

# HB272 HD1

Measure Title: RELATING TO TELECOMMUNICATIONS.

Report Title: Telecommunications; Basic Exchange Service; PUC; Exemptions

Description: Exempts public telecommunications utilities that provide basic exchange service to every county of the State from the regulatory jurisdiction of the Public Utilities Commission, including provisions governing financial reporting, rate regulation, issuance of securitized assets, disposal of property, and affiliate interests. (HB272 HD1)

Companion: [SB991](#)

Package: None

Current Referral: CPH

Introducer(s): TAKUMI, ICHIYAMA

TESTIMONY OF  
JAMES P. GRIFFIN, Ph.D.  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII

TO THE  
SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

April 4, 2019  
9:30 a.m.

Chair Baker and Members of the Committee:

**MEASURE:** H.B. No. 272 HD1

**TITLE:** RELATING TO TELECOMMUNICATIONS.

**DESCRIPTION:** Exempts public telecommunications utilities that provide basic exchange service to every county of the State from the regulatory jurisdiction of the Public Utilities Commission, including provisions governing financial reporting, rate regulation, issuance of securitized assets, disposal of property, and affiliate interests. (HB272 HD1).

**POSITION:**

The Public Utilities Commission offers the following comments for consideration.

**COMMENTS:**

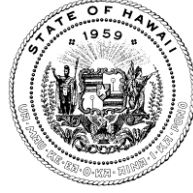
The Public Utilities Commission (“Commission”) does not oppose streamlining regulation of the telecommunications industry in Hawaii. In the past several decades, as the industry has become more competitive, regulation of businesses offering telecommunications services in Hawaii has been significantly reduced, through both legislative action and Commission orders. The Commission is supportive of policies enabling robust competition in the market while ensuring high quality customer service from telecommunications providers.

However, the Commission observes the proposed bill, as currently drafted, could have many unintended consequences, including creating uncertainty regarding the obligation of the incumbent telecommunication company to serve as the carrier of last resort for vulnerable customers, whether telecommunications companies would continue to be

eligible for federal grants and subsidies, the applicability and future effect of prior Commission orders.

The Commission previously worked with several key stakeholders on possible amendments to address these issues, and supports the amendments included in S.B. 991 SD1.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, April 4, 2019  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
H.B. 272, H.D. 1, RELATING TO TELECOMMUNICATIONS**

Chair Baker and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department has serious concerns with this bill and its potential adverse impacts on consumers, as well as both the wholesale and retail telecommunications markets. Thus, the Department opposes this bill.

The purpose of this bill is to exempt public telecommunications utilities that provide basic exchange service to every county of the State from the regulatory jurisdiction of the Public Utilities Commission (Commission), including provisions governing financial reporting, rate regulation, issuance of securitized assets, disposal of property, and affiliate interests. H.D. 1 has an effective date of July 1, 3000, and includes a provision that the bill shall be repealed on July 1, 2023, to address concerns that it might harm consumers.

Since the passage of Act 180, Session Laws of Hawaii 2009, codified in Hawaii Revised Statutes (HRS) section 269-16.85, retail intrastate telecommunications have been deemed fully competitive in Hawaii, and much of the Commission's regulation of retail telecommunication rates, fares, charges, and regulatory requirements have been lifted. Given the various retail alternatives available, the Department acknowledges fully competitive retail competition for telecommunications and supports a level playing field for all competitors.

Notwithstanding the inclusion of a defective effective date and a sunset date, if this measure passes as-is, the result goes much further than addressing concerns about a level playing field in the retail telecommunications market in Hawaii and could result in unintended and undesirable consequences. First, if passed, this measure would leave no regulatory oversight over areas such as wholesale competition, the carrier of last resort responsibilities that are required of incumbent local exchange carriers, and protection for consumers. To explain, while there may be fully competitive retail competition, the incumbent local exchange carriers in every state, including Hawaii, are responsible for providing significant infrastructure support to all telecommunications carriers. Pursuant to the Telecommunications Act of 1996 as well as existing Commission rules and orders, Hawaii's incumbent local exchange carriers are required to allow non-discriminatory and full access to that infrastructure at Federal Communications Commission (FCC) and/or Commission-regulated terms, conditions, and/or rates. If this measure passes, the Commission's and Department's ability to ensure this access will be eliminated or severely constrained since H.D. 1 proposes to eliminate all relevant sections of HRS chapter 269, as well as all rules and Commission orders related to the regulation of telecommunications services.

Second, while the FCC set forth a number of guidelines through the Telecommunications Act of 1996, it is through a number of Commission orders, such as those filed in Docket No. 7702, which investigated competition in Hawaii telecommunications market, that established specific terms and conditions as well as prices through which competitive local exchange carriers are able to provide service to consumers. Without Commission oversight and an invalidation of the relevant

Commission rules and orders, this could be a significant step backward in the fully competitive retail telecommunications market.

Third, through HRS chapter 269, the Hawaii Administrative Rules, and Commission orders, the Commission can ensure that a local incumbent local exchange carrier fulfills the responsibility of having a customer (such as customers in high-cost and/or rural areas as well as low-income and fixed-income customers) obtain affordable basic telecommunications services. While many residents can benefit from fully competitive retail competition, customers in rural areas who do not have mobile service coverage and/or customers who cannot afford mobile service are able to receive landline telecommunication services through Commission oversight. Along those lines, the Department is concerned that the carrier with carrier-of-last-resort responsibilities could raise its rates with no oversight to protect vulnerable customers. An even worse prospect is that a carrier of last resort under no regulatory oversight may decide not to provide service to vulnerable customers because it might not fit within the carrier's competitive strategy.

Fourth, if the proposed measure is passed, the State's ability to exercise oversight over transactions that might not be in Hawaii's best interest will be significantly reduced, if not eliminated. For example, the Commission can currently review a proposed merger or acquisition transaction to evaluate whether it is in the public interest. If this measure is passed, however, the Commission's ability to review this transaction is eliminated, and it would be impractical and unreasonable to expect that the newly merged or acquired company would agree to somehow annul or "unwind" the transaction after the transaction has already occurred. This type of oversight is important to ensure that mergers do not result in unreasonable concentration of market power in the State, which would be detrimental to consumers as well as other competitors. While the FCC and Department of Justice may look at such a transaction at a national level, the Commission is better positioned to understand the potential impact of those types of transactions at the local level.

Fifth, H.D. 1 has statutory inconsistencies that should not be allowed. Notably, section 1 proposes to exempt specified carriers from HRS section 269 (except HRS sections 269-7 and 269-16.9), whereas other sections of H.D. 1 propose modifications to other sections in HRS 269 that would essentially have no value because of the exemption in section 1.

Finally, if the Legislature is interested in moving this measure forward, the Department notes its preference for companion measure S.B. 991, S.D. 1 over H.B. 272, H.D. 1.

Thank you for the opportunity to testify on this bill.



**Testimony of Michael Bagley**  
**Director of Public Policy, Verizon**  
**Before the Senate Committee on Commerce, Consumer Protection, and Health**  
**State Capitol, Conference Room 229**  
**April 4, 2019**

To: Chair Baker, Vice-Chair Chang, & Members of the Committee  
Re: Testimony **in support** of HB 272 HD1- Relating to Telecommunications  
Hearing Date: April 4, 2019 9:30AM

Chair Baker, Vice-Chair Chang, & Members of the Committee:

I am providing testimony on behalf of Verizon in support of HB 272 HD1, legislation that seeks to modernize the state's statutory and regulatory framework. This legislation reflects the reality of current circumstances and allows basic local exchange service providers the opportunity to better serve their customers and provide more benefits to Hawaii. Multiple stakeholders, including regulating entities, had many discussions and settled on mutually agreeable amendments to HB 272 HD1, captured in SB 991 SD1 HD1. I ask you to consider changing the language of HB 272 HD1 to mirror that of SB 991 SD1 HD1.

The scope of SB 991 HD1 is limited to retail landline telephone service. It does not relate to wholesale services. SB 991 HD1 was developed in consultation with the Public Utilities Commission and the Consumer Advocate. All key stakeholders agree that telecommunications is a competitive market, and Hawaii benefits by creating an equal level playing field for all telecommunications providers.

Streamlining and reducing regulations in an increasingly competitive environment in which telecommunications businesses operate is a demonstration of good public policy – it is in the public's best interest.

SB 991 HD1 has the potential to reduce costs for both the consumer and the basic local exchange service provider. Basic local exchange providers today must maintain their legacy networks while attempting to invest in fiber optics in order to effectively compete. They do this while also being federally obligated to give their competition complete access to their infrastructure at cost, and while still being bound by outdated rules and regulations that their competition is free from.

Passing this bill will allow for resources to be directed towards investing in Hawaii's future. It will allow for the development of consumer-friendly upgrades and enhanced services rather than burdensome and unnecessary regulation that add costs and slow down delivery and quality of service in an environment where businesses must move quickly on behalf of their customers to stay competitive.

We strongly urge this Committee to pass this bill out, and adopt SB 991 HD1's language.



