



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

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

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 603 SD1 HD1 CD1

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE