

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

TO THE
HOUSE COMMITTEE ON
INTRASTATE COMMERCE

February 5, 2019
9:30 a.m.

Chair Ohno and Members of the Committee:

MEASURE: H.B. No. 272

TITLE: RELATING TO TELECOMMUNICATIONS.

DESCRIPTION: Except for requirements under federal law and section 269-7 and 269-16.9, exempts a public utility providing basic exchange service to every county in the State or any affiliate or parent of such public utility from chapter 269 and the jurisdiction of the PUC and consumer advocate. Exempts a public utility providing basic exchange service to every county in the State from financial report requirements. Repeals language requiring approval of the PUC prior to a telecommunications carrier charging a higher rate for basic exchange service than the rate included in the carrier's filed tariff. Allows any public utility providing basic exchange service to every county in the State to issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for any purpose, without securing approval of the PUC. Exempts telecommunications carriers from utility rate regulation and ratemaking procedures and provisions relating to valuations, regulatory flexibility for effectively competitive services, cross-subsidies, and access to advanced services. Allows any public utility providing basic exchange service to every county in the State to sell, lease, assign, dispose of, or encumber its property by any means without approval of the PUC, provided that the utility notifies the PUC in writing of such a transaction within 30 days. Exempts any transactions by public utilities providing basic exchange service to every county in the State from provisions regulating relations with an affiliated interest and contracts with affiliates filed and subject to PUC action and issuance of voting stock restrictions.

POSITION:

The Public Utilities Commission offers the following comments for consideration.

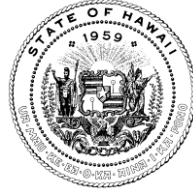
COMMENTS:

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, and the applicability and future effect of prior Commission orders.

The Commission is working with the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy, and Hawaiian Telcom on possible amendments to address these issues.

Thank you for the opportunity to testify on this measure.



LATE

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Intrastate Commerce
Tuesday, February 5, 2019
9:30 a.m.
State Capitol, Conference Room 430**

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

Chair Ohno 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 offers comments on this bill.

The purpose of this bill is to exempt a public utility providing basic exchange service to every county in the State or any affiliate or parent of such public utility from Hawaii Revised Statutes (HRS) chapter 269 and the jurisdiction of the Public Utilities Commission and consumer advocate, except for requirements under federal law and HRS sections 269-7 and 269-16.9. This bill also: (1) exempts a public utility providing basic exchange service to every county in the State from financial report requirements. Repeals language requiring approval of the Public Utilities Commission (Commission) prior to a telecommunications carrier charging a higher rate for basic exchange service than the rate included in the carrier's filed tariff; (2) allows any public utility providing basic exchange service to every county in the State to issue stocks and stock

certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve months after the date thereof, for any purpose, without securing approval of the Commission; (3) exempt telecommunications carriers from utility rate regulation and ratemaking procedures and provisions relating to valuations, regulatory flexibility for effectively competitive services, cross-subsidies, and access to advanced services; (4) allow any public utility providing basic exchange service to every county in the State to sell, lease, assign, dispose of, or encumber its property by any means without approval of the Commission, provided that the utility notifies the Commission in writing of such a transaction within 30 days; and (5) exempt any transactions by public utilities providing basic exchange service to every county in the State from provisions regulating relations with an affiliated interest and contracts with affiliates filed and subject to Commission action and issuance of voting stock restrictions.

Since the passage of Act 180, Session Laws of Hawaii 2009, codified in 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 Consumer Advocate acknowledges fully competitive retail competition for telecommunications and supports a level playing field for all competitors. However, 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.

If passed, this measure would leave no regulatory oversight over areas such as wholesale competition and the carrier of last resort responsibilities that are required of incumbent local exchange carriers. To explain, while there may be fully competitive retail competition, the incumbent local exchange carriers in every state, including Hawaii, are responsible for the provision of significant infrastructure support to all telecommunications carriers and, pursuant to the Telecommunications Act of 1996 as well as existing Commission rules and orders, the Hawaii's incumbent local exchange carriers are required to allow non-discriminatory and full access to that infrastructure at

Federal Communications Commission and/or Commission regulated terms, conditions, and/or rates. If this measure passes, the Commission's and Consumer Advocate's ability to ensure such access will be eliminated or severely constrained, since H.B. 272 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. In addition, it is through HRS chapter 269, Hawaii Administrative Rules, and Commission orders that the Commission can ensure that a local incumbent local exchange carrier fulfills the responsibility that a customer, such as customers in high cost and/or rural areas as well as low income and fixed income customers, is able to obtain affordable basic telecommunications services. Along those lines, the Consumer Advocate expresses concerns with the possibility that the carrier with carrier of last resort responsibilities might have the ability to 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 might decide not to provide service to those vulnerable customers because it might not fit within their competitive strategy.

