



GOV. MSG. NO. 851

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 603 SD1 HD1 CD1

On July 15, 2009, Senate Bill No. 603, entitled "A Bill for an Act Relating to Public Utilities" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to direct the Public Utilities Commission of the State of Hawaii to treat local exchange intrastate services as fully competitive.

The intent of this bill is laudable in that it attempts to update Hawaii's regulatory framework for telecommunications providers and create market parity among phone service providers. However, several provisions of this bill raise concerns because the language is vague and extends beyond the intended scope.

This bill directs that "fully competitive" treatment be accorded to local exchange intrastate services, "[n]otwithstanding section 269-16.9 or any other law to the contrary." The provisions in the bill, however, are not limited to local exchange intrastate services and providers of such services. Rather, the provisions extend to any telecommunications carrier, not just a carrier providing local exchange intrastate service.

Under the bill, any telecommunications carrier may modify its rates and services without the approval of the Commission, regardless of whether the carrier has received an exemption pursuant to section 269-16.9, Hawaii Revised Statutes. In addition, the carrier is not required to provide cost support and other information to the Commission for such modifications.

The absence of cost support and other information may impair the ability of the Commission to fulfill the statutory directive in section 269-40, Hawaii Revised Statutes, to ensure that all consumers are provided with "nondiscriminatory, reasonable, and equitable access

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to high quality telecommunication network facilities and capabilities . . . at just, reasonable, and nondiscriminatory rates that are based on reasonably identifiable costs of providing the services."

The bill provides that a telecommunications carrier's rates for any retail telecommunications service cannot be higher than the rate for the same service included in the carrier's filed tariff "except upon receiving the approval of the commission."

The significance of the Commission's approval with respect to rate increases for local exchange intrastate service is questionable, given the "fully competitive" treatment directed by the bill. With regard to any other telecommunications service, the Commission's role is in doubt because the bill provides that all rates, fares, charges, and bundled service offerings shall be filed with the Commission for "information purposes only," which raises a question as to whether any applicable tariff can be enforced by the Commission.

Because this language creates an ambiguity over the role of the Commission in enforcing tariffs, my Administration will be proposing amendments to this bill for consideration by the 2010 Legislature that deletes this clause and clarifies the scope and applicability of this measure.

For the foregoing reasons, I allowed Senate Bill No. 603 to become law as Act 180, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Lingle', with a stylized flourish at the end.

LINDA LINGLE

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



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

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



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

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

20 The purpose of this Act is to require the public utilities
21 commission to:



1 (1) Classify the State's local exchange intrastate
2 services as fully competitive with respect to certain
3 classifications of services; and

4 (2) Require telecommunications carriers to file their
5 rates, fares, charges, and bundled service offerings
6 for information purposes only.

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

10 "§269- Local exchange intrastate services; fully
11 competitive. (a) Notwithstanding section 269-16.9 or any other
12 law to the contrary, the public utilities commission shall treat
13 the State's local exchange intrastate services, under the
14 commission's classification of services relating to costs,
15 rates, and pricing, as fully competitive and apply all
16 commission rules in accordance with that designation. In
17 addition, a telecommunications carrier shall not be required to
18 obtain approval or provide any cost support or other information
19 to establish or otherwise modify in any manner its rates, fares,
20 and charges, or to bundle any service offerings into a single or
21 combined price package; provided that a telecommunications
22 carrier, except upon receiving the approval of the commission,



1 shall not charge a higher rate for any retail telecommunications
2 service than the rate for the same service included in the
3 telecommunications carrier's filed tariff. All rates, fares,
4 charges, and bundled service offerings shall be filed with the
5 public utilities commission for information purposes only.

6 (b) This section shall apply to retail rates charged for
7 service to end-user consumers only and shall not apply to
8 wholesale rates charged for services provided by a
9 telecommunications carrier to another telecommunications
10 provider, a wireless communications provider, a voice over
11 internet protocol communications provider, or other similar
12 communications provider.

13 (c) Nothing herein shall modify any requirements of a
14 telecommunications carrier to provide lifeline telephone
15 service, comply with carrier of last resort obligations, or
16 comply with applicable service quality standards."

17 SECTION 3. New statutory material is underscored.

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

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII