

LATE TESTIMONY

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TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

TUESDAY, JANUARY 31, 2012
9:00 A.M.

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

SENATE BILL NO. 2438 - RELATING TO THE PUBLIC UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to amend Section 269, Hawaii Revised Statutes ("HRS"), to add the requirement that parties in proceedings before the Public Utilities Commission, or the "Commission", must prepare an economic impact analysis and that the Commission must include an economic impact analysis in its decision and orders.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") opposes this measure as currently written.

COMMENTS:

This measure seeks to establish the requirement that in any filing before the Commission that is for a project, rate change, or has a "fiscal, rate fare, charge, or

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schedule impact," an economic impact analysis must be provided. It would also allow the following:

- Any party with an interest in the proceeding, to submit an economic impact analysis as part of a statement in opposition;
- At any time prior to the final determination by the Commission, a revised economic impact analysis or rebuttal of an economic impact analysis by another party with a reply statement of position; and
- Alternative proposals or economic impact analyses even after a deadline has passed upon a showing of good cause.

In its decision and order on the subject matter, the Commission would have to include a final economic impact analysis and summary of how the analysis was factored in the decision and order, as compared to other factors. The measure also offers examples of what would qualify as an economic impact analysis.

While the Consumer Advocate appreciates the intent of this bill, there may be unintended consequences if this measure is adopted that may be contrary to public policy and the public interest.

For example, based on the language in § 269-A (a), HRS, an economic impact analysis may be required for virtually every application and tariff that is filed with the Commission since most applications and tariffs would involve a project (e.g., capital improvement projects, software projects, etc.), rate change (e.g., tariff transmittals, general rate increases, etc.), or other proposals with fiscal, rate fare, charge of schedule impact, which would capture most other applications. While the Consumer Advocate already performs an economic impact analysis in most of the proceedings, a statutory requirement for an economic impact analysis in most dockets may delay the procedural schedule. Other sections in the proposed legislation would also extend the time necessary to complete the proceeding. For instance, if a revised economic impact analysis is allowed at any time prior to the Commission's final determination, that should automatically trigger an extension of the procedural schedule to allow other parties an opportunity to review and analyze the reasonableness of the revisions. If additional time were not allowed, the other parties' rights to due process may be adversely affected.

Furthermore, while the Consumer Advocate already conducts economic analyses, those economic analyses are generally designed to be appropriate to the

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filing. For instance, the amount of detail and analysis may be greater for more expensive and/or controversial projects, but reduced for smaller-scaled projects. It is unclear whether such flexibility would be allowed under the proposed legislation.

The Consumer Advocate notes that §269-B, HRS, offers the requirements of the economic impact analysis that must be submitted and conducted by the Commission. It should be noted that the proposed inclusion of consideration of indirect benefits, losses, or harms related to the proposal would likely add to both the time and resources required to consider such an analysis. Efforts to identify and quantify indirect benefits, losses, and harms have been attempted before and such efforts were time-consuming, contentious, and generally unproductive. Depending on the interest being advocated, each party will have its own definition of and means of quantifying indirect benefits, losses or harms.

Finally, it should be noted that requiring the Commission to specifically set forth an economic impact analysis and how it factored the results of that analysis in the final decision and order might otherwise lead to decisions that are dictated solely by economic analysis and not allow the consideration of public policy. If detailed, time-consuming, and/or costly economic impact analyses were conducted in a proceeding, there may already be a pre-disposition to rely on those analyses to support a decision rather allowing a full consideration of all factors, including those that may not be supported by economic impact analyses, especially if there is likelihood that an appeal may be filed that would require the record to support the reasonableness of any Commission decision.

Therefore, while the Consumer Advocate appreciates the general intent of the bill, to some large degree, this bill would formally recognize that which is already done. Following a hearing last week on a similar House Bill, HB No. 1881, before the House Committee on Consumer Protection and Commerce, the Consumer Advocate opened talks with the Department of Business, Economic Development and Tourism ("DBEDT") on proposed amendments to address its concerns.

Thank you for this opportunity to testify.

SB 2438
RELATING TO THE PUBLIC UTILITIES COMMISSION

KEN HIRAKI
VICE PRESIDENT-GOVERNMENT AFFAIRS
HAWAIIAN TELCOM
January 31, 2012

Chair Baker and members of the Senate Commerce and Consumer Protection Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 2438, Relating to The Public Utilities Commission. SB 2438 is the companion bill to HB 1881 that was heard last week and held in committee. Hawaiian Telcom does not support this measure and respectfully requests an exemption.

The purpose of this bill is to require that an economic impact analysis be submitted with any application to the Public Utilities Commission (PUC) that may have a fiscal, rate, fare, charge, or schedule impact. Passage of this measure will add an unnecessary, costly and time consuming regulatory requirement to an industry in which all retail services have already been declared fully competitive. The requirement for an economic impact analysis is completely at odds with the concept of a competitive market and will serve to only reinforce the perception that Hawaii has a negative regulatory environment.

Under Chapter 269, Hawaii Revised Statutes, Hawaiian Telcom and other Local Exchange Carriers are already required to comply with numerous PUC requirements that do not apply to our competitors; wireless and cable and other operators that provide Voice over Internet Protocol (VoIP). Creating an additional regulatory requirement that applies to Local Exchange Carriers but not to these competitors is a step backward from the progress recently made in leveling the playing field in Hawaii's telecommunications industry.

Hawaiian Telcom appreciates the efforts of the 2009 Legislature when it took a bold step toward modernizing outdated state telecommunications laws by declaring local exchange telecommunications services fully competitive. If it is the desire of this committee to pass this measure, Hawaiian Telcom respectfully requests that telecommunications providers be exempt from this bill. Such an exemption will support and build upon the Legislature's previous efforts to help bring regulatory parity and fairer competition to the telecommunications marketplace.

Based on the aforementioned, Hawaiian Telcom requests an exemption from this measure for all telecommunications providers under the purview of the PUC, and respectfully requests your favorable consideration. Thank you for the opportunity to testify.