

Local exchange intrastate services; fully competitive. (a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat the State's local exchange intrastate services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not charge a higher rate for any retail telecommunications service than the rate for the same service included in the telecommunications carrier's filed tariff. All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.

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

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

Act 180, Section 2.

According to the Act's preamble, the purpose of Act 180 is to require the commission to: (1) classify the State of Hawaii's ("State") local exchange intrastate services as fully competitive with respect to certain service classifications; and

(2) require telecommunications carriers to file their rates, fares, charges, and bundled service offerings for informational purposes only.¹

B.

Transmittal No. 09-13

By its Transmittal No. 09-13, filed on September 3, 2009, Hawaiian Telcom seeks "expedited Commission approval of [its] revised Intrastate P.U.C. Tariff 20 and, to the extent applicable, a waiver pursuant to Hawaii Administrative Rules § 6-80-135 of any time requirements that may apply for these revisions."² In support of its request, Hawaiian Telcom states:

1. In light of Act 180, its proposed revisions to its Intrastate P.U.C. Tariff 20 "authorize the Company to charge up to the rates and/or charges contained for the applicable service."³

2. Pursuant to HAR § 6-80-135(a), "a waiver is in the public interest in light of Act 180's determination that local exchange intrastate services are fully competitive, and because

¹Act 180, Section 1.

²Hawaiian Telcom's transmittal letter, dated September 3, 2009, at 1. Hawaiian Telcom served a copy of its transmittal upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

³Hawaiian Telcom's transmittal letter, dated September 3, 2009, at 1.

the revisions to Intrastate P.U.C. Tariff 20 are being made to reflect the Company's authorization in light of Act 180 to charge up to its current applicable tariffed rates and charges."⁴

C.

Consumer Advocate's Position

By letter dated September 17, 2009, the Consumer Advocate states that it does not object to the commission's approval of Hawaiian Telcom's proposed tariff changes. That said, the Consumer Advocate offers the following comments and recommendation:

The Consumer Advocate would like to affirm that it has no intent to delay Commission action on the instant filing, but does have one recommendation the Commission may desire to consider. Due to concerns related to the language reflected in Act 180, the Consumer Advocate recognizes that additional filings, including tariff transmittals different than the Commission's currently established practice, may be filed by the Company and other telecommunications carriers. Accordingly, the Consumer Advocate recommends that the Commission inform telecommunications carriers operating in Hawaii that may be affected by Act 180 of the process and form proposed by Hawaiian Telcom. Such notification would ensure that affected parties:

- Would be aware of Act 180 and how they may be affected;
- Would be aware of the process and form being proposed by the Company, how the Company's proposed process and new forms of filing may affect future filings by other carriers; and

⁴Hawaiian Telcom's transmittal letter, dated September 3, 2009. at 1 n.1.

- Would have an opportunity to timely inform the Commission of any issues they may have with the Company's proposal.

This upfront proactive endeavor may (1) serve to mitigate efforts that may be required in the future to address contentions that other parties may have with Hawaiian Telcom's proposed process and form and/or (2) help to identify additional significant item(s) as identified by other parties should the Commission approve the subject filing or something similar without all affected parties being notified. In addition, having all affected parties involved upfront would likely also minimize any possible negative public interest issues or discriminatory circumstances where customers may be charged differing rates for identical or similar services due to carriers' misunderstanding of Act 180 and the related Commission's approved process and form.

In addition to the above recommendation, the Consumer Advocate would like to continue to note, for the record, the apparent or possible discrepancies or conflicts that exist between Act 180 and [HAR chapter] 6-80 which hopefully will be rectified by upcoming legislation. Further review of this matter would be made at that time.

Consumer Advocate's letter, dated September 17, 2009, at 1-2.

D.

Hawaiian Telcom's Reply

By reply letter dated September 22, 2009, the incumbent telecommunications carrier states:

. . . . Hawaiian Telcom does not have any objection to the Consumer Advocate's recommendation pertaining to Act 180 in its September 17, 2009 letter, as long as it does not delay in any manner the Commission's approval of Hawaiian Telcom's Tariff Transmittal 09-13 and Hawaiian Telcom's ability to immediately offer bundled and other service offerings pursuant to Act 180. We believe this is consistent with the Consumer Advocate's filing, in which they specifically noted that they have no objections to

Hawaiian Telcom's submittal and that their recommendation has no intent to delay Commission action on the subject matter.

Hawaiian Telcom's letter, dated September 22, 2009, at 1.

II.

Discussion

HRS § 269-16.9, governing exemptions and waivers for telecommunications providers of services, states in relevant part:

Telecommunications providers and services.

(a) Notwithstanding any provision of this chapter to the contrary, the commission, upon its own motion or upon the application of any person, and upon notice of hearing, may exempt a telecommunications provider or a telecommunications service from any or all of the provisions of this chapter, except the provisions of section 269-34, upon a determination that the exemption is in the public interest. In determining whether an exemption is in the public interest, the commission shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry

. . . .

(c) The commission may condition or limit any exemption as the commission deems necessary in the public interest. The commission may provide a trial period for any exemption and may terminate the exemption or continue it for such period and under such conditions and limitations as it deems appropriate.

. . . .

(e) The commission may waive other regulatory requirements under this chapter applicable to telecommunications providers when it determines that competition will serve the same purpose as public interest regulation.

. . . .

HRS § 269-16.9.

