



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HAWAIIAN TELCOM, INC. ) Docket No. 2007-0233  
For Approval of Changes to its )  
Tariff. Transmittal No. 07-16. )  

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DECISION AND ORDER

By this Decision and Order, the commission approves Transmittal No. 07-16, filed by HAWAIIAN TELCOM, INC. ("Hawaiian Telcom" or "HT") on July 20, 2007, as revised on November 30, 2007.<sup>1</sup>

I.

Background

A.

Hawaiian Telcom and TWTC

Hawaiian Telcom is the incumbent provider of telecommunications services within the State of Hawaii ("State"). Hawaiian Telcom's predecessors in interest include GTE Hawaiian Telephone Company Inc. ("GTE Hawaiian Tel") and Verizon Hawaii Inc. ("Verizon Hawaii").

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<sup>1</sup>The Parties are Hawaiian Telcom, TIME WARNER TELECOM OF HAWAII, L.P. ("TWTC"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

TWTC is a facilities-based, competitive provider of interstate and intrastate telecommunications services, including dedicated access (private line) and local exchange services. TWTC has in effect interconnection agreements with the incumbent telecommunications carrier,<sup>2</sup> and it purchases unbundled network elements ("UNE" or "UNEs"), including DS1 loop elements, from Hawaiian Telcom as part of its provisioning of competitive telecommunications services within the State.

TWTC currently provides telecommunications services to the State Judiciary ("Judiciary"). As asserted by TWTC: (1) Hawaiian Telcom and Pacific LightNet, Inc. ("PLNI"), all submitted bids for the Judiciary contract; (2) at the bid opening, the rates submitted by each telecommunications carrier were revealed, and the rates submitted by Hawaiian Telcom, as reflected in the publicly disclosed portions of the incumbent telecommunications carrier's submittal, were substantially below the rates submitted by PLNI and TWTC;<sup>3</sup> and (3) TWTC was an unsuccessful bidder for the contract at issue.

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<sup>2</sup>See In re GTE Hawaiian Tel. Co. Inc., Docket No. 97-0219, Decision and Order No. 15736, filed on August 6, 1997 (approval of an interconnection agreement); and In re Verizon Hawaii Inc., Docket No. 03-0155, Decision and Order No. 20376, filed on August 12, 2003 (approval of Amendment No. 1 to the interconnection agreement); see also In re Verizon Hawaii Inc., Docket No. 04-0029, Decision and Order No. 20896, filed on April 8, 2004 (approval of an operator services agreement); and In re Verizon Hawaii Inc., Docket No. 04-0045, Decision and Order No. 20903, filed on April 14, 2004 (approval of a pole attachment and conduit occupancy licensing agreement).

<sup>3</sup>According to Hawaiian Telcom, a review of Exhibit A attached to TWTC's Protest "shows that the bid results for the Judiciary contract were Time Warner \$23,044.22, PLNI \$18,547.66 and Hawaiian Telcom \$16,286.37." Hawaiian Telcom's Reply; and

B.

Procedural Background

On July 20, 2007, Hawaiian Telcom: (1) filed Transmittal No. 07-16, seeking to establish rates and charges for an Integrated Services Digital Network ("ISDN") custom arrangement for Customer ID #2007-500220; and (2) separately filed its cost data under confidential seal, in support of Transmittal No. 07-16.<sup>4</sup>

The proposed monthly recurring charges range from \$4,800 to \$14,400, depending upon the number of units.<sup>5</sup> The term of the agreement is for one-year, "that is renewable at the same

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Certificate of Service, filed on August 10, 2007 (collectively, "Reply"), at 2.

<sup>4</sup>Subsequently, on November 30, 2007, Hawaiian Telcom filed "a revision of page 1 to the cost support for the Company's proposed provisioning of a custom arrangement for Customer ID #2007-500220. This revision does not significantly change the cost for providing this service." Hawaiian Telcom's transmittal letter, dated November 30, 2007, at 1. Hereinafter, unless the context clearly requires otherwise, Hawaiian Telcom's July 20, 2007 and November 30, 2007 filings are collectively referred to as "Transmittal No. 07-16."

<sup>5</sup>As set forth in Exhibit I of Transmittal No. 07-16:

	Customer/Rates/Charges
Provision of ISDN-PRI	ID#: 2007-500220
Port Access System Switched Facilities - DS1 Service within the State of Hawaii	MRC:
PRI Port Access System Switch Facilities	\$4,800.00 -
Flat Voice w/DS1 Service	\$14,400.00*
	TLA: 1 Year (See Note 1)
	MRC:
DID Number Charge, Per Number	\$0.095

NOTE 1: Refer to PUC Tariff No. 20, Section 1.29.7.

Transmittal No. 07-16, Exhibit I, at Original Sheet 135.6.

rate, on a year-by-year basis, for an additional four years, for a total [of] five years."<sup>6</sup>

On August 3, 2007, TWTC filed its Protest of Hawaiian Telcom's Transmittal No. 07-16, recommending that the commission suspend and investigate Hawaiian Telcom's transmittal. In its Protest, TWTC asserted that the rates set forth in Hawaiian Telcom's transmittal may be unjust and unreasonable, because the rates appear to be below the total service long run incremental cost ("TSLRIC") of providing the service, and discriminatory.

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

On August 16, 2007, the commission suspended Transmittal No. 07-16 and opened this investigation to examine the merits of Hawaiian Telcom's transmittal.<sup>7</sup> Thereafter, on October 3, 2007, the commission granted intervention to TWTC, over Hawaiian Telcom's noted objection.<sup>8</sup>

On November 8, 2007, the commission issued Protective Order No. 23816.<sup>9</sup> On December 6, 2007, the commission denied

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<sup>6</sup>Hawaiian Telcom's Reply, at 4.

<sup>7</sup>Order No. 23606, filed on August 16, 2007, at 7.

<sup>8</sup>Order No. 23693, filed on October 3, 2007.

<sup>9</sup>On October 24, 2007: (1) Hawaiian Telcom submitted its proposed protective order; and (2) TWTC submitted its proposed protective order.

Hawaiian Telcom's motion for reconsideration, which sought the partial reconsideration of Protective Order No. 23816.<sup>10</sup>

On December 18, 2007, the commission issued Procedural Order No. 23895, setting forth the issues, procedural schedule, and procedures to govern this proceeding.<sup>11</sup> On January 10, 2008, the commission granted Hawaiian Telcom's motion to modify or clarify two of the procedural steps in Procedural Order No. 23895.<sup>12</sup>

On February 26, 2008, TWTC and the Consumer Advocate filed their Statements of Position.<sup>13</sup> On March 24, 2008, Hawaiian Telcom filed its Reply Position Statement.<sup>14</sup>

C.

Past Commission Proceedings

In In re GTE Hawaiian Tel. Co. Inc., Docket No. 94-0348 ("Docket No. 94-0348"), the commission, by Decision and Order

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<sup>10</sup>Order No. 23873, filed on December 6, 2007.

<sup>11</sup>On November 19, 2007: (1) Hawaiian Telcom and the Consumer Advocate submitted their proposed procedural order; and (2) TWTC submitted its proposed procedural order.

<sup>12</sup>Order No. 23963, filed on January 10, 2008; see also Commission's letter, dated February 27, 2008.

<sup>13</sup>TWTC's Statement of Position; Exhibits A - E; and Certificate of Service, filed on February 26, 2008 (collectively, "Statement of Position"); and Consumer Advocate's Statement of Position; and Certificate of Service, filed on February 26, 2008 (collectively, "Statement of Position").

<sup>14</sup>Hawaiian Telcom's Reply Statement of Position; Exhibit 1; and Certificate of Service, filed on March 24, 2008 (collectively, "Statement of Position"). On April 10, 2008, the commission issued Order No. 24141, approving the Parties' voluntary and intentional waiver of an evidentiary hearing.

No. 13760, filed on February 10, 1995, as amended by Order No. 13831, filed on March 30, 1995, approved a pricing flexibility tariff for GTE Hawaiian Tel, subject to certain conditions, for the purpose of enabling the incumbent telecommunications carrier to reduce the price of certain of its services in response to competition from other private line service providers. In approving GTE Hawaiian Tel's proposed tariff, with conditions, the commission noted in part:

1. Long run incremental cost

Under standard contract procedures, GTE Hawaiian Tel is allowed to price certain services below its LRIC by basing rates on the incremental cost of serving a specific customer rather than on the company's total LRIC for the service. The commission allows GTE Hawaiian Tel to employ this type of pricing in its special assembly filings for large customers. However, the commission is concerned that GTE Hawaiian Tel may price services at a level that exceeds only the LRIC of each rate element, and may price such rate elements disparately to competitive carriers who must obtain network access or other service elements from the company to provide their own services. GTE Hawaiian Tel would have an unfair advantage when bidding for large contracts if it is able to price its services at the LRIC of each rate element of the services, but charge a competitor a higher rate for the same elements needed by the competitor to provide similar services.

Other jurisdictions have addressed this problem by requiring the local exchange carrier (LEC) to impute the tariffed rate of any monopoly building block function to the rate for any bundled service that includes that function. In effect, this requires the LEC to charge itself the same rate for a specific service element that it charges a competitor for any network function that the competitor needs to provide similar service. Although GTE Hawaiian Tel has not completely unbundled and tariffed each rate element, we find that the principle may reasonably be imposed on GTE Hawaiian Tel.

## 2. Discriminatory pricing

Under the proposed pricing format, GTE Hawaiian Tel may charge customers different rates for a given service. Such disparate pricing is not per se unreasonable since the cost to serve a large customer is typically less than the cost of providing similar service to a smaller customer. However, the commission is concerned that the pricing flexibility format would potentially permit discriminatory pricing. Thus, in keeping with the commission's policy on special assembly contracts, we shall require GTE Hawaiian Tel, as far as practicable, to charge the same rate to customers of similar size and circumstance. And when disparate charges are proposed, the company shall provide cost data justifying such charges.

## 3. Confidential filing

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GTE Hawaiian Tel's desire to maintain confidentiality during the contract bidding process is understandable since competitors may otherwise undercut its prices. The company's concerns seem reasonable in light of Oceanic's filing in Docket No. 94-0093, which simply prices services at 25 per cent below GTE Hawaiian Tel's tariffed rates. However, the commission finds that after a contract has been awarded, there is no reason to maintain confidentiality. Thus, we will grant GTE Hawaiian Tel's request for confidentiality of its contract bid and rates until the contract is awarded.

If the company is awarded the contract, it shall file the rates in its tariff as a special assembly on the date the rates become effective. We find that this will help to establish a truly competitive price for services, and will allow competitors to later review and comment on the application of the pricing flexibility tariff.

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## 7. Impact on Docket No. 7702

The pricing flexibility tariff touches upon fundamental issues with respect to the introduction and development of competition in the telecommunications marketplace, which is a central issue being addressed in Docket No. 7702, the commission's infrastructure proceeding. The

commission finds that the approval of the pricing flexibility tariff should not pose a problem or negatively impact the proceedings in Docket No. 7702. Approval of the proposed tariff in this docket should neither prejudice nor preempt that proceeding, for such approval shall be subject to any findings or orders that may be issued by the commission in Docket No. 7702.

Docket No. 94-0348, Decision and Order No. 13760, at 5-10.

. . . . Although we initially allowed GTE Hawaiian Tel to file its contract information under confidential cover, we find that in the absence of necessary data to verify the company's imputation methods, the input of other carriers and providers is necessary to facilitate our review of the company's contract filings. To this end, we will modify Decision and Order No. 13760 to require that GTE Hawaiian Tel shall provide competitive carriers with contract information under protective agreements.

Docket No. 94-0348, Order No. 13831, at 11.

The commission, thus, ordered in relevant part:

. . . .  
2. GTE Hawaiian Tel's pricing flexibility tariff, as proposed in transmittal number 94-31, is approved subject to the following conditions:

a. GTE Hawaiian Tel shall impute the same rate into its price floors and contract prices that it charges a competitor for the monopoly building block functions that are needed by the competitor to provide equivalent service. In its cost support for price floors and contract services, GTE Hawaiian Tel shall identify and list the prices for all service elements needed by its competitors to provide equivalent service. GTE Hawaiian Tel shall file updated lists as pricing for additional service elements is requested by competitive providers.

b. GTE Hawaiian Tel shall not unreasonably discriminate when pricing a service for customers of substantially similar size and circumstance. GTE Hawaiian Tel shall be required, as far as practicable, to charge the same rate to customers of similar size and circumstance, and shall provide cost studies and data justifying any disparate charges.

. . . . .

d. All contract information filed with the commission and Consumer Advocate shall be maintained under confidential cover until the effective date of the contract. On the effective date, GTE Hawaiian Tel shall file the contracted rate as a special assembly tariff page in section 5 of its existing tariff. Notwithstanding the above, GTE Hawaiian Tel shall make the proprietary information related to price floor filings and imputed costs, including workpapers and cost documentation, available to competitors who execute appropriate nondisclosure agreements. The nondisclosure agreements may contain reasonable provisions to ensure that the proprietary information is not disclosed to the party's employees or consultants who are involved in marketing, or is not in other ways used to GTE Hawaiian Tel's competitive disadvantage. GTE Hawaiian Tel shall honor standing requests presented by competitors who have executed appropriate nondisclosure agreements to receive workpapers and cost documentation whenever GTE Hawaiian Tel seeks contract approval under the express contract procedure.

. . . . .

f. The approval of the pricing flexibility tariff shall not predetermine any issues or findings that may be addressed by the commission in Docket No. 7702, with respect to the introduction and development of competition in intrastate telecommunications services. To this end, the approval of GTE Hawaiian Tel's pricing flexibility tariff shall be subject to any findings or orders that may be issued by the commission in Docket No. 7702.

Docket No. 94-0348, Decision and Order No. 13760, Ordering Paragraph No. 2, at 11-12, as modified by Order No. 13831, Ordering Paragraph No. 2d, at 12-13.

In In re Public Util. Comm'n, Docket No. 7702 ("Docket No. 7702"), the commission's communications infrastructure docket, the commission issued a multitude of orders and decisions

that culminated in the closing of its investigation on June 12, 1996.<sup>15</sup>

D.

Issues

As set forth in Procedural Order No. 23895, as amended, the issues in this proceeding are:

1. Whether the rates in Hawaiian Telcom's proposed tariff are just and reasonable. Within this issue are the following sub-issues:
  - a. Whether the rates comply with HAR § 6-80-33.
  - b. What form of pricing regulation governs the proposed rates.
  - c. Are the proposed rates cost-based.
2. Whether the rates in Hawaiian Telcom's proposed tariff comply with HAR § 6-80-37.
3. Whether Hawaiian Telcom's proposed tariff, which presently specifies the range for the monthly recurring charge, should specify the price per [primary rate interface ("PRI")] for the service, i.e., the monthly recurring charges per line for the service, under HRS §§ 269-12(b), 269-16(b), and HAR § 6-80-39(c)(3).

Procedural Order No. 23895, Section II, Issues, at 7.<sup>16</sup>

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<sup>15</sup>Docket No. 7702, Order No. 22569, filed on June 12, 1996. During the incumbent telecommunications carrier's participation in Docket No. 7702, it was known as GTE Hawaiian Tel, then later as Verizon Hawaii.

<sup>16</sup>This proceeding arises out of TWTC's timely protest of Hawaiian Telcom's Transmittal No. 07-16, which culminated in the filing of simultaneous position statements by TWTC and the Consumer Advocate, followed by Hawaiian Telcom's reply position statement. As a result, in this Decision and Order, TWTC's arguments are outlined first, followed by the Consumer Advocate and Hawaiian Telcom's arguments.

E.

TWTC's Position

By its Statement of Position filed on February 26, 2008, TWTC contends that Hawaiian Telcom has not met its burden of showing that the proposed rates are just and reasonable, and non-discriminatory. TWTC also requests that Hawaiian Telcom's proposed tariff and its future contract filings include a price per PRI. In support of its position, TWTC contends:

Issue 1

1. Based on past commission decisions in Dockets No. 94-0348 and No. 7702, "HT must price its retail services according to the same [TSLRIC], plus a reasonable allocation of common costs, for UNES that it charges [competitive local exchange carriers ('CLECs')]."<sup>17</sup> "[T]he pricing and imputation requirements are designed both to level the playing field between HT and the CLECs, and to discourage cross-subsidization of competitive services by noncompetitive services. If HT can charge a higher price to its competitors for UNES or other elements needed by the CLEC than it includes in its price floor,

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<sup>17</sup>TWTC's Statement of Position, at 9 (footnote and text therein omitted). As noted by TWTC:

. . . . the rates for the Proposed Service must be cost-based and may not be priced below the TSLRIC for the service. Similarly, HT is required to provide UNES at rates that are just, reasonable and cost-based . . . "cost-based" includes TSLRIC, imputed cost and allocated common cost. Thus, HT's cost study and its rates for UNES should both be based on essentially the same TSLRIC standard.

TWTC's Statement of Position, at 10 (footnote and citation therein omitted) (underscore in original).

it will be able [to] offer services at a lower price than the CLECs. This is precisely the case in the instant docket."<sup>18</sup>

2. Hawaiian Telcom's proposed rates are not cost-based for three reasons. Specifically: (A) while HAR chapter 6-80 requires that both Hawaiian Telcom's retail rates and its UNE rates be based on the same TSLRIC standard, differences between Hawaiian Telcom's cost study and its UNE rates raise serious doubts about the validity of Hawaiian Telcom's cost study; (B) the proposed rates fail to comply with the imputation requirement set forth in HAR chapter 6-80 and the commission's past decisions; and (C) Hawaiian Telcom's cost study "raises a number of high level concerns, including the way in which loop and switching costs are estimated and the way in which HT treats operational costs in its post-Verizon environment."<sup>19</sup>

3. The primary UNE functions, or their equivalent, that would be used by CLECs to provide the service are the DS1 Loop and ISDN PRI Digital Trunk Side Port. The applicable monthly recurring UNE rate Hawaiian Telcom would charge the two Hawaii CLECs for these two primary UNE functions is \$578.74. Hawaiian Telcom's cost support results in a monthly recurring cost that is incompatible with the UNE rates Hawaiian Telcom would charge its competitors for the elements required to provide the same services. "[T]he cost support for the Proposed Rates and the prices charged for HT for UNEs are required to be established according to essentially the same TSLRIC standard.

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<sup>18</sup>TWTC's Statement of Position, at 9 (footnote and text therein omitted).

<sup>19</sup>TWTC's Statement of Position, at 9-10.

Accordingly, the differences between the costs included in the HT Cost Study and the TSLRIC-based rates for the comparable UNE functions raise serious questions about the reasonableness and validity of the HT Cost Study."<sup>20</sup>

4. The TSLRIC upon which Hawaiian Telcom's retail rates are based must include an imputation of rates charged by Hawaiian Telcom to its competitors for UNEs or other noncompetitive rate elements they utilize in providing the same service. The primary UNE, or its equivalent, that would be used by CLECs to provide the proposed service is the DS1 Loop. Because of the inconsistency between Hawaiian Telcom's cost support for the proposed service and the UNE rates Hawaiian Telcom would charge its competitors for the elements required to provide the same services, the proposed rates do not comply with the imputation requirement set forth in HAR chapter 6-80 and the commission's past decisions.

5. Lastly, TWTC questions Hawaiian Telcom's approach to estimating the set-up and activation costs for the proposed service:

. . . . Most TSLRIC cost estimates for the non-recurring costs associated with ordering, provisioning and activation are based on automated, flow-through ordering systems. In fact, in Docket No. 7702, the Commission ordered HT's predecessor to implement automated flow-through ordering systems, and ordered that [non-recurring charges ("NRCs")] charged to CLECs for UNEs be based on the cost of such systems, rather than the manual systems in place at that time, as a further incentive for HT to implement the automated systems.

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<sup>20</sup>TWTC's Statement of Position, at 11-12.

However, . . . in Docket 2007-0400, HT has taken the position that it can choose whatever level of automation it believes appropriate, despite its promises and the Commission's order . . . If HT is permitted to rely on manual paper processing of orders for services such as DS1 Loops, the inclusion of costs based on automated systems for individual contracts appears questionable.

TWTC's Statement of Position, at 14-15 (footnotes, citations, and text therein omitted).

"TWTC believes that the Commission's ruling in Docket No. 7702 that pricing of NRCs to CLECs should be based on automated systems as an incentive for HT to implement such systems continues to be correct."<sup>21</sup>

#### Issue 2

6. With respect to the information designated as confidential by Hawaiian Telcom in this proceeding, TWTC notes that the commission specifically limited the disclosure of such information to TWTC "to the cost and pricing information directly related to the [contract] at issue. Thus, TWTC has not had access to information regarding the cost or pricing of other contracts, and TWTC defers to the Consumer Advocate for a detailed review of those contracts."<sup>22</sup> Moreover, "[w]hile TWTC has not been given access to sufficient information to fully analyze this issue, TWTC does not believe that HT has sufficiently justified the difference between the Proposed Rates and its current promotional rate and generally applicable

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<sup>21</sup>TWTC's Statement of Position, at 15 n.25.

<sup>22</sup>TWTC's Statement of Position, at 16.

tariffed rates. TWTC therefore remains concerned that the Proposed Rates may be discriminatory."<sup>23</sup>

### Issue 3

7. Hawaiian Telcom's proposed tariff should specify the price per PRI for the service, reasoning that the \$4,800 to \$14,400 range does not plainly state the rate to be established, as required by HRS § 269-12(b), or contain the applicable price, as required by HAR § 6-80-39(c)(3).

F.

### Consumer Advocate's Position

The Consumer Advocate's position is set forth in its Statement of Position filed on February 26, 2008. The Consumer Advocate states:

#### Issue 1

1. "Transmittal No. 07-16 for the most part complies with [HAR § 6-80-32] items (b)(1) and (b)(2) wherein the filing is seeking Commission authority to use alternative flexibility regulation with pricing floors and ceilings, and the filing does include a tariff that reflects the prices, terms, and conditions of the offering. The Consumer Advocate, however, is unable to determine at this time whether Transmittal No. 07-16 complies with [HAR § 6-80-32] items (b)(3) and (b)(4)[.]"<sup>24</sup>

2. Citing to HAR § 6-80-35(d), the Consumer Advocate stresses the importance of determining whether a network cost

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<sup>23</sup>TWTC's Statement of Position, at 18.

<sup>24</sup>Consumer Advocate's Statement of Position, at 7.

element (i.e., the cost of a network element) of a partially competitive service is competitive or noncompetitive.<sup>25</sup>

"[A] determination on (1) whether a competitor needs a specified network cost element to provide the equivalent service, and (2) whether that specific network cost element is competitive or noncompetitive (i.e., monopoly) is essential to determining whether proper costs have been included in the pricing for Transmittal No. 07-16, and whether the rates are just and reasonable."<sup>26</sup>

3. Given the various changes in the competitive intrastate telecommunications market since the commission's adoption of HAR chapter 6-80 in June 1996:

. . . . today, certain previously noncompetitive individual network elements could (1) continue to be totally noncompetitive and only available from Hawaiian Telcom; (2) have changed to be totally competitive and available from multiple providers; or (3) be either competitive or noncompetitive depending on the specific circumstance (i.e., the route taken, switch used, geographical location, etc.) of the service provided. In the later case, the specific circumstances that exist for each network element of a customer's service request would govern what falls under the terms "noncompetitive inputs" or "monopoly building blocks," and the proper costing approach to be taken (i.e., use of the Company's latest developed actual TSLRIC cost versus use of the same rate charged to competitors who have to use the Company's same network element to provide the subject service).

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<sup>25</sup>The Consumer Advocate also cites to HAR § 6-80-4 ("Where a service or component that is not fully competitive is used as an input to the service at issue, the tariffed rate or charge paid by competitors is the cost of the service or component."); and Docket No. 94-0348, Decision and Order No. 13760 (commission's reference to monopoly building block functions), and Order No. 13831, filed on March 30, 1995.

<sup>26</sup>Consumer Advocate's Statement of Position, at 11.

Consumer Advocate's Statement of Position, at 12.

4. Until the commission determines whether a network element is competitive or noncompetitive, the Consumer Advocate is unable to determine whether the proposed rates for Transmittal No. 07-16 are based on proper costs, and are just and reasonable.

5. Hawaiian Telcom is in the process of transitioning between using Verizon cost models and updated Hawaiian Telcom cost models in its cost development and cost support. "Hawaiian Telcom should attempt to use consistent costing models, or be able to validate that [the] use of differing costing models cover or overstate its cost. In addition, Hawaiian Telcom should point out to the Commission and Consumer Advocate whenever it changes costing models."<sup>27</sup>

6. For certain accounts Hawaiian Telcom utilizes 2005 or earlier cost data. "[C]ost elements based on 2005 or earlier cost data may not be reflective of the current costs for the service. Hawaiian Telcom should use updated costs that would properly reflect its current and forward looking TSLRIC costs."<sup>28</sup>

#### Issue 2

7. The Consumer Advocate was unable to determine whether the rates in Hawaiian Telcom's proposed tariff comply with HAR § 6-80-37, on the basis that it was unable to identify a customer of substantially the same size or circumstance, or similar situation.

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<sup>27</sup>Consumer Advocate's Statement of Position, at 13.

<sup>28</sup>Consumer Advocate's Statement of Position, at 14.

Issue 3

8. It is questionable whether any Hawaii utility regulations require Hawaiian Telcom to specify the price per PRI service for the tariff filed in Transmittal No. 07-16.<sup>29</sup> Thus:

In view of this, the Consumer Advocate concludes that although a price per PRI service may not be required for the Company's tariff in this filing, any applicable specific tariff rate or rate charged to competitors for noncompetitive or monopoly network cost elements required by the competitor to provide the equivalent service should be provided in the Company's cost support filed. Depending on how the Company developed its rates to competitors for noncompetitive or monopoly network cost elements, the related cost support filed for such network cost elements could be on a per network cost element basis or not. (i.e., rate per single UNE, rate per six UNES, etc.)

Consumer Advocate's Statement of Position, at 16.

G.

