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TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Thursday, February 5, 2009  
8:00 a.m.

**TESTIMONY ON H.B. No. 1077,  
RELATING TO THE HAWAII COMMUNICATIONS COMMISSION**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Lawrence M. Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony in strong support of H.B. No. 1077, H.B. No. 984, and H.B. No. 492. My testimony on all three bills is identical.

In her 2006 inaugural address, Governor Lingle said, "The magnitude and speed of change and innovation in the world today is so great, that if we fail to move forward, by definition, we will be going backwards. When it comes to global economic waves, we want to be riding them ... not sitting on the sand and watching others ride."

More recently, in his inaugural address, President Obama said "For everywhere we look, there is work to be done. The state of our economy calls for action, bold and

swift, and we will act -- not only to create new jobs, but to lay a new foundation for growth.

"We will build the roads and bridges, the electric grids and digital lines that feed our commerce and bind us together. We will restore science to its rightful place, and wield technology's wonders to raise health care's quality and lower its cost.

"We will harness the sun and the winds and the soil to fuel our cars and run our factories. And we will transform our schools and colleges and universities to meet the demands of a new age. All this we can do. All this we will do."

The State Legislature also showed much foresight when you established the Hawaii Broadband Task Force in 2007. The Task Force has provided a roadmap that will help guide us into a future where the availability and accessibility of high speed, affordable broadband is the norm in Hawaii.

These bills will go far in fulfilling the vision of both the Governor, the President, and the Legislature in ensuring that Hawaii and the nation are moving into the 21<sup>st</sup> century purposefully and intelligently. I believe that these bills will position Hawaii in the forefront of national efforts to regain America's primacy in the development, implementation, and widespread availability and use of technology, particularly as it relates to broadband and the applications served by broadband.

Many across the nation and around the world have come to the conclusion that an indispensable requirement for a strong and diversified economy is an advanced communications structure. This is the backbone of a true information economy. We need to hook up our hospitals and empower telehealth. We need to interconnect our

schools and make on-line classes a reality. We need to have the infrastructure in place so that Bishop Street and Front Street communicate seamlessly with Wall Street.

This 21<sup>st</sup> Century infrastructure is essential to creating the kind of high-paying jobs we are striving for in the coming years. What we have in place today meets today's needs. What we need to do, though, is to plan for tomorrow's needs. We can't be limited in our thinking by what we have in place today. We need to dream about tomorrow and lay the groundwork for getting there. What we need is a communications structure that will allow us to achieve competitive advancements in education, health care diagnosis and treatment, public safety, research and innovation, civic participation, creative media, e-government, and overall economic development.

In planning for that future, we have worked with the Broadband Task Force to craft a measure that recognizes the convergence of technologies that are used to provide voice, data and video services through wireline, wireless, cable and satellite infrastructure.

These bills consolidate regulation of communications services under one regulator, a new Hawaii Communications Commission ("HCC" or "Commission"), in order to expedite the availability of the latest communications services at the earliest possible time to the residents of Hawaii. The Commission will be funded from existing fees and will be directed to achieve various goals, including creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit approval process, and providing access to businesses and

residents by 2012 at prices and speeds that will make us world leaders, attract investment and empower our people.

Although the bills are very similar, there are several important differences that the Department wishes to bring to the Committees' attention.

My testimony will focus on differences related to those issues affecting the overall structure or general operations of the HCC, while Cable Television Administrator Clyde Sonobe's testimony addresses differences relating to cable television regulation and Division of Consumer Advocacy Executive Director Cat Awakuni's testimony addresses differences relating to telecommunications regulation.

H.B. No. 1077 and H.B. No. 492 are virtually identical with one exception. Whereas H.B. No. 1077 allows the HCC to investigate any person acting in the capacity of or engaging in the business of a telecommunications carrier within the State without having a certificate of public convenience and necessity or other authority "Beginning July 1, 2010" (page 19, line 3), H.B. No. 492 allows such investigations "One year following the effective date of this chapter" (page 19, line 3).

All differences between H.B. No. 1077 and H.B. No. 984 as outlined below equally apply between H.B. No. 492 and H.B. No. 984.

