

HB 1868, HD 1

EDT



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KEALI'I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND
TECHNOLOGY

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

FRIDAY, MARCH 16, 2012
1:30 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE CAROL FUKUNAGA, CHAIR, AND MEMBERS OF
THE COMMITTEE

HOUSE BILL NO. 1868, H.D. 1 - RELATING TO TELECOMMUNICATIONS

DESCRIPTION:

This measure proposes to exclude all services except for basic exchange services from the requirement to obtain Public Utility Commission ("PUC" or "Commission") approval prior to charging a rate higher than the filed tariff rate.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") opposes this proposed measure.

COMMENTS:

This measure proposes to amend Section 269-16.85, Hawaii Revised Statutes, by removing the requirement to obtain Commission approval prior to charging a higher than the filed tariff rate for any retail telecommunications service except for the basic exchange service.

The Consumer Advocate acknowledges that the intent of the measure may have been to seek consistency with the treatment of intrastate telecommunications services, relating to costs, rates and pricing, as fully competitive. The Consumer Advocate notes, however, that allowing a telecommunications carrier the opportunity to charge higher rates than what is provided for in the carrier's filed tariff goes against public and regulatory policy for transparency and notice. In addition, there would be no opportunity for the Consumer Advocate to review whether the carriers' intent to raise rates for ancillary services may be for the sole purpose of subsidizing lower rates for basic exchange services, basically a potential end run around the Commission's review process. Thus, the requisite review and Commission approval necessary for raising rates for basic exchange services could be rendered moot.

Thank you for this opportunity to testify.

TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TECHNOLOGY

MARCH 16, 2012

MEASURE: H.B. No. 1868, H.D. 1

TITLE: Relating to Telecommunications

Chair Fukunaga and Members of the Committee:

DESCRIPTION:

This measure proposes to make “basic exchange services” the only type of retail telecommunications services for which a telecommunications carrier would need to get Commission approval prior to charging a higher rate than the rate filed in the carrier’s tariff for that service.

POSITION:

The Commission has no objection to this measure and would like to offer the following comments for the Committee’s consideration.

COMMENTS:

H.B. No. 2524, H.D. 2, relating to the regulation of telecommunications and cable television services, contains a similar provision, but without the set of definitions found in this bill. The Commission recommends the inclusion of clarifying definitions in the vehicle the Committee decides to move forward with to address this issue.

Thank you for the opportunity to testify on this measure.

HB 1868 HD1

RELATING TO TELECOMMUNICATIONS

**JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL**

HAWAIIAN TELCOM

March 16, 2012

Chair Fukunaga and members of the Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on HB 1868 HD1, Relating to Telecommunications. Hawaiian Telcom strongly supports this measure.

The purpose of this bill is to continue the State's effort to level the regulatory playing field in retail telecommunications services and ensure that Hawaii's telecommunications marketplace remains vibrant and strong. This bill recognizes the competitive telecommunications marketplace in Hawaii and makes clear that as part of engaging in the marketplace every telecommunications carrier needs the flexibility to revise its rates as the marketplace demands.

Specifically, under the bill any telecommunications carrier may adjust a rate for any retail telecommunications service, other than basic exchange service, that is higher than the current filed tariff rate for that service without needing approval from the Public Utilities Commission (PUC); conversely, the bill retains the current requirement for PUC approval for any increase in rates to basic exchange service (e.g. single line residence and business service, which consists of plain old telephone service, and access to such services as 911 and operator services).

Passage of this measure will help to create a marketplace in which all carriers can compete equally. It allows Hawaiian Telcom a similar degree of pricing flexibility for non-basic exchange services (e.g. three-way calling, answering service, speed dialing, vacation service, and business services such as Centrex, private line and data services) afforded other telecommunication services including wireless, cable and Voice over Internet Protocol ("VoIP"), which are either unregulated or are not subject to the same degree of regulations as landlines.

Dramatic technological changes within the telecommunications industry have resulted in significant competition for Hawaiian Telcom. Today, local consumers can choose telecommunication services from wireless, cable and VoIP alternatives to the traditional landline. As a result of this intense competition, the number of our landline customers has declined dramatically. The reality is that this trend is certain to continue.

Hawaiian Telcom is currently subject to many antiquated state laws and requirements. Some of our laws date back to the early 1900s to an era when the incumbent local exchange carrier was a monopoly and the landline was the only means for a consumer to communicate. Until recently, existing state laws and requirements have not changed to reflect the fact that Hawaiian Telcom is no longer a monopoly and is now subject to significant competition. This competitive reality necessitates the need to continually assess the regulatory requirements that have historically attached solely to Hawaiian Telcom to allow Hawaiian Telcom the opportunity to compete on an equal footing with our competitors.

