

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND CONSUMER AFFAIRS  
HONOLULU, HAWAII

In the Matter of the Application of)  
WESTERN MOTOR TARIFF BUREAU, INC. )  
For Approval on Short Notice )  
to Increase Rates and Charges )  
on Behalf of Motor Carriers )  
Participating in WMTB's Passenger )  
Carrier Tariff No. 8-C, Island )  
of Oahu. )  
WMTB Rate Notice No. 4362-8-C. )  
\_\_\_\_\_ )

DOCKET NO. 03-0202

ORDER NO. 20336

Filed July 18, 2003  
At 9:00 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)	)	
WESTERN MOTOR TARIFF BUREAU, INC.)	)	Docket No. 03-0202
For Approval on Short Notice)	)	
to Increase Rates and Charges)	)	Order No. 20336
on Behalf of Motor Carriers)	)	
Participating in WMTB's Passenger)	)	
Carrier Tariff No. 8-C, Island)	)	
of Oahu.)	)	
WMTB Rate Notice No. 4362-8-C.)	)	
_____)	)	

ORDER

I.

On July 7, 2003, WESTERN MOTOR TARIFF BUREAU, INC. (WMTB) filed Rate Notice No. 4362-8-C, on behalf of motor carriers of passengers authorized to operate on the island of Oahu, and that participate in WMTB's Passenger Carrier Tariff No. 8-C. Specifically, WMTB seeks the commission's approval, on short notice, of a five per cent across-the-board increase in its rates and charges (except limousine rates) for its Oahu-based member carriers that participate in WMTB's Passenger Carrier Tariff No. 8-C.

WMTB supports its request with a cost study, dated July 7, 2003, completed by Bob Lewis and Associates. The cost study data is comprised of the 2002 revenues and expenses from two sample carriers, Polynesian Adventure Tours, Inc. ("PAT, Inc.") and Robert's Tours and Transportation, Inc. ("Robert's Tours"). WMTB represents that: (1) these sample

carriers are the larger, well-established passenger carriers that operate on the island of Oahu; and (2) "[t]he sample captures a significant amount of the WMTB industry revenues," 48.83 per cent, "and is a representative sample on which to base the revenue needs of the WMTB Oahu passenger carrier industry."

Appendix I of the cost study purports to list the Oahu-based WMTB member carriers that participate in Tariff No. 8-C, including PAT, Inc. and Robert's Tours.

WMTB makes its request in accordance with Hawaii Revised Statutes (HRS) §§ 271-20 and 271-21, and Hawaii Administrative Rules (HAR) § 6-63-18. The proposed effective date of WMTB's tariff changes is August 1, 2003.

Copies of the rate notice and cost study were served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). By position statement filed on July 16, 2003, the Consumer Advocate recommends that WMTB's rate notice be allowed to take effect, as proposed. In the event the commission suspends WMTB's rate notice for further review, the Consumer Advocate states that, due to its limited resources, it "will not participate in such review."

## II.

Upon review, the commission finds that WMTB has not met the requisite burdens of proof under HRS § 271-21(c) and HAR § 6-63-18(a) governing approvals on short notice. Furthermore, the burden of proof is also on WMTB to prove the justness and

reasonableness of its proposed increases in rates and charges.  
See HRS § 271-20.<sup>1</sup>

The commission finds that the cost study fails to, among other things:

1. Make any normalization adjustments to the sample carriers' operating expenses, except to increase revenue taxes.
2. Explain how: (A) the operating expenses are allocated between each sample carrier's regulated and non-regulated operations; (B) administrative overhead expenses of \$3,221,503 are allocated to Robert's Tours; and (C) administrative overhead expenses of \$88,427 are allocated to PAT, Inc.
3. Explain why PAT, Inc.'s salaries and wages, and payroll related expenses, account for 53.12 per cent of operating expenses, when Robert's Tours' ratio is only 39.82 per cent.

