
A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1 SECTION 1. The legislature finds that competition in the
2 telecommunications market is robust. Consumers have many
3 choices when deciding how to communicate: traditional land-line
4 telephony, voice over internet-protocol, and wireless phone
5 service.

6 The legislature further finds that advances in voice over
7 internet-protocol and wireless phone services make these
8 technologies viable substitutes for traditional land-line, or
9 switched access, telephony. These services currently provide
10 9-1-1 capability, number portability, reliable service, and
11 extensive network coverage. Even though some federal and state
12 regulators feel these new technologies, especially wireless
13 phone service, can never replace the traditional land-line phone
14 for casual and emergency communication needs, many consumers do
15 not share this same view. According to the Federal
16 Communications Commission, the number of switched access lines
17 of Hawaii's incumbent local exchange carrier decreased from
18 735,459 in 2001 to only 541,030 in 2007. The number of wireless



1 subscribers in Hawaii, however, increased from 595,721 to
2 1,096,181 over the same period. While some consumers
3 subscribing to wireless phone service maintain their land-line
4 or wired phone service, other consumers are subscribing to
5 wireless service as a true alternative and thus are
6 disconnecting their land-line service. Hawaii is not unique;
7 this telecommunication market trend is similar across the United
8 States.

9 The legislature further finds that competitive local
10 exchange carriers, currently enjoying a non-competitive switched
11 access market, should adapt to the changing telecommunications
12 market. When the 1996 Communications Act opened up competition
13 in the telecommunications market, it forced incumbent local
14 exchange carriers to wholesale their services to competitive
15 local exchange carriers so that they (the competitive local
16 exchange carriers) in turn, could re-sell them to consumers.
17 The Act was designed to open up competition by allowing other
18 carriers into the market, in hopes that they would eventually
19 develop their own networks. After twelve years of competition,
20 competitive local exchange carriers are still heavily reliant
21 upon the incumbent local exchange carriers for wholesale
22 services. This regulatory scheme has impeded growth of the



1 incumbent carriers, as competition from other telecommunication
2 and information services eroded market share and revenue. Thus,
3 highly regulated switched access services will continue to
4 saddle incumbent local exchange carriers from competing with
5 other services, while competitive local exchange carriers
6 continue to rely on the re-sale of the incumbents network
7 services.

8 The legislature further finds that competition in Hawaii's
9 telecommunications market is not a level playing field; the
10 incumbent local exchange carrier is highly regulated, while
11 other telecommunications service providers do not share the same
12 level of regulation. Although the incumbent local exchange
13 carrier continues to maintain the majority of switched access
14 lines, this dominance of market share does not take into account
15 the meteoric rise of wireless subscribers and voice over
16 internet-protocol service. In order to determine competition in
17 a modern telecommunications market, all types of services need
18 to be evaluated for their effects in the marketplace. It will
19 also force competitive local exchange carriers to adapt their
20 strategies in a competitive environment.

21 The purpose of this Act is to require the public utilities
22 commission to consider other telecommunications services in



1 respect to switched access service when determining the
2 competition in the switched access market.

3 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§269- Competition in switched access markets;
7 consideration of other telecommunications and information
8 services. When determining the competition in the switched
9 access market, the public utilities commission shall consider
10 other telecommunications and information services, such as voice
11 over internet-protocol and wireless services. In addition to
12 the classification of services factors, the commission shall
13 also make the determination based on consumer spending, consumer
14 demand, ratio of a particular telecommunications service to each
15 individual, market trends, and consumer value--the comparison of
16 the cost each service with the features provided by that
17 service."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

David Yogi

Carol Fukunaga

Will Eyo



Chris Hill

Rosalyn H. Baker

Report Title:

Public Utilities; Switched Access Telephone Service; Competition

Description:

Requires the public utilities commission to consider other telecommunications services when determining competition in the switched access telephone service market.



**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION
FEBRUARY 26, 2009**

MEASURE: S.B. No. 603
TITLE: Relating to Public Utilities.

Chair Baker and Members of the Committee:

DESCRIPTION:

This bill proposes to add a new section to chapter 269, Hawaii Revised Statutes ("HRS"), that would require the Public Utilities Commission ("Commission") to consider other telecommunications and information services, such as voice over internet protocol ("VoIP") and wireless services, along with consumer spending, consumer demand, ratio of particular services to individuals, market trends, and consumer value in determining the level of competition in the switched access telephone (incumbent) service market.

POSITION:

The Commission has no objections to the proposed amendment to chapter 269, HRS, contained in this bill, but offers the following comments for consideration.

COMMENTS:

- Under subchapter 3, chapter 6-80, Hawaii Administrative Rules ("HAR"), all telecommunications services are classified as either 1) fully competitive, 2) partially competitive, or 3) noncompetitive, based on an analysis of numerous factors including, but not limited to: whether there are multiple providers of the service who can enter or exit the particular market with ease and without being dominant in that market; whether there is access available to all customers relating to information about prices and service quality; the extent to which service of comparable quality is readily available from more than one carrier in the relevant market; the ability of alternative carriers to make equivalent or substitute services available at competitive rates, terms, and conditions, and any other factors deemed relevant by the Commission in determining whether and to what extent competition exists.
- Although the Commission may already consider the factors listed in this bill under currently applicable rules, the Commission does not object to the specific considerations enumerated therein. Subsequently, we may have further comments to clarify the factors listed in the bill to make it clearer and easier to administer.