Written Statement of  
**Ani Menon**  
**Director of Government & Community Affairs**

**SENATE COMMITTEE ON COMMERCE,  
CONSUMER PROTECTION, AND HEALTH**

April 4, 2019 9:30 AM  
State Capitol, Conference Room 229

**IN SUPPORT OF:**

**H.B. NO. 272 HD1 RELATING TO TELECOMMUNICATIONS**

To: Chair Baker, Vice-Chair Chang, and Members of the Committee  
Re: **Testimony in support of HB 272 HD1**

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to submit testimony in strong support of House Bill 272 HD1. The intent of this bill is to improve Hawaii's regulatory structure around voice services, eliminate competitive advantages among carriers, and promote fair competition in an open market.

We ask that this Committee replace the language of HB 272 HD1 with the language of SB 991 SD1 HD1 – a bill that key stakeholders including the Consumer Advocate and Public Utilities Commission have closely scrutinized and come to an agreement on. We have also attached additional non-substantive, technical amendments that add clarity and consistency to SB 991 HD1 for your consideration. We hope that the current form of SB991 SD1 HD1, along with our additional technical amendments, will be adopted as HB 272 HD1 SD1.

This committee incorporated the mutually agreed upon amendments captured in SB 991 HD1 on February 27, 2019, noting that key stakeholders discussed and addressed the concerns raised by the original measure. We ask that you do the same for HB 272 HD1.

**Key stakeholders agree**

Senate Bill 991 HD1 is a bill that key stakeholders have agreed on. After multiple working sessions with the Public Utilities Commission, the Consumer Advocate, and other stakeholders, SB 991 HD1 captures the concerns addressed by our regulating entities and others while staying true to the original intent of SB 991. SB 991 HD1 retains the Public Utilities Commission's oversight over telecommunications carriers.

## **Scope of SB 991 HD1 is limited to retail landline telephone service**

The language of SB 991 HD1 modernizes regulation over basic local exchange service (“BLES”) – our residential and business single line telephone service. The narrow scope of this bill is limited to retail BLES. The proposed language of this bill **does not impact** cable TV, broadband, interconnectivity agreements, Hawaiian Telcom’s obligations regarding our wholesale services, access, and pricing governed by Hawaii statutory law and the Telecommunications Act of 1996, or any other state or federal law meant to provide oversight over the telecommunications industry. Furthermore, this bill **does not impact** VoIP (“Voice over Internet Protocol”) – a service offered by our largest competitor – because VoIP is not considered a basic local exchange service and thus is free from the rules and regulations governing BLES. This bill **does not impact** our obligations under both state and federal laws to provide access to the deaf, persons with hearing disabilities, and those with disabilities. Access to telecommunications services for this population are governed by H.R.S. §269-16.6 and the FCC’s Communications and Video Accessibility Act, both not within the scope of this bill.

SB 991 HD1 aims to put Hawaiian Telcom on an equal footing with other providers of voice services, like VoIP, by updating the telecommunications regulatory framework that has not kept pace with the rapidly changing and competitive telecommunications marketplace.

## **Consumer safeguards and Carrier of Last Resort remain intact**

Senate Bill 991 HD1 will continue to provide for a number of consumer safeguards:

- The Public Utilities Commission will retain its authority and oversight over telecommunications providers under H.R.S. §269
- Hawaiian Telcom will continue carrying the “obligation to serve” – often referred to as the Carrier of Last Resort (COLR) – established by H.R.S. §269-16.9, ensuring that communities in Hawaii have access to BLES
- Laws and rules regarding lifeline telephone rates, telecommunications relay service, access for the deaf, hearing impaired, and disabled, emergency telephone service, and rural deployment of telephone service remain untouched
- All rules, regulations, decisions, orders, and other regulatory provisions outside the narrow scope of this bill will continue to be applicable to telecommunications providers
- The Public Utilities Commission will continue to retain oversight over BLES pricing in areas where there may be less options for voice/telephone services
- Competitors will continue to have full access to Hawaiian Telcom’s facilities, including co-location in our central offices, use of poles and conduits, and discounts on retail services for resale – this bill does not impact wholesale services
- Consumers will continue to be provided with nondiscriminatory, reasonable, and equitable access to services by law – *see Section 5 on Page 6, Lines 11-17*
- The Universal Service Fee which funds the Connect America Funds that telecommunications providers (like Hawaiian Telcom, Charter Communications, etc.) can bid on to build out in rural communities in Hawaii remains untouched – as with any other fee, tax, or surcharge required by state or federal law

## **We face outdated regulatory requirements in a competitive market, unlike our competitors**

Hawaiian Telcom was established over 135 years ago as an independent landline company providing voice and telegraph service. We have diversified our offerings to meet customer demand in an evolving and competitive market, and now provide an array of offerings including broadband, cable TV, data center solutions, security consulting, IT services, and more. While we add new services and solutions to meet the growing demands of our customer base, we continue to maintain our residential and business single line phone service – our basic local exchange service (BLES) - as the incumbent local exchange provider. This is a requirement we take seriously, and maintain an obligation to serve Hawaii under H.R.S. §269-16.9.