First, H.B. No. 1077 attaches the HCC to the Department for administrative purposes only (page 11, line 21). In comparison, H.B. No. 984 establishes a Hawaii

Communications Commissioner (“Commissioner”) as a division within the Department.<sup>1</sup> This distinction is significant in that under H.B. No. 1077, the HCC would be an independent decision-making body separate from the Department and analogous to the Hawaii Public Utilities Commission (PUC), which, although attached to, is independent of, the Department of Budget and Finance. Since the Department’s Division of Consumer Advocacy (“Consumer Advocate”) represents consumers in telecommunications matters, having both the Commissioner and the Consumer Advocate within the same Department would create a conflict of interest.

Second, H.B. No. 1077 includes provisions for the transfer to the HCC special fund of moneys collected by the PUC from telecommunications carriers and deposited in the PUC special fund and unencumbered balances in the CATV subaccount in the compliance resolution fund and provides for an appropriation for the next 2 years (Section 52, page 153, starting at line 7,). H.B. No. 984 does not specifically provide for the transfer of moneys from existing funds. Adequate funding is crucial for the work of the HCC.

Third, H.B. No. 984 calls for both the Department and PUC to each transfer four positions to HCC (page 155, Section 55), whereas H.B. No. 1077 provides that the Department shall transfer four (4) positions to HCC and no positions are transferred from the PUC (page 155, line 20). The Administration does not support transferring any positions from the PUC because of the PUC’s increased workload with energy-related

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<sup>1</sup> In the introductory section, page 3, subpara (b), it states that the purpose of this Act is to establish the commissioner under the administrative authority of DCCA. But when it comes to the statutory section, there is

matters. H.B. No. 1077 provides that up to ten (10) general funded positions shall be transferred to HCC to be funded from the HCC special fund (page 156, line 3). These positions, along with the four (4) positions H.B. No. 1077 transfers from the Cable Television Division, will provide the HCC with up to fourteen (14) positions – an amount we believe to be sufficient and necessary for HCC to accomplish its goals of promoting and ensuring the growth of broadband infrastructure as well as continuing the regulation of telecommunications carriers and cable operators in the State.

Fourth, H.B. No. 984 establishes a work group to develop procedures to streamline regulatory, franchising and permitting functions (page 157, section 56) whereas H.B. No. 1077 does not call for the establishment of a work group. Instead, H.B. No. 1077 adds a “Communications Infrastructure Permitting” section (Section -10, page 17) that assigns this responsibility to the Commissioner. Under H.B. No. 1077, the Commissioner has the option to form a work group to assist in resolving these issues. Unless the Committee believes that a work group is the only way to address permitting issues, it is our preference that the Commissioner be given the discretion to evaluate whether a work group is necessary.

Finally, H.B. No. 984, Section 58 (page 158) calls for the Legislative Reference Bureau to review all relevant laws in Hawaii Revised Statutes relating to broadband technology, telecommunications, and related areas, and make recommendations before the 2010 session, on how these laws may be amended to conform to this Act or the

implementation of this Act. Although we believe that H.B. No. 1077 addresses all relevant laws in the Hawaii Revised Statutes, we have no objection to this provision.

Thank you for the opportunity to testify on H.B. No. 1077, H.B. No. 984, and H.B. 492. I will be happy to answer any questions that the members of the Committee may have.



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TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Thursday, February 5, 2009  
8:00 a.m.

**TESTIMONY ON H.B. 1077 – RELATING TO THE HAWAII COMMUNICATIONS  
COMMISSION**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Clyde S. Sonobe, Administrator of the Cable Television Division (CATV), Department of Commerce and Consumer Affairs (DCCA). This testimony is identical to my testimony on House Bill Nos. 492 and 984.

CATV strongly supports H.B. 492, H.B. 984 and H.B. 1077. Under all three bills, the regulation of cable operators and telecommunication providers will be transferred to the Hawaii Communications Commission (HCC).

DCCA Director Lawrence Reifurth's testimony addresses differences related to those issues affecting the overall structure or general operations of the HCC and DCCA's Division of Consumer Advocacy Executive Director Cat Awakuni's testimony addresses differences relating to telecommunications regulation. My testimony focuses on how the bills differ with respect to functions related to cable television regulation.

