

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

TO THE
HOUSE COMMITTEE ON
FINANCE

February 20, 2019
4:00 p.m.

Chair Luke 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 is working with the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy and other key stakeholders on possible amendments to address these issues.

Thank you for the opportunity to testify on this measure.



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 Finance
Tuesday, February 20, 2019
4:00 p.m.
State Capitol, Conference Room 308**

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

Chair Luke 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.

Thank you for the opportunity to testify on this bill.



Charter Communications
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON FINANCE

Hawai'i State Capitol, Conference Room 309
Wednesday, February 20, 2019
4:00 PM

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

Chair Luke, Vice-Chair Cullen, and Members of the Committee.

House Bill 272, House Draft 1 (H.B. 272, H.D.1), 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 for vulnerable customers, which are part of the reason these subsidies were provided in the first place.

Additionally, of great consequence is H.B. 272, H.D.1 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. The role the PUC plays in these matters helps 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 in the state.

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.

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 defer H.B. 272, H.D.1.

Mahalo for the opportunity to testify.

Written Statement of
Ani Menon
Director of Government & Community Affairs

HOUSE COMMITTEE ON FINANCE

February 20, 2019 4:00 PM
State Capitol, Conference Room 308

IN SUPPORT OF:

H.B. NO. 272, H.D. 1 RELATING TO TELECOMMUNICATIONS

To: Chair Luke, Vice-Chair Cullen, and Members of the Committee
Re: **Testimony in support of HB272, 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. 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, HD1 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, HD1 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, HD1 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 will 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
- A sunset date reverting the regulatory framework back to our existing structure should the bill result in harm to consumers

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, HD1 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 regulations to achieve a level playing field in today's competitive retail intrastate telecommunications market.

The following key points address the concerns expressed by other parties:

- **This bill does not touch wholesale services, or affect wholesale competition** – as Hawaii's incumbent local exchange provider, Hawaiian Telcom is required by federal law to provide non-discriminatory and full access to our infrastructure as prescribed by the Telecommunications Act of 1996 (*see 47 U.S.C. §251*). This includes access to our facilities (e.g. co-location in central offices, use of poles, conduits, etc.) and discounts on retail services for resale with no reciprocity. H.B. 272, HD1 expressly states that “except for any requirements under federal law...” *See H.B. 272, H.D.1, Page 1, Lines 5-6.*
- **This bill does not relieve Hawaiian Telcom of its Carrier of Last Resort (COLR) obligation** – the bill explicitly carves out an exception for H.R.S. §269-16.9, the applicable law under which we carry an “obligation to serve.” *See H.B.272, H.D.1, Page 1, Lines 4-11.*
- **This bill does not refer to Voice over Internet Protocol (VoIP) services because VoIP services, unlike Hawaiian Telcom's voice services, are not considered a “basic exchange service” under Chapter 269.** Hawaiian Telcom is at a disadvantage in a competitive market in which VoIP is a viable alternative to our voice services, and yet VoIP providers are not bound by the full extent of our regulatory framework.
- **The Public Utilities Commission will retain its investigative powers as enumerated in H.R.S. §269-7, “Investigative powers”** - the bill explicitly carves out an exception for H.R.S. §269-7. *See H.B.272, H.D.1, Page 1, Lines 5-6.*

This bill promotes fair competition in a competitive market, and will eliminate existing competitive advantages among providers while keeping key consumer safeguards in place. We are actively working with the PUC, Consumer Advocate, and other stakeholders to address additional concerns they may have.

We ask for your support in the passage of House Bill 272, HD1.

HB-272-HD-1

Submitted on: 2/17/2019 5:41:30 PM

Testimony for FIN on 2/20/2019 4:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	We Are One, Inc. - www.WeAreOne.cc - WAO	Oppose	No

Comments:

Public Utilities Commission and Consumer Advocate involvement are important to protect the public interest in access and costs of communications.

www.WeAreOne.cc



Aloha State Association of the Deaf
Ka Po`e Kuli o Hawaii – The Deaf People of Hawaii

LATE

HOUSE COMMITTEE ON FINANCE

February 19, 2019

State Capitol, Conference Room 308

IN OPPOSITION OF:

House Bill Number 272 RELATING TO TELECOMMUNICATIONS

To: Chair Luke, Vice Chair Cullen, and Members of the Committee

Re: Testimony in opposition of HB272

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

The Aloha State Association of the Deaf (ASAD), on behalf of deaf and hard of hearing individuals living in the State of Hawai'i, asks that all Hawai'i state legislators vote to oppose HB272 which seeks to deregulate oversight of telecommunication service providers. Deaf and hard of hearing Hawai'i experience inaccessibility at all levels of society including in education, employment, health care, mental health services, legal and judicial systems, law enforcement, and telecommunications. It is imperative that telecommunication service providers are monitored and overseen to ensure that all their services are accessible to everyone, particularly to deaf and hard of hearing Hawai'i. This bill seeks to remove any such oversight, and our community is concerned that we will be left behind without accessible telecommunication services. For this reason, we ask that this bill be opposed.

Sincerely,

Darlene Ewan
ASAD President