Hawaiian Telcom's Reply

In its Reply Statement of Position filed on March 24, 2008, Hawaiian Telcom maintains that Transmittal No. 07-16 is non-discriminatory and does not contain rates that are priced below TSLRIC. Thus, Hawaiian Telcom requests that the commission approve its proposed tariff. In support of its position, Hawaiian Telcom asserts:

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<sup>29</sup>The Consumer Advocate does suggest that the rates set forth in the proposed tariff appear consistent with HAR § 6-80-32(b), which provides that pricing for telecommunications services classified as partially competitive may be subject to alternative, non-rate of return regulation, such as "price floors and price ceilings[.]"

## Issue 1

1. The proposed tariff fully complies with HAR §§ 6-80-4, 6-80-32(b), and 6-80-35, governing pricing for partially competitive services, and is cost-based, just, and reasonable.

2. TWTC cites to several commission decisions in Docket No. 94-0348, which pre-date the June 1996 effective date of HAR chapter 6-80. Pursuant to HAR § 6-80-3(2), HAR chapter 6-80 "[s]upersedes any conflicting commission order or rule that may be in effect on the effective date of this chapter."

Thus, "all previous rules or orders, regardless of whether they expressly conflict or not, are superseded, at least with respect to such services. Such orders include those that arose out of Docket No. 94-0348 on which TWTC relies. Decision and Orders Nos. 13760 and 13831, on which TWTC bases its position, predate the effective date of the Commission's administrative rules and address matters that are not directly relevant to this proceeding - the proper pricing methodology for partially or fully competitive services."<sup>30</sup>

3. If TWTC has concerns about Hawaiian Telcom's wholesale prices, its remedy is to seek a review of such prices, and not by interfering with retail arrangements between Hawaiian Telcom and its customers.

4. Hawaiian Telcom's cost support was developed after meticulously identifying the specific network configuration that would be required to provision ISDN-PRI service to each location

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<sup>30</sup>Hawaiian Telcom's Statement of Position, at 9 (footnote and citations therein omitted).

specified by the Customer. The network inputs of each of these configurations were separated into the appropriate network elements needed to provide ISDN-PRI service: Loop, Loop Electronics, Interoffice Transport, Switch, and Network Usage.

5. Because the Customer's competitive bid did not contain specific usage data, and to ensure that Hawaiian Telcom's costs were not underestimated, each element was assigned costs based on the dedicated, maximum use of the ISDN-PRI service. Such action ensured that even if the Customer operated at maximum usage, Hawaiian Telcom's rates would cover that cost. Hawaiian Telcom then took the resulting TSLRIC and divided it up by the number of circuits, in developing an average circuit cost, consistent with HAR § 6-80-4.

6. With respect to the costs associated with Verizon's Flat-Rate Differential:

Again, because of the lack of customer-specific usage data and in order to err on the side of being over-inclusive on its costs, Hawaiian Telcom used the Flat-Rate Differential cost study developed by Verizon and network parameters used in the Commission's Docket No. 7702. The Flat-Rate Differential was developed by Verizon and was intended to be added to costs that were developed assuming non-dedicated (i.e., not maximum) usage. However, . . . since the major network usage costs were included with other network elements when developing costs for this Tariff, the use of the Verizon Flat-Rate Differential, on top of the maximum usage already built into the network element costs by Hawaiian Telcom, ensures that costs, particularly as they applied to usage, would not be underestimated.

Hawaiian Telcom's Statement of Position, at 12-13 (emphasis in original).

7. The resulting costs developed by Hawaiian Telcom in support of its proposed tariff are specific to the Customer's needs, comprehensive, do not underestimate costs as alleged by TWTC, and in fact, are intentionally conservative, "since the Company included the Verizon Flat-Rate Differential that included usage costs that were at least partially already included in other network elements."<sup>31</sup>

8. TWTC identifies two primary UNE functions it considers to be the monopoly building block functions required by CLECs to provide ISDN-PRI services, then states that the applicable monthly rates as identified in the associated interconnection agreements for these elements are:

DS1 Loop	\$159.70
ISDN-PRI Digital Trunk Side Port	<u>\$419.04</u>
Total Monthly Recurring Rate	\$578.74

9. TWTC then alleges that Hawaiian Telcom's costs are neither just nor reasonable because Hawaiian Telcom did not include within its costs the rates for these two specific UNEs - DS1 Loop and ISDN-PRI Digital Trunk Side Port -- which TWTC claims should be included. TWTC's position is incorrect, based on the following reasons:

A. If the DS1 Loop and ISDN-PRI Digital Trunk Side Port were monopoly building block elements as TWTC alleges, TWTC would have to include the cost of these UNEs within its rates in order to price its services above cost; a simple review indicates that TWTC did not. In other words, "[i]f the DS1 Loop and ISDN-PRI Digital Trunk Side Port were monopoly building block

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<sup>31</sup>Hawaiian Telcom's Statement of Position, at 13.

elements, then TWTC would not be able to provide ISDN-PRI to its retail customers without subscribing to the DS1 Loop and ISDN-PRI Digital Trunk Side Port from HT. TWTC being able to provide ISDN-PRI services to its retail customers without subscribing to DS1 Loops and ISDN-PRI Digital Trunk Side Ports defeats TWTC's position that they are UNEs that are required to be imputed into HT's costs."<sup>32</sup> Simply stated, TWTC is not using the UNEs it alleges are monopoly building block elements that TWTC would be required to subscribe to from HT in order for TWTC to provide ISDN PRI services.

B. Unlike other UNEs, the DS1 Loop and ISDN PRI Digital Trunk Side Port have never been found to be monopoly building block elements requiring UNE treatment for imputation. Specifically, the rates for these network services that Hawaiian Telcom would charge CLECs were not explicitly adopted by the commission in Docket No. 7702; instead, these network services are in addition to the fundamental UNE rates identified and required by the commission in Docket No. 7702. "The fact that HT has agreed to provide DS1 Loop and ISDN-PRI Digital Trunk Side Port as services included in an [interconnection agreement do] not make these services essential network elements. These services are no different than any other services HT provides to TWTC through its tariffs or agreements."<sup>33</sup>

C. DS1 Loops and ISDN PRI Digital Trunk Side Ports should not be considered monopoly building block functions or

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<sup>32</sup>Hawaiian Telcom's Statement of Position, at 15.

<sup>33</sup>Hawaiian Telcom's Statement of Position, at 16.

essential service elements for the provisioning of ISDN-PRI service.

10. TWTC states that: (A) one of the primary UNEs, or its equivalent, that would be used by CLECs to provide the proposed service is the DS1 Loop; and (B) because the cost for the Customer Access/Loop developed by Hawaiian Telcom for this tariff is less than the UNE rate for a DS1 Loop, Hawaiian Telcom's cost study therefore does not comply with the imputation requirement. TWTC's analysis is flawed based on the following reasons: (A) the DS1 Loop is not an essential network element, and thus, is not required to be imputed; (B) TWTC admits that the DS1 Loop is not the functionally equivalent services it would use, if necessary, to provision the service at issue in this proceeding; and (C) assuming arguendo, that the DS1 Loop is considered the valid rate that Hawaiian Telcom should impute, Hawaiian Telcom's prices are still compliant.

11. Hawaiian Telcom's rates are above costs and comply with the requirements governing imputation.

12. Hawaiian Telcom's cost study is based on the specific service requirements identified in the Customer's competitive bid. Contrary to TWTC's assertions, Hawaiian Telcom's TSLRIC estimates are reasonable and appropriate with respect to other similarly situated services. Specifically, Hawaiian Telcom's loop costs, switch costs, Flat-Rate

Differential rate, and tariff service order and travel rates are just and reasonable.<sup>34</sup>

13. In response to the Consumer Advocate's comments, Hawaiian Telcom notes that out of the many cost studies required in developing its proposed tariff, only the Drop and Flat-Rate Differential costs were previously developed by Verizon. "Both of these studies use the same network parameters and methodologies reviewed as part of Docket No. 7702, which resulted in the Commission authorized UNE rates. Because there are no identifiable changes to the way Drops are provisioned, or anticipated changes to average customer usage due to the transition from Verizon-Hawaii, there was no justification to believe that there would be a material difference to these Verizon cost studies. On this basis, Hawaiian Telcom believes both of these studies should be considered valid and reasonable."<sup>35</sup>

14. With the exception of the cost studies used in developing the Drop and Flat-Rate Differential costs:

. . . . the remaining cost studies (including the loop, MDF, switch and transport) were developed using Hawaiian Telcom specific labor rates, material prices, loadings (both labor and materials) and other financial factors. The cost studies include changes to Hawaiian Telcom's bulk purchasing prices or "economies of scale" impacts resulting from the transition from Verizon Hawaii.

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<sup>34</sup>At the same time, Hawaiian Telcom acknowledges that the Flat-Rate Differential Rate was developed by Verizon, and that Hawaiian Telcom "is proceeding to carefully develop cost support documentation that is consistent with the methodologies and granularities reviewed as part of Docket No. 7702." Hawaiian Telcom's Statement of Position, at 29.

<sup>35</sup>Hawaiian Telcom's Statement of Position, at 31.

HT confirmed that HT's current direct expenses were not significantly different than those in [use] as a basis for the development of the Proposed Tariff.