In all three bills, the provisions in Hawaii Revised Statutes (HRS) chapter 440G, relating to cable services, are incorporated into a new chapter and chapter 440G is repealed.

A major difference in the bills concerning cable television relates to the general authority over public, educational or governmental ("PEG") access organizations. H.B. 492 and H.B. 1077 provide the HCC with the authority to designate and select PEG access organizations and to enter into and enforce contracts with them whereas H.B. No. 984 does not. This authority should be provided to the HCC in order to avoid confusion and litigation in the future.

Under all three measures, the cable operator will still be required to designate a minimum of three television channels or video streams for PEG use. At the present time, programming is transmitted by cable operator Oceanic Time Warner via channels to its subscribers. In the future, changes in technology and different cable franchise operators may result in video programming being transmitted to subscribers via protocols that are different than channels as defined today. Irrespective of how programming is delivered to viewers, what is important is the amount of programming authorized by the HCC Commissioner. As is currently the case with the Director of Commerce and Consumer Affairs, the HCC Commissioner will have the authority to require additional channels or streams of programming for PEG use if requested and appropriate justification is provided.

Thank you for the opportunity to testify on H.B. 492, H.B. 984 and H.B. 1077. I will be happy to answer any questions that the members of the Committee may have.



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TO THE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, AND  
MILITARY AFFAIRS

THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

THURSDAY, FEBRUARY 5, 2009  
8:00 A.M.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS TO THE HONORABLE REPRESENTATIVE McKELVEY, CHAIR, AND  
MEMBERS OF THE COMMITTEE

**HOUSE BILL NO. 1077 – RELATING TO THE HAWAII COMMUNICATIONS  
COMMISSION.**

**DESCRIPTION:**

This measure creates the Hawaii Communications Commission to: (1) be responsible for the consolidated regulation of telecommunications carriers and cable operators; (2) "champion" the State's broadband, telecommunications and video interests; (3) develop State policies relating to broadband communication services and facilities; and (4) examine how to expedite the availability of communications services to the residents of Hawaii.

**POSITION:**

The Division of Consumer Advocacy ("Consumer Advocate") strongly supports H.B. No. 492, H.B. No. 984, and H.B. 1077.

**COMMENTS:**

Testimony for this measure and for House Bill Nos. 492 and 984 are identical (but for the house bill number and the descriptions). DCCA Director Lawrence Reifurth's testimony addresses differences related to those issues affecting the overall structure or general operations of the HCC and DCCA's Cable Television Division

Administrator Clyde Sonobe's testimony addresses differences relating to cable television regulation. My testimony focuses on how the bills differ with respect to functions related to telecommunications regulation.

The Consumer Advocate supports the adoption of either bill, and offers a few comments on the measures generally and highlights a few of the differences between the measures as they relate to telecommunications regulation.

Increasingly, the United States lags behind the rest of the industrialized nations in next-generation broadband deployment and subscription. As recognized by the National Association of State Utility Consumer Advocates, deficiencies in broadband deployment and subscription in the U.S. can be broadly summarized as:

*Lack of access.* Rural, low population density areas in the United States have little or no access to broadband service, even "first generation data" service, and market conditions do not justify private investment in the infrastructure necessary to bring next generation broadband to households and businesses in unserved and underserved areas.

*Low penetration rates even where access is available.* Even where next generation broadband is available, subscription to such service is relatively low, usually due to a combination of factors, e.g., lack of a home computer, lack of education regarding accessing and using broadband service, high recurring and non-recurring costs of broadband service, unreliable network facilities. Low-income, minority and elderly consumers are particularly affected by these issues.

*Limited broadband competition.* Past federal and state policy decisions have effectively created a duopoly for broadband service, i.e., broadband is provided either by the incumbent telephone company or by the regional cable provider, stymieing innovation and reducing market constraints on pricing or service quality.

Having a commission specifically tasked to champion broadband issues and develop policies relating to broadband communication services and facilities will address the deficiencies outlined above and expand access to broadband services throughout the State.

