  
 6 provisions of this chapter shall apply to the rates, fares, and  
 7 charges of the incumbent local exchange carrier, and the  
 8 incumbent local exchange carrier shall not be required to obtain  
 9 approval or provide any cost support or other information to  
 10 establish or otherwise modify in any manner its rates, fares,  
 11 and charges and shall not be required to bundle any service  
 12 offerings into a single or combined pricing package.

13 Notwithstanding the above, all rates, fares, charges, and  
 14 bundled service offerings shall be filed with the commission for  
 15 informational purposes only and become effective immediately  
 16 upon filing."

17 SECTION 3. Statutory material to be repealed is bracketed  
 18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.  
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**Report Title:**

Telecommunication Regulations; Local Exchange Carrier;  
Deregulation

**Description:**

Exempts the incumbent local exchange carrier from the provisions of chapter 269, HRS, relating to rates, fares, and charges and requires rate filings with the PUC for information purposes only.

