

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELECOM, INC.)
For Approval of Changes to its)
Tariff. Transmittal No. 07-16.)

DOCKET NO. 2007-0233

ORDER NO. 23606

Filed August 16, 2007
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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ORDER

By this Order, the commission suspends Transmittal No. 07-16, filed by HAWAIIAN TELCOM, INC. ("HT" or "Hawaiian Telcom"), on July 20, 2007,¹ which seeks to establish rates and charges for an Integrated Services Digital Network Services ("ISDN") custom arrangement for Customer ID #2007-500220. In doing so, the commission opens an investigation to examine the merits of Transmittal No. 07-16.

Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty days from the date of this Order, with copies served on Hawaiian Telcom and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate").²

¹Transmittal No. 07-16; Exhibit I; Verification; Certificate of Service; and the Cost Support Letter, enclosing under confidential seal the cost support for Transmittal No. 07-16 (i.e., Attachments I and II), filed on July 20, 2007 (collectively, "Transmittal No. 07-16").

²The Consumer Advocate is an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

II.

Background

Hawaiian Telcom is the incumbent provider of telecommunications services within the State of Hawaii ("State"). Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications ("TWTC") "is a competitor of HT for dedicated transport private line services and certain business switched services in the State. TWTC provides intrastate private line and switched services, including interisland toll services[.]"³

On July 20, 2007, Hawaiian Telcom filed its Transmittal No. 07-16, seeking to establish rates and charges for an ISDN custom arrangement for Customer ID #2007-500220. The proposed monthly recurring charges range from \$4,800 to \$14,400, depending upon the number of units. The term of the agreement is for one-year, "that is renewable at the same rate, on a year-by-year basis, for an additional four years, for a total [of] five years."⁴ The proposed effective date of Hawaiian Telcom's transmittal is August 20, 2007.

A.

TWTC's Protest

On August 3, 2007, TWTC filed its Protest of Hawaiian Telcom's Transmittal No. 07-16, recommending that the

³Protest of Time Warner Telecom of Hawaii, L.P.; Verification of Edward Murley; Exhibits A to C; and Certificate of Service, filed on August 3, 2007 (collectively, "Protest"), at 2.

⁴Hawaiian Telcom's Reply; and Certificate of Service, filed on August 10, 2007 (collectively, "Reply"), at 4.

commission suspend and investigate Hawaiian Telcom's transmittal. In its Protest, TWTC contends:

1. Based on the volumes and rates, Customer ID #2007-500220 is the State Judiciary ("Judiciary"). Hawaiian Telcom, TWTC, and Pacific LightNet, Inc. ("PLNI"), all submitted bids for this contract with the Judiciary.

2. The proposed rates set forth in each of the bids submitted to the Judiciary, which were disclosed at the bid opening meeting, are attached to TWTC's Protest as Exhibit A. "As shown on Exhibit A, the rates bid by HT, and reflected in the Proposed Tariff, are substantially below those offered by TWTC and PLNI."⁵

3. Because three telecommunications carriers submitted bids for the contract with the Judiciary, TWTC assumes that for purposes of its Protest that the DS1 service Hawaiian Telcom proposes to offer to the Judiciary is a partially competitive telecommunications service, as least as it relates to the Judiciary.

4. HAR § 6-80-32(b) "provides, in part, that pricing for partially competitive services may not be set below the total service long run incremental cost of providing the service [TSLRIC], calculated as provided in [HAR] § 6-80-35(e), and must not result in any cross-subsidization of any partially competitive service from any non-competitive service. Because HT continues to provide non-competitive services, any losses it incurs by pricing certain services below TSLRIC can be

⁵Protest, at 3.

subsidized through the rates charged for non-competitive services. Any such pricing is contrary to the Commission's rules and could stifle or eliminate competition."⁶

5. "TWTC does not have access to HT's TSLRIC for the service to be provided under the Proposed Tariff. However, TWTC is concerned that the rates set forth in the Proposed Tariff may be less than the combined cost for the relevant unbundled network element ('UNE') components that are used to provide the service. The majority of the prices per PRI/DS1 that were included in HT's bid for the Judiciary contract were \$339.51. TWTC understands that the current TSLRIC based rate for a UNE DS1 loop is approximately \$159.00. While TWTC doesn't have the costs for the remaining UNES that would be required to provide the service, it is concerned that the sums of those costs is greater than the \$180.51 balance of the bid price."⁷

6. "Based on the information included in HT's tariff filings for custom arrangements, TWTC cannot determine whether the rates set forth in the Proposed Tariff are below those offered by HT to its other business customers for similar volumes under custom arrangements. However, the rates in the Proposed Tariff are the lowest rates offered by HT that TWTC is aware of, and are substantially lower than HT's current promotional rate of \$450.00 per PRI/DS1 for the same service for a one year term If the rates in the Proposed Tariff are

⁶Protest, at 3.

⁷Protest, at 4 (footnote and text therein omitted).

lower than those offered by HT to similarly situated customers, they are discriminatory."⁸

7. "[T]he rates set forth in the Proposed Tariff may be unjust and unreasonable, because (1) they appear to be below the total service long run incremental cost . . . of providing the service, and (2) they appear to be discriminatory. TWTC does not have sufficient information to determine, at this time, whether the rates are in fact below TSLRIC and/or discriminatory. However, [the] information available to TWTC raises significant concerns. Therefore, TWTC asks that the Commission suspend and investigate the Proposed Tariff."⁹

B.

Hawaiian Telcom's Reply

On August 10, 2007, Hawaiian Telcom filed its Reply to TWTC's Protest. In its Reply, Hawaiian Telcom counters that: (1) its cost support, filed under confidential seal, demonstrates that its proposed rates and charges are not below TSLRIC and are non-discriminatory; and (2) TWTC's claims are unpersuasive and without supporting basis.

⁸Protest, at 4 (citing to HAR § 6-80-37, governing non-discrimination in the provision of telecommunications services).

⁹Protest, at 3.

II.

Discussion

HAR § 6-80-40 states in relevant part:

Denial or approval of tariffs.

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(b) A telecommunications carrier shall file its tariff for any partially competitive service or noncompetitive service at least thirty days before the effective date of the proposed service. The commission may suspend the operation of the tariff and investigate the justness and reasonableness of the tariff. The commission may conduct a hearing to aid its investigation. The commission shall conduct its investigation on an expedited basis. With or without such suspension, the commission may:

- (1) Deny or reject the tariff; or
- (2) Allow the tariff to take effect.

(c) Any person may protest or oppose any proposed tariff filing for a partially competitive or noncompetitive service by filing a written protest with the commission and serving a copy of the protest on the telecommunications carrier proposing the tariff not less than fifteen days before the proposed effective date of the tariff. The carrier may file a reply to the protest not later than five days before the proposed effective date of the tariff with proof of service of a copy of the reply on the protestor. A written protest does not require the commission to suspend the operation of the tariff, but may be considered by the commission in deciding whether to:

- (1) Deny or reject the tariff; or
- (2) Allow the tariff to take effect.

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HAR § 6-80-40(b) and (c); see also HRS § 269-16 (suspension of a proposed rate, fare, or charge); and HAR §§ 6-62-58 (protests), 6-61-61 (protest of a public utility's tariff change), and 6-61-111 (public utility tariff filings).

Upon review, the commission finds that TWTC's Protest raises certain issues that merit further review, including a review of the Consumer Advocate's position on this matter. The commission, thus, suspends for investigation Hawaiian Telcom's Transmittal No. 07-16.

Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty days from the date of this Order, with copies served on Hawaiian Telcom and the Consumer Advocate.¹⁰

III.

Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom's Transmittal No. 07-16, filed on July 20, 2007, is suspended, and an investigation is opened to examine the merits of said transmittal.

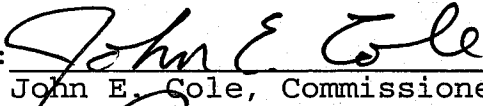
2. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within twenty days from the date of this Order, with copies served on Hawaiian Telcom and the Consumer Advocate.


¹⁰HAR § 6-61-57(3)(B) states in part that a timely motion to intervene or participate shall be filed with the commission within "[t]wenty days after the commission orders an investigation including an investigation of a tariff change or an initial tariff filing."

DONE at Honolulu, Hawaii AUG 16 2007.

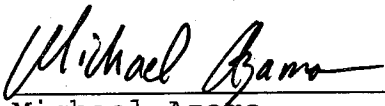
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

HTI 07-16 Suspension.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23606 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: AUG 16 2007