Promoting fair competition with consistent regulatory treatment of all competitors is the best way to ensure consumers receive quality service at fair prices. Hawaii's outdated rate-of-return regulations are no longer relevant in today's competitive landscape and should be changed. Telecommunication rates are extremely price sensitive and we understand this fact. As an example, Hawaiian Telcom's last rate case was filed with the PUC over fourteen years ago and our rates have not increased since that time. Present circumstances, however, dictate that some non-basic services may need to be better aligned to reflect fixed costs being spread over a shrinking customer base.

In summary, the regulatory requirements that are the subject of this bill unjustly apply to Hawaiian Telcom and do not apply to our wireless, cable, or VoIP competitors and out of fairness must be changed. Our company supports this effort to provide the incumbent local exchange carrier with a more level regulatory playing field which will in turn help our company to provide consumers with what they demand: more innovation, quality service, and greater selection of new products and offerings.

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

Lyndall W. Nipps
Vice President, Regulatory-Western Region



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Honorable Carol Fukunaga, Chair
Senate Committee on Economic Development and Technology

RE: HB 1868 HD1 - **Relating to Telecommunications**
March 16, 2012; Hawaii State Capitol Room 016 – 1:30 PM

Aloha Chair Fukunaga, Vice Chair Wakai and Members of the Committee:

I am Lyndall Nipps, Vice President of Regulatory Affairs for **tw telecom of hawaii lp** ("TWTC"), which has operated in Hawaii since 1994, providing voice, Internet and data networking, and managing nearly 25,000 access lines to state and local governments, military, and businesses in the State. Thank you for the opportunity to present testimony on HB 1868 HD1.

Our concerns are the following:

1. Hawaii's enterprise business market differs greatly the residential market. While many providers exist on equal footing in delivering residential retail communications services, that same fair competition does not yet exist in the business market. Today, competition in the enterprise business market is insufficient and regulation is still required to assure that businesses can acquire alternative telecommunications services from smaller, innovative telecommunications carriers. Regardless of the underlying technology at use, the Public Utilities Commission ("PUC") should retain the ability to address anticompetitive behaviors, including predatory or discriminatory pricing, and to resolve disputes between carriers, e.g. interconnection arrangements and dispute resolution.
2. As was raised by the Consumer Advocate "allowing a telecommunications carrier the opportunity to charge higher rates than what is provided for in the carrier's filed tariff goes against public and regulatory policy for transparency and notice. In addition, there would be no opportunity for the Consumer Advocate to review whether the carriers' intent to raise rates for ancillary services may be for the sole purpose of subsidizing lower rates for basic exchange services, basically a potential end run around the Commission's review process. Thus, the requisite review and PUC approval necessary for raising rates for basic exchange services could be rendered moot."

TWTC shares the Consumer Advocate's concerns that the amendments proposed in HB 1868 HD1 are much more significant than they appear at first glance. As a starting point, Section 269-16.85 requires the PUC to treat retail telecommunications services, under the PUC's telecommunications rules, as fully competitive, and apply all its rules in accordance with that designation. Those rules require that all fully competitive services be "offered on prices, terms and conditions reflected in a tariff filed with the PUC." For fully competitive services, prior PUC approval is not required to change rates, but rates must be as stated in the tariff.

TWTC believes the requirement that pricing be in accordance with a tariff is very important. It allows the PUC, Consumer Advocate and interested parties to know what a carrier is charging for its services. This is important in order to prevent discriminatory pricing and cross-subsidization.

The requirement that a carrier file and tariff and comply with the tariff is separate from the issue of whether or not a carrier is required to obtain PUC approval to change its tariff (and therefore its rates). The existing language at the end of Section 269-16.85 is somewhat confusing, since it refers to obtaining PUC approval to charge "a higher rate than the rate in the tariff." Generally, a carrier should never charge a higher rate than what is in its tariff. TWTC understood that the original intent of this language was to require PUC approval to increase rates for retail services.

To allow a carrier to charge a rate higher than what is in its tariff is inconsistent with the first sentence of Section 269-16.85, which requires the PUC to apply its rules in accordance with the "fully competitive" designation. It is also poor policy.

For these reasons, we respectfully request the following amendments:

"(a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat residential retail intrastate telecommunications services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. 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 for residential retail services, or to bundle any such service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not ~~[charge a higher]~~ increase a rate for any residential retail telecommunications basic exchange service ~~[than the rate for the same service included in the telecommunications carrier's filed tariff]~~. All residential retail rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only."

Thank you for the opportunity to offer our comments and proposed amendments to this legislation.

Sincerely,
/s/
Lyndall Nipps
Vice President, Regulatory Affairs-Western Region
tw telecom of hawaii lp
Email: Lyndall.Nipps@twtelecom.com