We are a locally-managed company whose ability to invest in our networks, retain our workforce and meet our customers' needs depends greatly on Hawaii's regulatory structure. Currently, 100% of Hawaiian Telcom's market is in Hawaii. Our employees live here, our customers live here, and our networks are physically located statewide. We continue maintaining our traditional legacy network while simultaneously investing in fiber optic facilities and upgrades to our IP-based network despite a declining residential and business voice consumer base.

Currently, Hawaiian Telcom serves a little over 120,000 residential landlines in Hawaii. By contrast, in 2008, we served 291,512 residential landlines. We have lost over 60% of our residential landline customers in the last decade, and those losses are expected to continue as consumers exercise their choice in a competitive market and migrate to services provided by cable companies, VoIP service providers, and wireless carriers.

Consumers are increasingly placing a higher value on cellular, internet, and video services – areas dominated by our competitors. Yet, unlike our competitors, we are faced with regulatory requirements that impact our operational decisions. Our largest competitor is not faced with similar regulatory requirements around their voice service. This puts us at a distinct competitive disadvantage, especially because we are required by federal law to give our competitors full access to our infrastructure, poles, conduits, facilities, central offices, and more at rates fixed by our regulating entities (*see 47 U.S.C. §251*).

## **Lifting outdated regulations will allow us to continue investing meaningfully in Hawaii**

Hawaiian Telcom is committed to continuing to invest in Hawaii. We plan to expand our fiber footprint statewide by investing over \$20 million over the next four years. We were the only local service provider that submitted and won a competitive bid for the Connect America Funds (CAF) Phase II Auction held in the summer of 2018. This Auction was open to other telecommunications providers. We were awarded \$18.2 million to deploy high-speed internet to an additional 4,000 unserved rural locations statewide over the next six years. Our networks include over 11,000 miles of copper cable, and more than 4,562 miles of fiber optic cable that will serve as the wireline backbone for future 5G networks and Hawaii's smart cities.

Updating the telecommunications regulatory framework will enable Hawaiian Telcom to compete on a level playing field and reduce the cost of regulatory compliance so that additional funds can be reinvested in improving our state's telecommunications infrastructure and creating

jobs. Improving and developing infrastructure will foster economic development opportunities and give our state a strategic advantage.

**SB 991 HD1 is a positive and necessary step in encouraging fair competition in an open market place, and will reduce existing competitive advantages among providers while keeping key consumer safeguards in place.**

We ask for your support in the passage of HB 272 HD1 in a form that mirrors SB 991 SD1 HD1 and includes our additional technical amendments, attached.

Thank you.

## A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

1           SECTION 1. Section 269-16.85, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§269-16.85 Retail intrastate services; fully competitive.**

4 (a) Notwithstanding section 269-16.9 or any other law to the  
5 contrary, the public utilities commission shall treat retail  
6 intrastate telecommunications services, under the commission's  
7 classification of services relating to costs, rates, and  
8 pricing, as fully competitive and apply all commission rules in  
9 accordance with that designation except as provided herein. In  
10 addition, a  
11 telecommunications carrier shall not be required to obtain  
12 approval or provide any cost support or other information to  
13 establish or otherwise modify in any manner its rates, fares,  
14 [~~and~~] charges, and terms and conditions, or to bundle any  
15 service offerings into a single or combined price package [~~+~~  
16 ~~provided that a telecommunications carrier, except upon~~  
17 ~~receiving the approval of the commission, shall not charge a~~  
~~higher rate for any retail telecommunications basic exchange~~

1 ~~service than the rate for the same service included in the~~  
2 ~~telecommunications carrier's filed tariff.]~~ and shall not be  
3 subject to sections 269-16 and 269-39; provided that on an  
4 annual basis, the monthly rate increase for basic exchange  
5 service in any county with a population of less than five  
6 hundred thousand shall not exceed \$6.50 without the public  
7 utilities commission's approval. All rates, fares, charges,  
8 ~~[and]~~ bundled service offerings, and service terms and  
9 conditions shall be ~~[filed with the public utilities commission~~  
10 ~~for information purposes only.]~~ posted made available on the  
11 local exchange telecommunications carrier's website.