The measures require the commissioner to promptly examine rate regulation alternatives including price cap regulation. The most recent studies indicate that Hawaii is one of just six jurisdictions utilizing rate of return regulation. Alternative forms of regulation, such as price cap regulation, allow the various carriers to better meet customer needs in terms of market-based rates and in a streamlined fashion. Under traditional rate of return regulation, telecommunications companies are subject to more

rigid and time-consuming guidelines, which inhibit the ability for these companies to act efficiently and expeditiously.

A portion of these measures should provide for greater regulatory flexibility for all local exchange carriers operating in Hawaii, which should eventually help stimulate competition. The greater regulatory flexibility for all carriers, however, does not occur immediately. Specifically, the measures propose to keep the existing regulatory structure in place to allow for certain current events and conditions to be resolved.

The measures adopt a similar approach in that they both extract the telecommunications regulation from chapter 269, Hawaii Revised Statutes, to consolidate such regulation with cable providers under a new commissioner. A few differences in the telecommunications sections are observed when comparing House Bill Nos. 492 and 1077 with House Bill No. 984.

House Bill Nos. 492 and 1077 (See section -9) include a requirement that the commissioner investigate the extent to which telecommunications services provided to residential and business customers are available from multiple providers in Hawaii and whether to reclassify telecommunications services provided to residential and business customers as "fully competitive" communications services. Such a review, if not completed sooner by the Hawaii Public Utilities Commission, may provide greater understanding of the current telecommunications market. If certain services are found to be fully competitive, such a finding should mean that all carriers would be able to offer market-based tariffs to customers through a less regulated process, which might allow customers to enjoy these service offerings sooner rather than later.

Another observed difference between the bills relates to the regulator's ability to recognize that the telecommunications industry and markets continue to evolve and change. As a result, it is necessary to recognize that exemptions of or waivers from some of the proposed requirements may be necessary. In the exemption section of House Bill No. 984 (See section -34(a)(1)) the commissioner is tasked, among other criteria, with evaluating the "responsiveness of the exemption to changes in the structure and technology of the State's telecommunications industry" (emphasis added). House Bill Nos. 492 and 1077 (See section -34(a)(1)) instead ask the commissioner to determine the "appropriateness of the exemption in view of changes in the structure and technology of the State's telecommunications industry" (emphasis added). In my opinion, the commissioner considering the "appropriateness of the exemption" appears to be more reasonable for determining whether exemption to regulation is within the public interest. I defer to the judgment of the Committee, on this provision, however, and merely note some differences.

Finally, House Bill No. 984 (See section -51(a)) provide for a telecommunications fee of three-tenths of one percent. While the Legislature, of

H.B. No. 1077

House Committee on Economic Revitalization, Business, and Military Affairs

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course, has the authority to change this fee, I would recommend the use of the existing fee, one-fourth of one percent, which is included in House Bill Nos. 492 and 1077 (See section -23(a)). Since the telecommunications carriers are allowed to recover, via surcharge, the amount above one-eighth of one percent of gross income, there is the potential for greater amounts being passed on to consumers.

The competition in telecommunications industry and the markets themselves have developed far beyond the paradigms that existed when the original language in the existing statutes and rules were adopted. If the proposed statutory language is adopted, it should better recognize the current market conditions, allow customers to experience even more robust competitive offerings from existing and future carriers, and also allow all certified telecommunications carriers to operate under more flexible and streamlined regulatory regimes. As such, it is hoped that the telecommunications carriers in Hawaii's market will strive to maximize their investments to better serve all of Hawaii's customers by introducing more advanced services that meet Hawaii's needs at competitive prices.

Thank you for this opportunity to testify.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

**LINDA LINGLE**  
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Statement of  
**THEODORE E. LIU**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS &  
MILITARY AFFAIRS**  
Thursday, February 5, 2009  
8:00 a.m.  
State Capitol, Conference Room 312

**HB 1077**  
**RELATING TO THE HAWAII COMMUNICATIONS COMMISSION.**

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

DBEDT strongly supports the Administration's bill SB 1077; however we defer to the Department of Commerce and Consumer Affairs as to the technical details of this measure.

High speed broadband service has become essential infrastructure for an idea-based innovation economy and a key source of competitive economic advantage. Improved broadband service will also help Hawaii's traditional economy and improve services from the public sector. Hawaii has an opportunity to deploy world class broadband service and re-establish itself as a key node in the worldwide telecommunication network. The Federal Government is also adopting a National Broadband Policy. The proposed Economic Stimulus Package currently targets broadband infrastructure for investment.

DBEDT would like to recognize the excellent work of the Hawaii Broadband Task Force in guiding our state's efforts on Broadband Policy. As the Broadband Task Force report and as we have learned with the state's energy policy, we have to make



difficult decisions to make if we are to achieve the transformational change necessary for Hawaii to be competitive in a global economy.

Furthermore, as our recent experience with the state energy policy has taught us, it is critical that we launch the Hawaii Communications Commission with a clear and compelling vision and with clear and compelling targets and to set a timeline by which we achieve those targets.

The clear and compelling policy vision and targets set by the legislature establishes the basis for the Hawaii Communications Commission and furthers develops the change strategies to achieve them. It creates credibility and confidence in the markets and on the part of private sector partners who we expect will provide the technologies and the investment capital.

DBEDT would also like to note its support of HB 984 and that it supports the intent of HB 492.

Thank you for the opportunity to provide this testimony.

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION,  
BUSINESS, & MILITARY AFFAIRS  
FEBRUARY 5, 2009**

**MEASURE: H.B. No. 1077**

**TITLE: Relating to the Hawaii Communications Commission**

Chair McKelvey and Members of the Committee:

**DESCRIPTION:**

This bill creates the Hawaii Communications Commission ("HCC") by consolidating the regulation of telecommunications carriers and cable operators in the State under the HCC by removing these carriers from the jurisdiction of the Public Utilities Commission ("Commission") and the Cable Television Division of the Department of Commerce and Consumer Affairs, respectively.

**POSITION:**

The Commission supports the intent of this Administration bill to consolidate the regulation of all forms of modern communications in an effort to facilitate the development of broadband infrastructure in the State, and defers to the Legislature's judgment on how best to consolidate regulatory functions and equalize regulatory schemes, provided that it does not disrupt the other functions and operations of the Commission.

**COMMENTS:**

- The Commission recognizes the recent convergence of communications technologies where voice communications no longer includes just wireline (or landline) telephone services, but now also includes wireless telecommunications, voice over internet protocol (or VOIP), and satellite telephones. Data and information can be transmitted not just by wireline telephone companies and cable television companies, but can also be transmitted by wireless telecommunications companies. Video can not only be transmitted by cable television companies, but also by wireline telephone companies and to a certain extent by wireless telecommunications companies.

- The Commission also recognizes that different regulatory schemes apply to each of the technologies, from traditional cost of service regulation of wireline telephone services, to limited regulation of terms and conditions of wireless telecommunications services due to federal preemption, even more limited regulation of VOIP services also due to still evolving federal preemption of regulation of VOIP services.
- Accordingly, the Commission understands the need to equalize and consolidate the regulation of voice, video and data services as separate regulation of each of the different technologies may no longer be appropriate or optimal.
- Although the decision to consolidate regulation in a new agency is within the prerogative of the Legislature, moving jurisdiction over telecommunications from the Commission to another agency is a very major step and this committee should carefully consider the costs and benefits of taking such an action.
- The consolidation of regulatory functions alone will probably not change the level of broadband services without improving the fiber network and access to it, which also requires tremendous amounts of funding and financing.
- Nonetheless, the Commission defers to the Legislature as to the appropriate method of equalizing and consolidating voice, video, and data regulation, provided it is accomplished in a way that does not disrupt the Commission's other duties and responsibilities, primarily in the development and implementation of energy policy for the State.

Thank you for the opportunity to testify.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
House Committee on Economic Revitalization, Business & Military Affairs  
February 5, 2009 at 8:00 am

by  
David Lassner  
Vice President for Information Technology/CIO, University of Hawaii

HB 0492 – RELATING TO THE HAWAII COMMUNICATIONS COMMISSION  
HB 0984 – RELATING TO TECHNOLOGY  
\* HB 1077 – RELATING TO THE HAWAII COMMUNICATIONS COMMISSION

Chair McKelvey, Vice Chair Choy and Members of the Committee:

I am pleased to testify today as Chair of the Hawaii Broadband Task Force. The Hawaii Broadband Task Force was established by the 2007 Legislature with a mix of public and private sector members to provide recommendations on how to advance broadband within the State of Hawaii.