These studies reflect the most current information available to HT, as of the date of the study. There is nothing to indicate that any subsequent changes or updates would result in a material impact to the cost studies supporting this Proposed Tariff.

Hawaiian Telcom's Statement of Position, at 33.

15. Hawaiian Telcom opposes the Consumer Advocate's suggestion that the commission consider requiring Hawaiian Telcom to provide notice of any changes to its cost studies to the commission and the Consumer Advocate, noting that it already provides the commission and the Consumer Advocate with detailed cost studies and support. Moreover, the costing area is highly complex and continues to evolve, requiring companies to continuously review and analyze their costing procedures, parameters, and models to determine whether any updates or changes are appropriate. Also, there are many different approaches and models that can be used to derive just and reasonable costs based on the TSLRIC concept of costing.

#### Issue 2

16. The proposed tariff is in compliance with HAR § 6-80-35, as there is no evidence in the record that Transmittal No. 07-16 is discriminatory, or that there are at least two customers that are similarly situated or within a reasonably constituted class.

Issue 3

17. The proposed tariff complies with HRS §§ 269-16(b) and 269-12(b), and HAR § 6-80-39(c)(3), and there is no requirement that Hawaiian Telcom specify in its tariff the price per PRI for the service. Moreover: (A) the proposed tariff is similar to tariffs filed by Hawaiian Telcom and reviewed and approved by the commission since 1986; (B) Hawaiian Telcom files or makes available detailed cost support for its tariffs; and (C) in the event that the commission requires Hawaiian Telcom to include the per unit price for the proposed tariff, the commission should require all telecommunications carriers, including TWTC, to file tariffs for all services and to include such detail in its filings (including the filing of cost studies).

II.

Overview

In addressing the issues in this proceeding, the commission is guided by HAR chapter 6-80, Competition in Telecommunications Services, and the commission's pronouncements in Docket No. 7702.

HAR § 6-80-4 defines certain cost terms, including:

"Cost-based" means based on the underlying cost of providing a telecommunications facility, function, or service and includes, as the context requires, total service long run incremental cost, imputed cost, and allocated common cost.

. . . . .

"Total service long run incremental cost" or "TSLRIC" means the total additional cost to

provide the entire forecasted quantity of service divided by the forecasted quantity, based on the least cost, most efficient technology that is capable of being implemented at the time the total service incremental cost is calculated. The cost is calculated over a period long enough to avoid all costs associated with the provision of the service (i.e., the time interval over which all plant, equipment, and other investments are to be replaced). The forecasted quantity is the highest level of anticipated annual demand for at least the next three years. Where a service or component that is not fully competitive is used as an input to the service at issue, the tariffed rate or charge paid by competitors is the cost of the service or component. The costs of joint facilities, including loop costs, are excluded in calculating the incremental cost.

HAR § 6-80-4; see also HRS § 269-39(b) (TSLRIC).

HAR chapter 6-80, subchapter 3, governs the classification of telecommunications services. HAR §§ 6-80-25, 6-80-26, and 6-80-27 of subchapter 3, provide in relevant part:

§6-80-25 Classification of services.

(a) All telecommunications services offered, initiated, or provided by telecommunications carriers within the State shall be classified as:

- (1) Fully competitive;
- (2) Partially competitive; or
- (3) Noncompetitive.

(b) Any single telecommunications carrier may seek to offer, initiate, or provide any or all classes of services, unless ordered otherwise by the commission.

(c) A service is fully competitive, if:

- (1) There are multiple providers of the service who can enter and exit the market with ease, with none of the providers being dominant in terms of sales;
- (2) All customers for the service have access to information about prices and service quality; and

(3) All customers have the ability and incentive to obtain service from the most efficient provider at a price equal to the economic cost of the service.

(d) In determining whether a service is fully competitive or partially competitive, the commission shall consider the following factors:

(1) The identity, number, and size of any alternative carriers offering the same or equivalent service;

(2) The extent to which service of comparable quality is readily available from more than one carrier in the relevant market;

(3) The ability of alternative carriers to make equivalent or substitute services readily available at competitive rates, terms, and conditions;

(4) Other indicators of market power, including the various carriers' shares of the relevant market, the growth or shifts in market share, the ease of market entry and exit, and any affiliation between or among alternative carriers providing the same or similar service;

(5) Benefits to the public interest; and

(6) Any other factors deemed relevant by the commission.

The degree and extent of competition determine whether the telecommunications service is fully competitive or partially competitive. Partial competition constitutes a classification that is transitional to full competition. Any service not classified as fully or partially competitive is noncompetitive.

.....

§6-80-26 Reclassification of services. The commission may reclassify any telecommunications service from one category to another, if such reclassification is in the public interest.

§6-80-27 Procedures for classifying or reclassifying a service. (a) The classification or reclassification of a telecommunications service as fully competitive, partially competitive, or noncompetitive may be initiated by the filing of a petition by any telecommunications carrier or the consumer advocate, or upon the commission's own motion.

. . . . .  
(e) In a classification or reclassification proceeding initiated by a petition, the petitioner bears the burden of demonstrating that the proposed classification or reclassification is appropriate.

HAR §§ 6-80-25, 6-80-26, and 6-80-27.

HAR chapter 6-80, subchapter 4, governs costs, rates, and pricing for telecommunications services. HAR §§ 6-80-32, 6-80-33, 6-80-35, 6-80-37, and 6-80-42 of subchapter 4, provide:

§6-80-32 Pricing - fully and partially competitive services. (a) Pricing for telecommunications services classified as fully competitive:

- (1) Is exempt from rate of return regulation;
- (2) Is not subject to a price ceiling;
- (3) Must be offered on prices, terms, and conditions reflected in a tariff filed with the commission;
- (4) May not be set below the total service long run incremental cost of providing the service, calculated as provided in §6-80-35(d); and
- (5) Must not result in the cross-subsidization of any fully competitive service from any noncompetitive service as proscribed in §6-80-35.

(b) Pricing for telecommunications services classified as partially competitive:

- (1) May be subject to flexibility and other than rate of return regulation, as authorized by the commission. Such alternative regulation may include price floors and price ceilings;
- (2) Must be offered on prices, terms, and conditions reflected in a tariff filed with the commission;
- (3) May not be set below the total service long run incremental cost of providing the service, calculated as provided in §6-80-35(d); and
- (4) Must not result in the cross-subsidization of any partially competitive service from any noncompetitive service as proscribed in §6-80-35.

§6-80-33 Pricing - noncompetitive services.  
Pricing for noncompetitive services:

- (1) Is subject to rate of return regulation or to such other form of pricing, as authorized by the commission;
- (2) Must be cost-based and just and reasonable;
- (3) Must conform to the applicable requirements of §§269-12 and 269-16, HRS; and
- (4) Must not cross-subsidize any competitive service as proscribed in §6-80-35.

§6-80-35 Cross-subsidization prohibited.

(a) Noncompetitive services offered or provided by any telecommunications carrier must not cross-subsidize the telecommunications carrier's competitive services.

(b) Cross-subsidization is deemed to have occurred if:

- (1) Any fully competitive or partially competitive service is priced below the total service long run incremental cost of providing the service;

(2) Fully competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs; or

(3) If fully competitive and partially competitive services, taken as a whole, fail to cover the direct and allocated joint and common costs.

(c) The total service long run incremental cost of a service must include an imputation of an amount equal to the contribution that the telecommunications carrier receives for the use of the carrier's noncompetitive inputs by other telecommunications carriers to provide the same or equivalent service.

(d) The total service long run incremental cost of a service is the sum of the:

(1) The tariffed rates for the noncompetitive services or noncompetitive service elements, or their functional equivalents, that the carrier itself utilizes to provide the service;

(2) Long run incremental costs of facilities and functionalities that are utilized but not specifically tariffed; and

(3) Long run incremental costs of any other identifiable element associated with the provision of the service.

(e) A telecommunications carrier may not offer a noncompetitive telecommunications service jointly with any fully or partially competitive service or with any interstate, international, or other service not within the jurisdiction of the commission, except upon the commission's express approval. The commission's approval is subject to a satisfactory showing by the telecommunications carrier seeking to offer such joint services that the costs of the fully or partially competitive service or the costs of the interstate, international, or other non-jurisdictional service are not subsidized by the noncompetitive service. An application for approval to offer any such joint services must be filed with the commission not less than thirty days before the joint services are marketed, sold, or advertised.

§6-80-37 Nondiscrimination in the provision of telecommunications services. A telecommunications carrier shall not unreasonably discriminate among its customers in offering or providing any competitive or noncompetitive telecommunications service. It shall offer or provide its service under the same rates, terms, and conditions to all customers similarly situated or within a reasonably constituted class.

§6-80-42 Cost studies. (a) The incumbent telecommunications carrier shall complete and submit a cost study for all tariffs of noncompetitive services, unless ordered otherwise by the commission.

(b) A non-incumbent telecommunications carrier need not submit a cost study for any tariff, whether for fully competitive, partially competitive, or noncompetitive service, unless ordered otherwise by the commission.

(c) The commission may, on its own initiative or at the request of a telecommunications carrier or the consumer advocate, order any telecommunications carrier to complete and submit a cost study to the commission for any service.

(d) Any cost study, where required, must include an analysis of the total service long run incremental cost underlying the service, unless ordered otherwise by the commission.

HAR §§ 6-80-32, 6-80-33, 6-80-35, 6-80-37, and 6-80-42; see also HRS § 269-39 (cross-subsidization and TSLRIC).

Decision and Order No. 14734, filed on June 12, 1996, in Docket No. 7702, was issued shortly after HAR chapter 6-80 took effect on June 3, 1996. By this decision and order, the commission reiterated or set forth certain principles and guidelines to govern the transitioning to a competitive intrastate telecommunications services market, including:

Initially, all local exchange services are deemed to be noncompetitive. However, specific services provided through resale are fully

competitive for the reseller of the specific service, unless otherwise ordered by the commission; and a service is partially competitive where it is available to a substantial majority of potential customers in the relevant market from more than one carrier. Included among partially competitive services is interisland toll. The commission has already allowed carriers other than GTE Hawaiian Tel to provide interisland toll service.

Docket No. 7702, Decision and Order No. 14734, at 28 (footnotes and citations therein omitted).

In our rules, we have incorporated the general agreement of the parties and reflected the Consumer Advocate's market results approach to determining the degree to which a service is competitive. We have defined a fully competitive service in economic terms. We have also reflected in our rules differing levels of pricing flexibility for the different categories of services. Fully competitive are not subject to any price ceiling; partially competitive services may be priced by methods other than the rate of return mode; and noncompetitive services will continue to be subject to rate of return or other forms of pricing, as authorized by the commission. All services, whether fully competitive, partially competitive, or noncompetitive, must be priced at no lower than the TSLRIC of providing the services and must be appropriately tariffed. In addition, pricing for noncompetitive services must not cross-subsidize any fully or partially competitive service.

Docket No. 7702, Decision and Order No. 14734, at 29-30 (footnotes and citations therein omitted) (emphasis added).

[T]ariffs for fully competitive services are effective upon filing with the commission. Tariffs for partially competitive services and for noncompetitive services must follow the standard 30-day filing requirement. The 30-day filing requirement is to enable the commission time to determine the appropriate pricing flexibility to be granted to the carrier for partially competitive and noncompetitive services.

An issue in this docket is whether GTE Hawaiian Tel, the incumbent local exchange carrier, and new market entrants should be treated

alike in terms of pricing requirements. We have determined that they should not. Initially, and perhaps for some time to come, GTE Hawaiian Tel will remain the dominant carrier in local exchange service. As such, it will need to be regulated more than a new entrant. Our rules reflect this need. Thus, where there is less than full competition, GTE Hawaiian Tel will be required to support its 30-day tariff filing with appropriate cost studies, while non-dominant carriers will not, unless specifically required to do so by the commission for a specific service. Where there is full competition, no cost study need be filed by any carrier, unless required by the commission. As the dominant carrier, GTE Hawaiian Tel may also be subject to less flexibility in pricing partially competitive services, than a non-dominant carrier.

The cost studies, where required, are TSLRIC studies. In our rules, we have adopted the general definition of TSLRIC recommended by the Consumer Advocate, as modified by suggestions made by the other parties in the docket. As required by Act 225, TSLRIC includes an imputation of an amount equal to the contribution that a telecommunications carrier receives for the use of the carrier's noncompetitive inputs by other telecommunications carriers to provide the same or equivalent service.

. . . . .  
As required by Act 225, our rules provide that cross-subsidization is deemed to have occurred, if, among other things, fully competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs . . . . .

Docket No. 7702, Decision and Order No. 14734, at 30-32  
(footnotes and citations therein omitted) (emphasis added).

The parties agreed that network facilities, functions, and services should be unbundled and offered on an unbundled basis to other telecommunications carriers. The parties disagreed, however, on (1) whether the unbundling requirement should apply to all carriers or just GTE Hawaiian Tel; (2) whether unbundling should occur only upon bona fide requests for specific unbundled elements or whether a carrier should, from the outset, provide a list of elements to be

offered on an unbundled basis; and (3) what costing methodology should be used to price the unbundled elements.

Under Act 225, unbundling obligations are imposed on all telecommunications carriers, including nondominant carriers and cellular carriers. Our rules, therefore, provide for unbundling by all telecommunications carriers. However, we are in agreement with a number of carriers that in the immediate future, it is GTE Hawaiian Tel that must unbundle its network elements and offer them on an unbundled basis to other telecommunications carriers. GTE Hawaiian Tel is the only carrier that currently has the full panoply of facilities, functions, and services that are subject to unbundling. Thus, by Order No. 14129, issued on August 14, 1995, we ordered GTE Hawaiian Tel to unbundle its network functions and services necessary for the provision of local exchange services and to discretely determine and identify the TSLRIC and allocated joint and common costs for each unbundled service element. We specified that, to the extent possible, GTE Hawaiian Tel must disaggregate the TSLRIC studies to a level that provides cost data for each of 11 categories of network functions.<sup>36</sup>

Docket No. 7702, Decision and Order No. 14734, at 44-45 (footnote 65 and citation therein omitted; footnote 66 retained) (emphasis added).

An issue is the method of calculating the amount of the tariff for monopoly services used by competitors in providing the same or equivalent service that must be imputed by GTE Hawaiian Tel in calculating the TSLRIC of a competitive service. Act 225 prohibits the cross-subsidization of competitive services by noncompetitive services and provides that cross-subsidization is deemed to have occurred if

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<sup>36</sup>Footnote 66 of Decision and Order No. 14734 states:

The 11 categories of functions are: (1) loop distribution; (2) loop concentration; (3) loop feeder; (4) switching; (5) operator systems; (6) dedicated transport links; (7) common transport links; (8) tandem switching; (9) signaling links; (10) signal transfer point; and (11) service control points.

Docket No. 7702, Decision and Order No. 14734, at 45 n.66.

(1) any competitive service is priced below the TSLRIC of providing the service or (2) competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs. The act requires that the TSLRIC of a service include "an imputation of an amount equal to the contribution that the telecommunications carrier receives from noncompetitive inputs used by alternative providers in providing the same or equivalent service."

. . . . .

We reject GTE Hawaiian Tel's approach. Allowing GTE Hawaiian Tel to impute only the margin would provide GTE Hawaiian Tel with an unfair advantage in the competitive market. We will, thus, require the imputation of the full tariff for the monopoly component that GTE Hawaiian Tel's competitors use to provide the same or equivalent service. This means that GTE Hawaiian Tel must impute in its rates the same cost of access that it charges competitors regardless of how GTE Hawaiian Tel may ultimately provision the competitive service.

Docket No. 7702, Decision and Order No. 14734, at 64-65 (footnote and citation therein omitted) (emphasis added); see also Order No. 14959, filed on August 30, 1996, at 9 (including only the margin of the monopoly component that GTE Hawaiian Tel's competitors buys from the incumbent carrier is insufficient; the full tariffed amount must be used).

Thereafter in Decision and Order No. 16775, filed on January 7, 1999, the commission held in relevant part:

TELRIC/TSLRIC

Our rules require that pricing for interconnection, unbundled elements, and collocation be based on total service long run incremental cost (TSLRIC) . . . .

The FCC utilizes the term "total element long run incremental cost" (TELRIC), which, for most purposes, is synonymous with TSLRIC.

There are several approaches to computing forward-looking costs. The approach we adopt utilizes a forward-looking economic-cost methodology based on the most efficient technology deployed in the ILEC's current wire center locations. That is, pricing will be based on costs that assume the ILEC's current wire center locations, but with a reconstructed local network that employs the most efficient technology for any reasonably foreseeable capacity requirements.

Docket No. 7702, Decision and Order No. 16775, at 13-14 (footnote and text therein omitted) (emphasis added).

#### Cost Models and Unbundled Network Element Pricing

Unbundled network elements are the basic components of the ILEC's services and the building blocks by which many competitors propose to enter the local exchange market. In this phase II proceeding, we establish prices for GTE Hawaiian Tel's unbundled network elements based on their underlying TELRICs. The parties approached the determination of unbundled network element costs from two general perspectives. GTE Hawaiian Tel's approach is based on a family of cost models generically referred to as COSTMOD. Conversely, AT&T's proposals are based on the Hatfield Model, version 3.1. For purposes of this decision and order, we utilize COSTMOD for the reasons cited below. However, we also require modifications to the assumptions used in the model. These modifications are designed to reflect forward-looking costs, and are based on recommendations made by the parties, particularly GST . . . .

Docket No. 7702, Decision and Order No. 16775, at 14-15 (emphasis added).

#### Imputation

For competition to thrive, there must be a level playing field for all local service providers. This requires all players to price their services based on a common benchmark. It is equally important that the incumbent, GTE Hawaiian Tel, not cross-subsidize those services that become subject to competition . . . .

To ensure a level playing field and discourage cross-subsidization, we require GTE

Hawaiian Tel to base its own prices for retail services on the same benchmark we set in this decision and order. That is, GTE Hawaiian Tel must price its services as if it were an entity separate and apart from the entity that controls and manages the physical facilities currently owned by GTE Hawaiian Tel. Thus, its services must be priced according to the same TELRIC (plus a reasonable allocation of common costs) for interconnection and unbundled network elements that it charges to CLECs. We do not, by this condition, require GTE Hawaiian Tel physically and organizationally to separate itself into different entities. We only require that GTE Hawaiian Tel price its services on the same benchmark as its competitors.

Docket No. 7702, Decision and Order No. 16775, at 15-16 (emphasis added).

#### ORDER

We order as follows:

1. GTE Hawaiian Tel's COSTMOD shall be used, with the adjustments specified in this decision and order, in determining loop costs and the costs of GTE Hawaiian Tel's other unbundled network elements.

2. GTE Hawaiian Tel shall submit prices for its unbundled network elements, based on TELRIC that assumes GTE Hawaiian Tel's current wire centers, but also assumes the most efficient, new technology that is available and compatible with the existing framework.

3. In calculating the costs of its unbundled loops, GTE Hawaiian Tel shall, among other things: (a) assume the average length of the loops in every loop band to be equal to the band's median loop length, instead of the longest loop within that band; (b) utilize a weighted average fill factor of 75 per cent; (c) exclude the drop costs associated with two-wire private line services in calculating the weighted average unbundled loop drop cost; (d) assume pole sharing with one other entity; (e) assume the utilization of integrated (i.e., next generation) digital line carriers, instead of the current generation technology; (f) eliminate the retail-related costs associated with billing, collection, and administration; and (g) hold constant all other

inputs and assumptions not expressly required by the commission to be modified pursuant to this decision and order.

4. Loop costs will not be allocated to intrastate toll/switched access services at this time.

5. In calculating the costs of all unbundled network elements and non-recurring charges, GTE Hawaiian Tel shall, among other things: (a) utilize a cost of capital of 9.73 per cent; (b) utilize the depreciation lives and rates currently authorized by this commission for intrastate purposes; (c) remove the costs associated with the GTD-5 switch, and replace them with an appropriate mix of the costs associated with the other two predominant switches in GTE Hawaiian Tel's network; and (d) hold constant all other inputs and assumptions not expressly required by the commission to be modified pursuant to this decision and order.

6. GTE Hawaiian Tel shall deaverage the loop cost by island.

7. GTE Hawaiian Tel shall offer on an unbundled basis the following network elements: (a) the local loop (including loop distribution, loop concentration/multiplexer, and loop feeder); (b) network interface devices; (c) local and tandem switching; (d) interoffice transmission facilities (including dedicated transport, common transport, and direct transport); (e) signaling (including signaling links, signal transfer points, and service control point/databases); (f) operations support systems; and (g) operator systems (operator services and directory assistance facilities).

8. GTE Hawaiian Tel shall offer to CLECs all vertical switch features as part of the switching element; except that GTE Hawaiian Tel may negotiate on a case-by-case basis for the provisioning of only the basic switching element or the basic switching element and certain independent vertical feature elements. To this end, GTE Hawaiian Tel shall file with us a TELRIC that includes the costs of all elements and a TELRIC that includes the costs of only the basic switching element. In addition, GTE Hawaiian Tel shall be prepared to provide the TELRIC for any of the independent vertical switch feature elements that a CLEC may request.

9. GTE Hawaiian Tel is not required to provide combined unbundled network elements except to the extent that existing interconnection agreements require such combinations.

10. GTE Hawaiian Tel shall make available its dark fiber on an unbundled basis to the extent that such dark fiber is included in GTE Hawaiian Tel's rate base.

11. GTE Hawaiian Tel shall use a fixed allocator of 20 per cent in determining the amount of common costs to be added to TELRIC in the offering of its network elements on an unbundled basis.

12. GTE Hawaiian Tel shall offer to CLECs its retail services at wholesale, based on a discount rate of 15 per cent.

13. GTE Hawaiian Tel shall offer at wholesale all services it sells at retail to subscribers who are not telecommunications carriers. Included among the services that must be offered at wholesale are: (a) non-recurring charges associated with the provision of retail services; (b) operator and directory assistance services; (c) contract and public policy services (including E-911 and telecommunications relay services); (d) pay telephone access line services; (e) private line and special access services (including customer-owned coin operated telephone access lines); and (f) services offered at volume discounts.

14. GTE Hawaiian Tel may recover the non-recurring (one-time) charges it incurs in processing CLECs' orders for unbundled network elements and for wholesale services. GTE Hawaiian Tel shall process CLECs' orders through operating support systems that employ the most efficient, forward-looking technology, including an electronic interface. However, until such time that nationally standardized gateways have been adopted, GTE Hawaiian Tel may utilize manual processing to provide operations support.

15. GTE Hawaiian Tel shall not impose any changeover charge or a disconnect charge on customer migrations from GTE Hawaiian Tel's services to CLECs' services, except that it may impose a disconnect charge where a disconnect is necessary.

16. GTE Hawaiian Tel shall not impose, as a matter of course, a charge for billing inquiries. GTE Hawaiian Tel may charge for billing inquiries that actually occur; provided that, the charge is based on efficient, forward-looking costs.

. . . .

24. The most favored nation clause, 47 U.S.C. § 252(i), is construed to require a telecommunications carrier to accept, in toto, all terms and conditions of an existing agreement.

. . . .

Docket No. 7702, Decision and Order No. 16775, at 76-80 and 82.

Subsequently, the commission, by Order No. 16826, filed on February 9, 1999, clarified and reconsidered Decision and Order No. 16775, in relevant part, as follows:

Upon review, we conclude that GTE Hawaiian Tel's requests for clarification and/or reconsideration should be granted in part and denied in part, as follows:

First, we clarify that GTE Hawaiian Tel is not required to provide subloop unbundling on a generic basis. Further, subloop unbundling need not be reflected in GTE Hawaiian Tel's recalculated cost studies. However, we will require GTE Hawaiian Tel to provide subloop unbundling to other telecommunications providers on a bona fide request basis.

Second, we find that it is reasonable for GTE Hawaiian Tel to use pole costs based on 40-foot poles when recalculating its loop costs. However, we will require GTE Hawaiian Tel, in conjunction with the use of 40-foot poles for pole costs, to submit all related pricing factors for our review.

Third, although GTE Hawaiian Tel may utilize manual processing to provide operations support until a nationally-standardized gateway has been adopted, we clarify that NRCs shall be computed utilizing the most efficient, forward-looking OSS technology, rather than GTE Hawaiian Tel's current

manual OSS processes.<sup>37</sup> We agree that this will provide GTE Hawaiian Tel with further incentive to adopt such forward-looking OSS technology as soon as possible . . . .

Fourth, we reiterate that "changeover charges" are those charges which GTE Hawaiian Tel has proposed to charge competitive local exchange carriers (CLECs) when a GTE Hawaiian Tel customer migrates to a CLEC. We also clarify that "changeover charges" include the types of charges listed in GTE Hawaiian Tel's memorandum in support of its motion for reconsideration, i.e., the initial service order charge, the customer service record research charge, the loop or port installation charge (per loop or port), and the loop facility charge.

. . . .

Finally, in Decision and Order No. 16775, we determined that the commission-arbitrated GTE-AT&T interconnection agreement requires GTE Hawaiian Tel to recombine unbundled network elements at AT&T's request. We reaffirm that determination . . . .

Docket No. 7702, Order No. 16826, at 5-7.

### III.

#### Discussion

As set forth in Tariff No. 22 of Hawaiian Telcom's tariff:

Special assemblies are designed to meet the unique requirements of a small number of customers in conjunction with regular exchange and/or private line services and for which provision is not otherwise made in the tariffs of the Telephone Company. Installation charges and monthly recurring charges will be based upon the total cost of the equipment and the special work required to meet the customer's request.

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<sup>37</sup>Footnote 6 of Order No. 16826 states: "By this decision, we concomitantly grant AT&T's motion for clarification of the same issue."

This proceeding involves Hawaiian Telcom's proposed rates and charges for an ISDN custom arrangement for Customer ID #2007-500220 ("Customer"), "which was subsequently identified as the State of Hawaii Judiciary."<sup>38</sup> The proposed service is "ISDN-PRI DS1 Service to approximately 37 locations throughout the State[.]"<sup>39</sup>

A.

Issue No. 1

Whether the rates in Hawaiian Telcom's proposed tariff are just and reasonable.

Within this issue are the following sub-issues:

- a. Whether the rates comply with HAR § 6-80-33.
- b. What form of pricing regulation governs the proposed rates.
- c. Are the proposed rates cost-based.

The Parties have reached consensus that the service at issue, as it applies to the Customer, is at a minimum, a partially competitive service, and not a non-competitive service.<sup>40</sup> The Parties take particular note of the fact that the service at issue was the subject of a competitive bidding process

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<sup>38</sup>TWTC's Statement of Position, at 1.

<sup>39</sup>TWTC's Statement of Position, at 1.

<sup>40</sup>While TWTC, in its position statement, refers to HAR § 6-80-33, governing pricing for non-competitive services, TWTC utilizes the TSLRIC and imputation requirements set forth in HAR §§ 6-80-4, 6-80-32(b)(3), and 6-80-35 in analyzing Hawaiian Telcom's proposed rates. The TSLRIC and imputation requirements apply to pricing for partially competitive services under HAR chapter 6-80. TWTC also maintains that because the proposed service was the subject of a formal bidding process, some level of competition exists, regardless of the classification of the proposed service. Thus, the concerns about the possible cross-subsidization of a competitive service by a competitive service, under HAR § 6-80-35(b), apply here.

that involved the submission of bids by three telecommunications carriers.

The commission notes that while the ISDN PRI service at issue may have the characteristics of at least a partially competitive service, and as such may merit reclassification in the future, it is presently classified as a non-competitive service pursuant to HAR chapter 6-80.<sup>41</sup> Thus, as a non-competitive service, Hawaiian Telcom's service is subject to the pricing requirements set forth in HAR §§ 6-80-33 and 6-80-35.

The Parties discuss various Docket No. 7702-type issues related to whether Hawaiian Telcom's pricing method imputes the TSLRIC of the UNES which other carriers would use to provide the service, and whether Hawaiian Telcom is required to impute these costs in this instance. TWTC, moreover, raises concerns that the DS1 loop costs, switching costs, and set-up and activation costs for the proposed ISDN PRI service deviate from the costs typically associated with Hawaiian Telcom's network.

Upon the commission's review of the docket record, it appears that Hawaiian Telcom has appropriately based its pricing on the Customer's site-specific network costs. In effect, as explained by Hawaiian Telcom, for this special assembly,

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<sup>41</sup>At the same time, the commission, in this proceeding, declines to formally proceed with reclassifying the ISDN PRI service at issue. See Order No. 23693 (any action to reclassify the ISDN PRI service at issue may appear to unduly broaden the issues presented in this proceeding); and TWTC's letter, dated March 31, 2008, at 1 ("If the Commission wishes to address the reclassification of the proposed service, or any other issues outside the scope of the issues identified in Procedural Order No. 23895, TWTC believes that it should do so in a separate proceeding in which other interested parties would have an opportunity to participate.").

individual case basis ("ICB") transmittal: (1) Hawaiian Telcom developed its cost support after identifying the specific network configuration that would be required to provision ISDN-PRI service to each of the locations specified by the Customer; (2) the network inputs for each of these configurations were separated into the appropriate network elements needed to provide ISDN-PRI service; and (3) due to the lack of specific usage data on the Customer's part, each element was assigned costs based on the dedicated, maximum use of the ISDN-PRI service, so that such costs, by design, would not be underestimated by the incumbent telecommunications carrier. The commission, under the specific circumstances of this proceeding, finds that Hawaiian Telcom has met its burden of proving that its proposed rates for the ISDN PRI service appear cost-based, just, and reasonable, and do not appear to cross-subsidize any of the incumbent telecommunications carrier's competitive services. HAR §§ 6-80-33 and 6-80-35.

B.

Issue No. 2

Whether the rates in Hawaiian Telcom's proposed tariff comply with HAR § 6-80-37.

HAR § 6-80-37: (1) prohibits a telecommunications carrier from unreasonably discriminating among its customers in offering or providing any competitive or noncompetitive telecommunications services; and (2) states that the carrier "shall offer or provide its service under the same rates, terms, and conditions to all customers similarly situated or within a reasonably constituted class."

TWTC notes the differences between the proposed rates for Hawaiian Telcom's proposed service offering, and the incumbent telecommunications carrier's current promotional rates and general tariff rates for similar services. TWTC suggests that these differences represent unreasonable discrimination among Hawaiian Telcom's customers. The Consumer Advocate, meanwhile, is unable to identify a customer of substantially the same size or circumstance, or similar situation, under HAR § 6-80-37, and thus, is unable to state a position on this issue.

Hawaiian Telcom counters that: (1) the reason for filing an ICB transmittal is due to the customer's unique service requirements; and (2) TWTC has not identified any other customer it believes is similar to Customer ID #2007-500220. Hawaiian Telcom, in essence, contends that its transmittal does not constitute unreasonable discrimination under HAR § 6-80-37.

In the commission's view, Hawaiian Telcom's proposed service offering is for a customer with a somewhat unique combination of requirements, including line counts, volume, specific locations, and contract duration. Moreover, the record in this docket does not identify a similarly situated customer. While there may exist typical promotional rates or other tariff rates that are higher than the rates Hawaiian Telcom is offering in Transmittal No. 07-16, such rates are not being offered to a customer in a similar circumstance or situation as Customer ID# 2007-500220. Based on these reasons, the commission finds that Hawaiian Telcom's service offering to its Customer does not

appear to constitute unreasonable discrimination under HAR § 6-80-37.

C.

Issue No. 3

Whether Hawaiian Telcom's proposed tariff, which presently specifies the range for the monthly recurring charge, should specify the price per PRI for the service, i.e., the monthly recurring charges per line for the service, under HRS §§ 269-12(b), 269-16(b), and HAR § 6-80-39(c)(3).

HRS § 269-16(b) states in relevant part that "[n]o rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-16(b), and prior approval by the commission for any increases in rates, fares, or charges." HRS § 269-12(b), in turn, states that "[a]ny notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof shall be given by filing the notice with the commission and keeping it open for public inspection." HAR § 6-80-39(c)(3) provides that any tariff filed with the commission by a telecommunications carrier must "[c]ontain the applicable price of the service[.]"

Hawaiian Telcom's transmittal states that the proposed monthly recurring charges range from \$4,800 to \$14,400, depending upon the number of units. TWTC asserts that Hawaiian Telcom's transmittal should specify the price per PRI for the service, while Hawaiian Telcom contends that: (1) its transmittal complies with the applicable requirements; and (2) there is no requirement that Hawaiian Telcom specify in its transmittal the price per PRI for the service. The Consumer Advocate, meanwhile, suggests that the rates set forth in the transmittal appear consistent with HAR § 6-80-32(b) (pricing for partially competitive services may be subject to price floors and ceilings), and "although a price per PRI service may not be required for the Company's tariff in this filing, any applicable specific tariff rate or rate charged to competitors for noncompetitive or monopoly network cost elements required by the competitor to provide the equivalent service should be provided in the Company's cost support filed."<sup>42</sup>

Here, the commission notes that, in practice, ICB service offerings by Hawaiian Telcom and other telecommunications carriers commonly contain a range of rates based on the customer's forecasted range of future requirements during the customer's contract period. Many telecommunications carriers also offer service packages (i.e., local, toll, features, etc.) that do not identify in their tariffs the discrete prices of the individual component services. Based on these considerations, the commission finds that in this context, Hawaiian Telcom need

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<sup>42</sup>Consumer Advocate's Statement of Position, at 16.

not publish in its transmittal the price per PRI for its proposed ISDN PRI service.

D.

Conclusion

In summary, the commission answers Issues No. 1 and No. 2 in the affirmative, and Issue No. 3 in the negative. Accordingly, Hawaiian Telcom's Transmittal No. 07-16 is approved, effective from the date of this Decision and Order. Concomitantly, as acknowledged by Hawaiian Telcom in response to the Consumer Advocate's comments, it must, on an on-going basis, continue to "carefully develop and update the required cost support documentation that is consistent with the methodologies and granularities reviewed as part of Docket No. 7702 [and HAR chapter 6-80]."<sup>43</sup>

III.

Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom's Transmittal No. 07-16, filed on July 20, 2007, as revised on November 30, 2007, is approved, effective from the date of this Decision and Order.
2. By September 15, 2008, Hawaiian Telcom shall file its revised tariff sheets that implement Transmittal No. 07-16, with the appropriate issued and effective dates.

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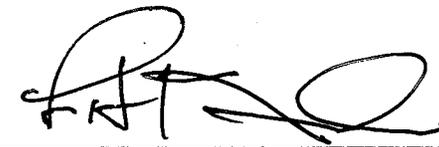
<sup>43</sup>Hawaiian Telcom's Statement of Position, at 31; see also id. at 29.

DONE at Honolulu, Hawaii SEP 10 2008

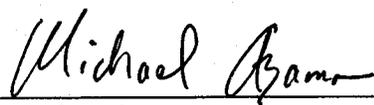
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
Carlito P. Caliboso, Chairman

By:   
John E. Cole, Commissioner

By:   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2008-0233.cp

CERTIFICATE OF SERVICE

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

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