12 (b) This section shall apply to retail rates charged for  
13 service to end-user consumers only and shall not apply to  
14 wholesale rates charged for services provided by a  
15 telecommunications carrier to another telecommunications  
16 provider, a wireless communications provider, a voice over  
17 internet protocol communications provider, or other similar  
18 communications provider.

19 (c) Nothing herein shall modify any requirements of a  
20 telecommunications carrier to provide lifeline telephone

1 service, comply with carrier of last resort obligations, or  
2 comply with applicable service quality standards.

3 (d) Notwithstanding section 269-17, any telecommunications  
4 ~~service provider carrier~~ providing fully competitive retail  
5 services  
6 shall not be required to seek commission approval for the  
7 issuance of stocks, stock certificates, bonds, notes, and other  
8 evidences of indebtedness; provided that the telecommunications  
9 ~~service provider carrier~~ notifies the public utilities  
10 commission, with  
11 a copy to the consumer advocate, of all issuances upon execution  
12 of the transaction.

13 (e) Notwithstanding section 269-19, any telecommunications  
14 ~~service provider carrier~~ providing fully competitive retail  
15 services  
16 shall not be required to seek commission approval for the sale,  
17 lease, mortgage, assignment, or other disposition or encumbrance  
18 of the whole or any part of its road, line, plant, system, or  
19 other property; provided that any telecommunications ~~service~~  
~~provider carrier~~ shall not, directly or indirectly, merge or  
consolidate  
with any other public utility without first having secured from  
the public utilities commission an order authorizing the  
~~provider carrier~~ to do so.



1           (f) Notwithstanding section 269-9, any telecommunications  
 2 ~~service provider carrier~~ providing fully competitive retail  
services  
 3 shall not be required to file accident reports with the  
 4 commission."

5           SECTION 2. Section 269-17.5, Hawaii Revised Statutes, is  
 6 amended by amending subsection (c) to read as follows:

7           "(c) No more than twenty-five per cent of the issued and  
 8 outstanding voting stock of a corporation organized under the  
 9 laws of the State and who owns, controls, operates, or manages  
 10 any plant or equipment, or any part thereof, as a public utility  
 11 within the definition set forth in section 269-1 shall be held,  
 12 whether directly or indirectly, by any single foreign  
 13 corporation or any single nonresident alien, or held by any  
 14 person, unless prior written approval is obtained from the  
 15 public utilities commission, or unless a transaction is exempt.

16 An exempt transaction is:

- 17           (1) Any purchase or sale by an underwriter; [~~or~~]
- 18           (2) Any transaction involving a public utility providing  
 19 basic exchange service to every county in the State or  
any affiliate or parent of such public utility,  
 20 that consists of less than fifty per cent of the



1 issued and outstanding voting stock of a corporation

2 organized under the laws of the State; or

3 [~~2~~] (3) A transaction to acquire shares of a corporation  
4 with less than one hundred shareholders and less than  
5 \$1,000,000 in assets.

6 Every assignment, transfer, contract, or agreement for  
7 assignment or transfer of any shares in violation of this  
8 section shall be void and of no effect; and no such transfer  
9 shall be made on the books of the corporation. Nothing herein  
10 shall be construed to make illegal the holding of stock lawfully  
11 held, directly or indirectly, prior to June 4, 1977."

12 SECTION 3. Section 269-19.5, Hawaii Revised Statutes, is  
13 amended by amending subsection (h) to read as follows:

14 "(h) Transactions between affiliated Hawaii based  
15 utilities, and any transactions by public utilities providing  
16 basic exchange service to every county in the State or any  
affiliate or parent of such public utility, shall be  
17 exempt from the provisions of this section."

18 SECTION 4. Section 269-38, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§269-38[+] **Regulatory flexibility for effectively**  
21 **competitive services.** The commission may allow



1 telecommunications carriers to have pricing flexibility for  
2 services that the commission finds are effectively competitive;  
3 provided that ~~{the rates for:~~

- 4 (1) ~~Basic telephone service and for services that are not~~
- 5 ~~effectively competitive are cost based and remain~~
- 6 ~~just, reasonable, and nondiscriminatory, and~~
- 7 ~~(2) Universal]~~ universal service is preserved and
- 8 advanced."

9 SECTION 5. Section 269-40, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[+] §269-40[+] **Access to advanced services.** The  
12 commission shall ensure that all consumers are provided with  
13 nondiscriminatory, reasonable, and equitable access to high  
14 quality telecommunications network facilities and capabilities  
15 that provide subscribers with sufficient network capacity to  
16 access information services that provide a combination of voice,  
17 data, image, and video[, and that are available at just,  
18 reasonable, and nondiscriminatory rates that are based on  
19 reasonably identifiable costs of providing the services]."