In addition, the cost study neglects to:

1. Explain why limousines were excluded from the proposed increase in passenger carrier rates and charges, nor does it define the seating capacities of limousines that are subject to the proposed exclusion.
2. Explain why Travel Plaza Transportation, LLC is not included as a sample carrier when its 2002 operating revenues of \$11.682 million is the second highest of the participating carriers listed in Appendix I (with Robert's Tours' revenues at the highest).

Moreover, based on the commission's review of its files, the accuracy of Appendix I is suspect. Specifically, the commission finds that:

1. Appendix I fails to list the 2002 operating revenues of certain participating carriers, when

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<sup>1</sup>It is the duty of every motor carrier of passengers "to establish, observe, and enforce just and reasonable rates, fares, and charges[.]" HRS § 271-20(a). All such charges "shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful." HRS § 271-20(c).

in fact, the carrier's corresponding 2002 annual financial report ("AFR") sets forth the applicable operating revenues. Among the examples:

	<u>Appendix I</u>	<u>AFR</u>
Hai Shi,		
dba Hawaii Global Holiday	--	\$156,200
Pascua Trans. & Tours, Inc.	--	\$201,039
Korean Tour Guide Service Center, Inc.,		
dba Vivi's Transportation	--	\$351,727

2. Appendix I excludes many of the Oahu-based passenger carriers that indeed, participate in Tariff No. 8-C. The missing participating carriers appear to include:

	<u>AFR</u>
Duke's Limousine, Inc.	\$587,986
Marketing Consultants, Inc.	\$560,218
Royal Wedding Services, Inc.	\$565,041
Sharp Limousine Tours, Inc.	\$574,884

Given the various deficiencies in the cost study, the commission is unable to conclude that WMTB has met its burden of establishing the lawfulness of the proposed increases in its rates and charges, notwithstanding the Consumer Advocate's findings to the contrary.

Based on the foregoing reasons, the commission will deny WMTB's request for approval on short notice. Nonetheless, for purposes of administrative efficiency, the commission will also: (1) treat WMTB's Rate Notice No. 4362-8-C as a 30-day statutory filing; and (2) suspend WMTB's rate notice for further review and investigation.<sup>2</sup> By these actions, the commission makes it clear that the burden of fully addressing the deficiencies noted in the cost study, above, remains with WMTB.

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<sup>2</sup>Under the 30-day statutory notice, the proposed effective date of WMTB's rate notice is August 7, 2003. HRS § 271-21(c).

III.

THE COMMISSION ORDERS:

1. WMTB's Rate Notice No. 4362-8-C, filed on July 7, 2003, seeking commission approval on short notice of a five per cent across-the-board increase in its rates and charges (except limousine rates) for its Oahu-based member carriers that participate in Tariff No. 8-C, is denied.

2. The commission will: (A) convert WMTB's Rate Notice No. 4362-8-C to a 30-day statutory filing, consistent with HRS § 271-21(c); and (B) suspend WMTB's Rate Notice No. 4362-8-C for a period of up to five months from the proposed effective date, up to and including January 7, 2004. Further action from the commission will follow.

DONE at Honolulu, Hawaii this 18th day of July, 2003.

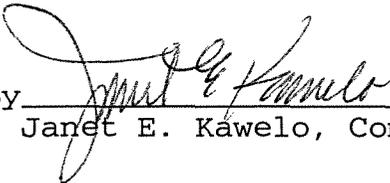
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

By   
Janet E. Kawelo, Commissioner

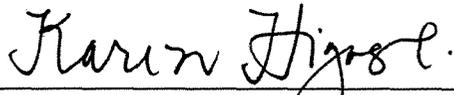
WMTB4362.8.C.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20336 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

ROBERT E. LEWIS  
MANAGER  
WESTERN MOTOR TARIFF BUREAU, INC.  
P. O. Box 30268  
Honolulu, HI 96820

  
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Karen Higashi

DATED: July 18, 2003