HAR § 6-80-135 provides:

Exemption and waiver. (a) The commission may, upon its own motion or upon the written request of any person or telecommunications carrier, exempt or waive a telecommunications carrier or telecommunications service from the provisions of chapter 269, HRS, this chapter, or any other telecommunications-related rule, in whole or in part, upon the commission's determination that the exemption or waiver is in the public interest; provided that the commission may not exempt or waive a telecommunications carrier or telecommunications service from:

- (1) Any provision of §269-34, HRS; or
- (2) Any provisions of this chapter that implement §269-34, HRS.

(b) The applicable provisions of §269-16.9, HRS, apply to any exemptions or waivers issued by the commission.

(c) The commission may hold a hearing on any proposed exemption or waiver.

HAR § 6-80-135.

Hawaiian Telcom's existing Local Exchange Intrastate Tariff 20 sets forth the rates, terms, and conditions of service for its intrastate offerings. The underlying change proposed by Hawaiian Telcom is to incorporate the following new language throughout the text of Tariff 20:

Hawaiian Telcom is authorized to charge up to the rates and/or charges contained in this section for the applicable service. Appendix B may contain

current specific applicable rates, charges, bundled services offerings and terms and conditions for, or involving, the applicable service which took effect without Commission approval, pursuant to Act 180 Session Laws of Hawaii 2009 (SLH 2009).

In addition, Hawaiian Telcom proposes "minor text changes to correct or revise headings, subsection numbering, and cross references" to its Local Exchange Intrastate Tariff 20.⁵

Here, Transmittal No. 09-13 represents the incumbent telecommunications carrier's initial step in implementing the provisions of Act 180, governing local exchange intrastate telecommunications services. Specifically, it is evident that as a result of Act 180's enactment, Hawaiian Telcom proposes to: (1) utilize and have on file with the commission the rates and charges set forth in its current existing Local Exchange Intrastate Tariff 20 as a price ceiling; and (2) in the future, file with the commission "specific applicable rates, charges, bundled services offerings and terms and conditions for, or involving, the applicable service" for informational purposes, as part of its newly proposed Appendix B to Tariff 20. Although unclear, it is likewise evident that Hawaiian Telcom seeks a waiver of the thirty-day notice period governing proposed tariff changes as set forth in HRS § 269-16(b), HAR § 6-80-40(b), and HAR § 6-61-111, to the extent applicable.

⁵Hawaiian Telcom's transmittal letter, dated September 3, 2009, at 1.

The State legislature, in supporting the enactment of Act 180, noted that:

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

Act 180, Section 1.

Based on the legislature's pertinent observations, the commission finds that the exemption or waiver from the thirty-day notice period appears consistent with the public interest of providing the incumbent telecommunications carrier with the opportunity to promptly "roll-out" new local exchange intrastate service offerings, including bundled service packages, in response to competitive service offerings. The requested exemption or waiver, in effect, will enable Hawaiian Telcom to proceed with the filing of applicable "rates, fares, charges, and bundled service offerings" with the commission for informational purposes, consistent with the provisions of Act 180. In sum, the commission: (1) pursuant to HRS § 269-16.9(e) and HAR § 6-80-135(a), waives the thirty-day notice period set forth in HRS § 269-16(b), HAR § 6-80-40(b), and HAR § 6-61-111, to the

extent applicable;⁶ and (2) approves Hawaiian Telecom's transmittal, effective from the date of this Order, subject to the following revisions for consistency with the language set forth in HAR § 6-80-40(a):⁷

Hawaiian Telcom is authorized to charge up to the rates and/or charges contained in this section for the applicable service. Appendix B may contain current specific applicable rates, charges, bundled services offerings and terms and conditions for, or involving, the applicable service which [took effect without Commission approval,] is effective upon filing with the Commission, pursuant to Act 180 Session Laws of Hawaii 2009 (SLH 2009).

III.

Orders

THE COMMISSION ORDERS:

1. Pursuant to HRS § 269-16.9(e) and HAR § 6-80-135(a), the thirty-day notice period set forth in HRS § 269-16(b), HAR § 6-80-40(b), and HAR § 6-61-111 is waived, to the extent applicable.

2. Hawaiian Telcom's Transmittal No. 09-13, filed on September 3, 2009, is approved, effective from the date of this Order, provided that the following language in the Company's transmittal is revised to read as follows:

Hawaiian Telcom is authorized to charge up to the rates and/or charges contained in this section for the applicable service. Appendix B may contain current specific applicable rates, charges,

⁶In response to the Consumer Advocate's recommendation, the commission will be providing written notice to telecommunications carriers about Act 180 and its effects on said carriers.

⁷Deletions are bracketed, additions are underscored.

bundled services offerings and terms and conditions for, or involving, the applicable service which is effective upon filing with the Commission, pursuant to Act 180 Session Laws of Hawaii 2009 (SLH 2009).

3. The commission reserves the right at any time to review and modify the Company's Local Exchange Intrastate Tariff 20, including Appendix B.

4. Hawaiian Telcom shall promptly file its revised Local Exchange Intrastate Tariff 20, with the applicable issued and effective dates.

5. Hawaiian Telcom's failure to comply with the requirement noted in Ordering Paragraph No. 2, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law.


DONE at Honolulu, Hawaii SEP 28 2009

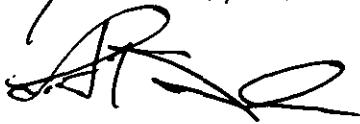
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel


By
Leslie H. Kondo, Commissioner

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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

STEVEN P. GOLDEN
VICE PRESIDENT, EXTERNAL AFFAIRS
HAWAIIAN TELCOM, INC.
P. O. Box 2200
Honolulu, HI 96841