20 SECTION 6. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



**1** SECTION 7. This Act shall take effect on July 1,3000.





Charter Communications  
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hawai'i State Capitol, Conference Room 229  
Thursday, April 4, 2019  
9:30 AM

**Opposition to H.B. 272, H.D.1, Relating to Telecommunications**

Chair Baker, Vice-Chair Chang, and Members of the Committee.

The telecommunications industry involves a complex set of interactions between and through different networks facilitated by fiber optic cables, landlines, coaxial, and a global network of switching centers. We believe that appropriate assessments are needed to ensure access to these different network facilities are fair, reasonable, and nondiscriminatory. However, if telecommunications carriers are to be relieved of a broad array of regulatory obligations, cable operators should be relieved of all similar obligations.

H.B. 272, H.D.1 authorizes the incumbent telecommunications carrier to unilaterally invalidate any PUC rule, decision or order, except those expressly required by federal law, when it says in section 1 that "all rules, regulations, decisions, orders, and other regulatory provisions...may be invalid beginning on the effective date of this Act *at the discretion of the public utility providing basic exchange service to every county in the State.*" This authority is dangerous because it would allow the incumbent carrier to pick and choose which PUC rule, decision or order

should apply and which should be discarded. The role of the PUC in these matters is to ensure reasonable, non-discriminatory access to infrastructure in order to provide competitive service. We are concerned that this legislation could undermine these important PUC functions and thus consequently harm competition and consumers, including Charter, in the state.

This measure continues to present provisions that fall short of ensuring telecommunications services in Hawai'i are designed to foster competition, encourage an even-playing field, and protect the public interest.

Hawaii's incumbent telephone carrier continues to receive benefits of access to rights-of-way without paying any right of way access fees, but wants to be relieved of its obligations as a public utility despite the massive infusion of taxpayer dollars and customer-funded subsidies, to supplement its business.

In contrast, cable operators are highly regulated and required to pay five percent (5%) of revenues for the privilege for rights-of-way access and doing business in Hawai'i. Charter is required to contribute other exactions and are subject to extensive regulatory requirements, tariff reporting, and other burdens for that earned. Whereas, the incumbent telephone carrier is not required to pay such franchise fees in order to gain access to rights-of-way and operate as a telecommunications carrier.

Through the State's generous contribution, the incumbent telephone carrier now enjoys the privilege of controlling bottleneck facilities such as conduits, poles, communication switches, and other equipment that Charter and other competitive telecommunications providers rely on

for interconnection. Without proper oversight, they could leverage these facilities to gain an unfair competitive advantage over its wholesale customers. The PUC's regulatory oversight provides protection that is needed to maintain competition for the benefit of all consumers.

In order to address the concerns that have been highlighted in this testimony, we respectfully ask the committee to incorporate our enclosed amendments into any future version of the bill. These amendments will foster competition, encourage an even-playing field, and protect the public interest.

I am available to answer any questions you may have. Mahalo for the opportunity to testify.

STATE OF HAWAII

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# A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

SECTION 1. Section 269-16.85, Hawaii Revised Statutes, is amended to read as follows:

**"§269-16.85 Retail intrastate services; fully competitive.** (a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat 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 retail intrastate telecommunications service rates, fares, ~~[and]~~ charges, and terms and conditions, or to bundle any 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 rate for any retail telecommunications basic exchange service than the rate for the same service included in the telecommunications carrier's filed tariff.] and shall not be subject to sections 269-16 and 269-39; provided that on an annual basis, the monthly rate increase for basic exchange service in any county with a population of less than five hundred thousand shall not exceed \$6.50 without the public utilities commission's approval.~~ All rates, fares, charges, [and] bundled service offerings, and service terms and conditions, for retail intrastate telecommunications service shall be [~~filed with the public utilities commission for information purposes only.~~] posted on the local exchange carrier's website.

(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.

(c) Nothing herein shall modify any requirements of a telecommunications carrier applicable to ~~provide~~ lifeline telephone service, compliancey with carrier of last resort obligations, or compliancey with applicable service quality standards. ~~Notwithstanding this section or any law to the contrary a telecommunications carrier shall not modify in any manner the rates, fares, charges, terms and conditions~~



~~applicable to lifeline services, except upon receiving the approval of the commission.~~

(d) Notwithstanding section 269-17, any telecommunications service provider providing ~~fully competitive~~ retail intrastate telecommunications services shall not be required to seek commission approval for the issuance of stocks, stock certificates, bonds, notes, and other evidences of indebtedness; provided that the telecommunications service provider notifies the public utilities commission, with a copy to the consumer advocate, of all issuances upon execution of the transaction.