As the task force completed its work at the end of last year, we greeted with great enthusiasm the words of then President-Elect Obama on December 6, 2008: "It is unacceptable that the United States ranks 15th in the world in broadband adoption. Here, in the country that invented the Internet, every child should have the chance to get online, and they'll get that chance when I'm President - because that's how we'll strengthen America's competitiveness in the world."

We gratefully acknowledge the support of the State Auditor and her office in facilitating our work. We fulfilled our duties under full Sunshine, through public meetings that were fully noticed and with our minutes published on the web. One interim report was provided to the Legislature before the 2008 Session, and as we neared completion last fall, numerous intermediate drafts of our final report were publicly available on the web.

While there wasn't enough time or money to do everything we had hoped, the Task Force unanimously put forward four key recommendations, summarized as follows.

- 1) **Broadband is Vital to Hawaii**  
Broadband is critical infrastructure for Hawaii's 21st century advancement in education, health, public safety, research & innovation, economic diversification and public services. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. The task force recommends that Hawaii establish an aggressive and forward-looking vision that positions the State for global competitiveness.

- 
- 2) **Driving Broadband Deployment**  
The task force found that the U.S. as a whole is dramatically lagging the leaders in the developed world in our broadband capabilities and pricing, and is falling farther behind each year. While Hawaii is doing well on some measures relative to some other parts of the U.S., the State also falls to the bottom in many national broadband studies. The task force recommends that the State consolidate all relevant regulatory and permitting responsibilities in a new, one-stop, broadband advancement authority that promotes Hawaii's policy objectives and provides advocacy at all levels of government.
  - 3) **Maximize Hawaii's Connectivity to the World**  
Hawaii's "lifeline" for broadband to the rest of the world is expensive submarine fiber. While Hawaii was once the crossroads for trans-Pacific telecommunications, all of the new fiber systems built across the Pacific since 2001 have bypassed Hawaii. The task force recommends that Hawaii aggressively promote the landing of new trans-Pacific submarine fiber in Hawaii, including a shared access cable station that reduces barriers to fiber landing in Hawaii.
  - 4) **Stimulate Broadband Adoption and Use**  
The task force believes supplying advanced broadband at affordable prices is just one side of the equation. The task force recommends that Government lead by example in demonstrating the value of broadband to our citizenry, deploying broadband services to the public, and ensuring that we do not leave behind the economically disadvantaged members of our communities who may be inhibited from full participation in the 21st century.

There is much more detail in our full report, which was provided to each Legislator and the Governor just before the end of the year.

The Task Force is delighted to see multiple bills introduced to implement our key recommendations this year. With our Report as a base, we now stand ready to listen to your ideas and those of others so that together we can all create the best possible broadband future for Hawaii.

Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, &  
MILITARY AFFAIRS**  
Thursday February 5, 2009  
8:00 AM  
State Capitol, Conference Room 312

In consideration of  
**HB 1077 RELATING TO TECHNOLOGY.**

Chair McKelvey, Vice Chair Choy and Members of the House Committee on Economic Revitalization, Business, & Military Affairs.

The High Technology Development Corporation (HTDC) supports HB 1077 and defers to the recommendations of the Hawaii Broadband Task Force which was created by the Legislature in 2007 with the primary purpose of 1) removing the barriers to broadband access, including gaining wider access to public rights-of-way; 2) identifying opportunities for increased broadband development and adoption, including very high speed broadband services; and, 3) enabling the creation and development of new advanced communication technologies in Hawaii.

In a report to the Legislature dated December 2008, the Hawaii Broadband Task Force recommended the creation of a one-stop broadband advancement authority. Quoting from the report, *“Enact legislation that consolidates any and all State and County, wired and wireless, voice, data and video regulation, franchising and permitting functions into a one-stop self-funded expert broadband advancement authority in the State Department of Commerce and Consumer Affairs that provides primary leadership for achieving Hawaii’s broadband vision*

*through both short-term and long-term strategies. Headed by a Broadband Commissioner and guided by a statewide advisory group including County representation, this office would:*