Thank you for the opportunity to testify and provide comments and recommendations on this bill.



**Testimony to the Senate Committee on Commerce and Consumer Protection
Thursday, February 26, 2009 at 8:30 a.m.
Conference Room 229, State Capitol**

RE: SENATE BILL NO. 603 RELATING TO PUBLIC UTILITIES

Chair Baker, Vice Chair Ige, and members of the committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports the intent of SB 603-Relating to Public Utilities. The Chamber, however, believes that this measure must be amended to provide immediate regulatory relief in the telecommunications marketplace which will benefit Hawaii's economy and our consumers.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Over the past several years, we have all been able to observe first hand the explosion of new products and services in the communications marketplace. Consumers now have the freedom to choose between numerous wireline, wireless, or VoIP providers for their phone service needs. Competition has driven down the price of phone service, increased innovation, and improved customer service.

The Chamber believes that the time has come to update Hawaii's regulatory framework by removing unnecessary regulatory barriers in telecommunications and allowing true competition to take hold. In a true open and competitive environment, the marketplace will determine the winners and losers with the major winner being Hawaii's consumers.

For these reasons, the Chamber of Commerce of Hawaii respectfully request that the Committee amend SB 603 to provide immediate regulatory relief in telecommunications. Thank you for the opportunity to provide testimony.



February 25, 2009

Honorable Rosalyn H. Baker, Chair, Committee
Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 603, Relating to Public Utilities - Oppose
CPN Hearing, Thursday, February 26, 2009, 8:30 am – Room 229

Aloha Chair Baker, Vice Chair Ige and Committee members:

On behalf of tw telecom (“TWTC”) which has operated in Hawaii since 1994 and manages approximately 25,000 access lines in the State of Hawaii, thank you for the opportunity to submit testimony today. I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom.

The stated purpose of this bill is to require the public utilities commission (“PUC”) to consider other telecommunications services in respect to switched access services when determining competition in the switched access market. TWTC has a number of concerns about this bill, and believes passage of this bill is not necessary and will be a detriment to the communications industry.

This bill requires the PUC to consider other telecommunications and information services, such as voice over internet-protocol (“VOIP”) and wireless services when determining competition in the switched access market. By way of background, the PUC’s telecommunications rules, HAR Chapter 6-80, contain a mechanism for the PUC to allow for pricing flexibility depending on the level of competition. Those rules set forth criteria to be considered in determining the level of competition, but also allow the PUC to consider any factors deemed relevant by the commission. TWTC believes that the existing rules are adequate to allow the PUC to consider all relevant factors in determining the level of competition, and doesn’t believe that it is necessary to mandate the consideration of VOIP and wireless services.

TWTC has serious concerns about requiring the PUC to consider intermodal services, such as VOIP and wireless services, in determining the level of competition. Determining the extent of competition is dependent on factual findings, and doesn’t necessarily follow from the availability of VOIP and wireless services. For example, in “forbearance” proceedings before the FCC, the FCC must determine the level of competition faced by an ILEC for purposes of relieving an ILEC from federal tariffing and other requirements. In a recent denial of a forbearance request by Qwest, the FCC conducted a detailed factual inquiry of the levels of competition in different segments of the market, and recognized that wireless was not a perfect substitute for wireline service. Under the existing PUC rules, the PUC has the ability to consider VOIP and wireless

services if it finds that it is appropriate to do so. However, especially given the FCC's contrary findings, TWTC doesn't believe that the PUC should be mandated to consider these services.

In addition, TWTC has some specific comments and concerns about statutory language proposed in the bill. First, the bill refers to "competition in special access markets". The term "special access" is generally used to refer the access lines purchased by telecommunications carriers. TWTC believes that the intent was to address the determination of the level of competition in services to retail customers. TWTC therefore suggest that the term "special access markets" be replaced with "intrastate local exchange services".

TWTC also has concerns about a number of the findings in the bill. For example, it is important to distinguish between the services provided by Hawaiian Telcom to other telecommunications carriers and the retail services that Hawaiian Telcom and other telecommunications carriers provide to end users. TWTC believes that this bill is intended to address the level of competition in services to retail customers. Therefore, findings that relate to the relationship of Hawaiian Telcom to CLECs don't appear to be relevant to the proposed bill. Similarly, there is no factual basis for findings that competition is robust, or that the existing regulatory scheme is unfair to Hawaiian Telcom. If one were to look at Hawaii's market data, one would undoubtedly find that Hawaiian Telcom continues to dominate both the residential and business sectors in all relevant categories: number of customers, number of lines, revenue building connected to its own network, miles of fiber, etc. Further, such statements ignore the fact that there are a number of different market segments in Hawaii – residential, business, wholesale, retail, wireless, and wireline – which are not all subject to the same level of competition. TWTC therefore respectfully requests that such findings be deleted.

For these reasons, we respectfully request that you hold this bill.

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs

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