The proposed measure raises several public interest concerns and the Consumer Advocate believes that it should not be passed as-is. The Consumer Advocate has expressed these concerns to one of the incumbent local exchange carriers in the State and believes that the carrier has acknowledged the concerns that have been raised, the need for modifications to the measure, and willingness to address the concerns.

Thank you for the opportunity to testify on this bill.

LATE

Written Statement of
Ani Menon
Director of Government & Community Affairs

HOUSE COMMITTEE ON INTRASTATE COMMERCE

February 5, 2019 9:30 AM
State Capitol, Conference Room 430

IN SUPPORT OF:

H.B. NO. 272 RELATING TO TELECOMMUNICATIONS

To: Chair Ohno, Vice-Chair Kobayashi, and Members of the Committee
Re: **Testimony in support of HB272**

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

Thank you for this opportunity to submit testimony in strong support of House Bill 272. This bill improves Hawaii's regulatory structure around voice services, eliminates competitive advantages among carriers, and promotes fair competition in an open market.

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, a national wireline service provider with assets 50 times greater than the assets of Hawaiian Telcom and Cincinnati Bell combined, is not faced with similar regulatory requirements around their voice service. This puts us at a distinct competitive disadvantage.

The intent of House Bill 272 is to put Hawaiian Telcom on an even footing with other providers of voice service by updating the telecommunications regulatory framework that has not kept pace with the rapidly changing telecommunications marketplace. The language of House Bill 272 will modernize regulation over BLES. The proposed language of this bill will not impact our wholesale requirements governed by the Telecommunications Act of 1996, or any other federal law meant to provide oversight over the telecommunications industry.

Section 1 of this bill amends the existing regulatory framework under H.R.S. Chapter 269 to acknowledge that retail intrastate telecommunications services are fully competitive, consistent with the Legislature's 2009 classification of all retail intrastate telecommunications services as fully competitive. This section seeks to establish full regulatory parity in retail voice services to allow telecommunications providers to compete on a level playing field. Sections 2 through 7 aim to alleviate the burden of specific monopoly-era rules and regulations that limit our ability to compete in a competitive, growing market.

House Bill 272 also provides for a number of consumer safeguards:

- The Public Utilities Commission (PUC) will retain its authority to investigate telecommunications providers under §269-7
- Telecommunications providers will continue carrying the “obligation to serve” – often referred to as the Carrier of Last Resort (COLR) – established by §269-16.9, ensuring that communities in Hawaii have access to BLES
- Consumers will continue to be able to file complaints
- Competitors would continue to have 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

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. 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 money 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.

House Bill 272 is a positive and necessary step in encouraging fair competition in an open market place. It will allow market forces to guide the provisioning of telecommunications services while safeguarding consumers. We are committed to working collaboratively with the PUC, Consumer Advocate, and other key stakeholders to modernize regulation to achieve a level playing field in today's competitive retail intrastate telecommunications market.

We ask for your support in the passage of House Bill 272.

Charter Communications
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON INTRASTATE COMMERCE

Hawai'i State Capitol, Conference Room 430
Tuesday, February 5, 2019
9:30 AM

Opposition to H.B. 272, Relating to Telecommunications

Chair Ohno, Vice-Chair Kobayashi, and Members of the Committee.

House Bill 272 (H.B. 272), a sweeping deregulation bill, is completely lopsided because it is for the benefit of one company only, Hawaiian Telcom (HT), which has built its network with millions of dollars in government subsidies and is still receiving substantial universal service subsidies. These subsidies come with Carrier of Last Resort (COLR) and other obligations, which are part of the reason these subsidies were provided in the first place.

In addition, the bill's deregulation is upside down, because it deregulates basic services without referring to any other retail services, including advanced services such as VoIP (Voice over Internet protocol). No bill should deregulate one set of services and leave more advanced services open to possible regulation.

Moreover, this bill does not meaningfully address protections that maintain a competitive environment for non-incumbent LEC and VoIP providers like Charter. Competition in the telecommunications market has led to unprecedented innovation and consumer benefits, and this bill as currently drafted could result in significantly reversing the benefits of competition.

H.B. 272 authorizes HT 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 HT to pick and choose which PUC rule, decision or order should apply and which should be discarded. For example, among other competitive dangers, the PUC has occasionally displayed an interest in pole attachment disputes between HT and those that attach to their poles—as well as had a hand in approving certain kinds of contracts that are important to competitive communications service providers. The role the PUC plays in these matters helps ensure reasonable access to poles 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 in the state.

Should the committee decide to move forward with this ill-advised bill (which it should not), such action must include simultaneously enacting in statute to confirm the permanent and unequivocal deregulation of VoIP services and ensure that if HT receives state or federal subsidies for USF expansion it should be precluded from those subsidies if services are deregulated as these funds were secured under the auspices of serving as a carrier of last resort.

For the forgoing, we respectfully request the Committee on Intrastate Commerce defer H.B. 272.

Mahalo for the opportunity to testify.