(e) Notwithstanding section 269-19, any telecommunications service provider providing ~~fully competitive~~ retail intrastate telecommunications services shall not be required to seek commission approval for the sale, lease, mortgage, assignment, or other disposition or encumbrance of the whole or any part of its road, line, plant, system, or other property ~~that is not necessary or used and useful for the provision of wholesale telecommunications services~~; provided that any telecommunications service provider shall not, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing the provider to do so.

(f) Notwithstanding section 269-9, any telecommunications service provider providing ~~fully competitive~~ retail intrastate telecommunications services shall not be required to file accident reports with the commission.

(g) Notwithstanding sections 269-16.91, 269-41, 269-42, HRS § 269-43, no telecommunications service provider providing ~~fully competitive~~-retail intrastate telecommunications services in any county in the State shall receive any universal service funds in such county for any purpose, including but not limited to assistance for low income subscribers, and for high cost and unserved areas, under any fund or program authorized under this chapter.

(h) Notwithstanding anything in this Section to the contrary, the monthly rate increase for basic exchange service after January 1, 2019 shall not exceed \$6.50 without the public utilities commission's approval."

SECTION 2. Section 440G-8, Hawaii Revised Statutes, is amended by adding a new subsection (e) to read as follows:

"(e) No cable operator shall be required to seek approval by the director for the issuance of stocks, stock certificates, bonds, notes, and other evidences of indebtedness."

SECTION 3. Section 440G-10.1, Hawaii Revised Statutes, is amended to read as follows:

"§440G-10.1. Transfer or encumbrance of cable system or franchise. ~~[(a)]~~ No cable operator shall be required to seek approval by the director for the sale, lease, mortgage, assignment, or other disposition or encumbrance of the whole or any part of its road, line, plant, system, franchise, or other property, including the rights, privileges, and obligations thereof~~[, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or~~

~~indirectly, including by transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the director.~~

~~(b) Sections 440G-7 and 440G-8 shall apply to the transfer of cable franchises]."~~

SECTION 4. Section 440G-11, Hawaii Revised Statutes, is amended to read as follows:

~~"§ 440G-11. Rates not regulated[, filed with director; approval]. [(a) The director shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the director may prescribe.~~

~~(b) To the extent permitted by federal law, the director shall regulate rates to ensure that they are fair both to the public and to the cable operator.]~~

~~A cable operator 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, charges, and terms and conditions, or to bundle any service offerings into a single or combined price package. All rates, fares, charges, bundled service offerings, and service terms and conditions shall be posted on the cable operator's website."~~

SECTION ~~25~~. Section 269-17.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No more than twenty-five per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages

any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt. An exempt transaction is:

(1) Any purchase or sale by an underwriter; [Ø]

(2) Any transaction involving a ~~public utility providing basic exchange service to every county in the State~~telecommunications carrier that consists of less than fifty per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State; or

[Ø] (3) A transaction to acquire shares of a corporation with less than one hundred shareholders and less than \$1,000,000 in assets.

Every assignment, transfer, contract, or agreement for assignment or transfer of any shares in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of the corporation. Nothing herein shall be construed to make illegal the holding of stock lawfully held, directly or indirectly, prior to June 4, 1977."

SECTION ~~36~~. Section 269-19.5, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) Transactions between affiliated Hawaii based utilities, and any transactions by ~~public utilities providing basic exchange service to every county in the State~~telecommunications carriers, shall be exempt from the provisions of this section."

~~SECTION 4. Section 269-38, Hawaii Revised Statutes, is amended to read as follows:~~

~~"[~~§~~269-38~~] Regulatory flexibility for effectively competitive services.~~ The commission may allow telecommunications carriers to have pricing flexibility for services that the commission finds are effectively competitive; provided that [the rates for:~~

~~—(1) Basic telephone service and for services that are not effectively competitive are cost based and remain just, reasonable, and nondiscriminatory; and~~

~~—(2) Universal] universal service is preserved and advanced."~~

~~SECTION 57. Section 269-40, Hawaii Revised Statutes, is amended to read as follows:~~

~~"[~~§~~269-40~~] Access to advanced services.~~ The commission shall ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality telecommunications network facilities and capabilities that provide subscribers with sufficient network capacity to access information services that provide a combination of voice, data, image, and video~~], and services that are not effectively competitive are available at just, reasonable, and nondiscriminatory rates that are based on reasonably identifiable costs of providing the services~~]."~~~~~~

~~SECTION 8. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:~~

~~"§269- Regulation of Voice Over Internet Protocol~~

Prohibited.

(a) As used in this section:

(i) "Internet protocol enabled service" or "IP enabled service" means any service, capability, functionality or application, other than "voice over internet protocol service," using existing internet protocol, or any successor internet protocol, that enables an end user to send or receive a communication in existing internet protocol format, or any successor internet protocol format, utilizing a broadband connection at the end user's location, regardless of whether the communication is voice, data or video;

(ii) "Voice over internet protocol service" means any service that:

(A) Enables real time, two-way voice communication originating from or terminating at the user's location in internet protocol or a successor protocol;

(B) Utilizes a broadband connection at the user's location; and

(C) Permits a user to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(b) The commission shall not regulate IP enabled service or voice over internet protocol service.

(c) Nothing in this section affects or modifies:

(i) Any applicable wholesale tariff or any jurisdiction of the commission to implement or enforce any rights, duties or obligations of any party related to interconnection, unbundled

network elements or wholesale services;

(ii) Any entity's obligations or rights or jurisdiction of the commission under sections 251 and 252 of the Federal Communications Act of 1934, 47 U.S.C. §§ 251 and 252; or

(iii) Any jurisdiction of the commission over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation.

(iv) Any entity's obligations or rights or commission authority with respect to the use of public streets, roads, highways, and rights-of-way."

SECTION 9. Section 269-34, Hawaii Revised Statutes, is amended by to read as follows:

"Obligations of telecommunications carriers. In accordance with conditions and guidelines established by the commission to facilitate the introduction of competition into the State's telecommunications marketplace, each telecommunications carrier, upon bona fide request, shall provide services or information services, on reasonable terms and conditions, to an entity seeking to provide intrastate telecommunications, including:

(1) Interconnection to the telecommunications carrier's telecommunications facilities at any technically feasible and economically reasonable point within the telecommunications carrier's network, so that the networks are fully interoperable;

(2) The current interstate tariff used as the access

rate until the commission can adopt a new intrastate local service interconnection tariff pursuant to section 269-37;

(3) Nondiscriminatory and equal access to any telecommunications carrier's telecommunications facilities, functions, and the information necessary to the transmission and routing of any telecommunications service and the interoperability of both carriers' networks;

(4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights-of-way owned or controlled by the telecommunications carrier, or the commission shall authorize access to electric utilities' poles as provided by the joint pole agreement, commission tariffs, rules, orders, or Federal Communications Commission rules and regulations;

(5) Nondiscriminatory access to the network functions of the telecommunications carrier's telecommunications network, that shall be offered on an unbundled, competitively neutral, and cost-based basis;

(6) Telecommunications services and network functions without unreasonable restrictions on the resale or sharing of those services and functions; and

(7) Nondiscriminatory access of customers to the telecommunications carrier of their choice without the need to dial additional digits or access codes, where technically feasible. The commission shall determine the equitable



distribution of costs among the authorized telecommunications carriers that will use such access and shall establish rules to ensure such access.

(8) A telecommunications carrier shall not:

(a) Block traffic from another telecommunications carrier based on the absence of an interconnection agreement;  
or

(b) Require another telecommunications carrier to enter into an interconnection agreement before:

(i) porting telephone numbers;

(ii) accepting for termination, and terminating, local and mandatory extended area service traffic originated by such other telecommunications carrier; or

(iii) originating local and mandatory extended area service traffic directed to the customers of such other telecommunications carrier.

Where possible, telecommunications carriers shall enter into negotiations to agree on the provision of services or information services without requiring intervention by the commission; provided that any such agreement shall be subject to review by the commission to ensure compliance with the requirements of this section. Approved interconnection agreements for which the original term has expired, but which remain in effect pursuant to term renewal or extension provisions, will be available for adoption for as long as the interconnection agreement remains in effect between the original parties to the agreement."

SECTION ~~6~~10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ~~7~~11. This Act shall take effect upon its approval.

**Report Title:**

Telecommunications; Basic Exchange Service; Pricing Flexibility; Sale, Lease, Encumbrance of Assets; Financing; Affiliate Transactions; Issuance of Stock

**Description:**

Caps annual utility rate increases without PUC approval for counties with a population of less than 500,000. Provides telecommunications service providers with flexibility from certain regulatory oversight requirements including issuance of securities and other evidences of indebtedness, and sales or disposition of property or equipment, if the utility is providing fully competitive retail services and specific conditions are met. Specifies other requirements related to flexibility for telecommunications service providers. (SD1)

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