- Consolidate all broadband-related activities currently in the PUC (telephony) and DCCA (cable TV) along with applicable County functions to serve as a one-stop shop that expedites processing for all regulatory, franchising and permitting functions normally available to state and local governments,*
- Create a level playing field for broadband providers by rationalizing fees and requirements to the extent permissible under federal law,*
- Promote maximum sharing and equitable access to all elements of broadband infrastructure through permitting, regulation, building codes and other means permissible under federal law,*
- Implement efficient, consistent and equitable policies on behalf of the state and all counties while remitting revenue for all leases and easements to the appropriate entities,*
- Offer incentives that promote competitive broadband access at affordable costs,• Provide advocacy at all levels of government on behalf of broadband service providers to help overcome unnecessary barriers to progress,*
- Implement an ongoing program of data collection and mapping to enable Hawai'i's policy-makers to monitor progress in achieving the committee's broadband vision, and*
- Proactively develop new partnerships with the federal government to implement modern approaches to advancing broadband infrastructure and services throughout Hawai'i, including in rural and underserved areas."*

The creation of the proposed Hawaii Communications Commission as described in HB 1077 would move the State towards many of its goals involving improved education, healthcare, global competitiveness and economic development, and a better quality of life for its citizens.

Thank you for the opportunity to submit testimony in support.

HR 1077  
Relating To The Hawaii Communications Commission

Robert T. Tanimura  
Director – Public Affairs, Policy & Communications  
Verizon Communications  
808-595-6521

Thursday, February 5, 2009

Rep. Angus L.K. McKelvey, Chair  
Rep. Isaac W. Choy, Vice Chair  
House Committee On Economic Revitalization, Business, & Military Affairs

Proposed Amendments to HR 1077 Relating To The Hawaii Communications Commission.

My name is Robert T. Tanimura and I am testifying on behalf of Verizon on HR 1077, "A Bill For An Act Relating To The Hawaii Communications Commission." Verizon offers the following comments on HR 1077:

- Verizon supports the establishment of state policy to promote broadband access, however, some of the goals proposed in HR 1077 should be modified to better achieve that objective. First, comparing broadband speeds and prices in Hawaii to the top three performing countries in the world is problematic if nothing else because of different national policies, which are well beyond the control of Hawaii government. A more meaningful benchmark would be the top quartile of states within the U.S. or something similar since all states are operating under the same national broadband policy. For this reason, a comparison of results by state would be a more meaningful measurement of the effectiveness of state policy. In addition, the metrics should include a measurement of broadband penetration since the percentage of people that actually subscribe to broadband is as important as speed and price. I would note that in this regard, Hawaii is doing relatively well. Based on the FCC's latest Broadband Report and Census Bureau figures,<sup>1</sup> Hawaii is ranked 5th among the 50 states and the District of Columbia in terms of the number of residential broadband lines per household.
- Second, Verizon recommends that all references to the "sharing" of infrastructure be deleted from the bill. The sharing of telecommunications and broadband infrastructure is a complex and costly proposition, as the FCC found out with its now mostly rescinded policies for unbundled network elements (UNEs) and line sharing. While sharing might seem to be a logical way to lower average network costs, this is not necessarily true because sharing comes at a high cost, in terms of creating a disincentive to invest, in the complex management inherent in shared use of a common resource, and potential inefficiencies. These trade-offs must be taken into consideration by state policy.

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<sup>1</sup> FCC, *High-Speed Services for Internet Access: Status as of December 31, 2007*, January 2009, Table 13; U.S. Census Bureau, American FactFinder, 2007 American Community Survey, Selected Social Characteristics in the United States.

Including sharing as an explicit goal as this bill does would needlessly hamstring state broadband policy. For example, it would preclude innovative solutions such as using competitive bidding rather than infrastructure sharing. Under a bidding scenario, state grants would be provided for projects in unserved areas based on a ranking of various criteria such as cost, price, and number of customers served. In essence, this approach promotes competitive deployment of advanced networks via the bidding process, not through the sharing of the resultant infrastructure. Through this process, more areas can be served on a competitive basis but without a costly or cumbersome sharing requirement. Indeed, a sharing requirement would be a significant deterrent for a carrier to bid for grants. Another example of a potential program that would be precluded by a sharing requirement is a proposal outlined in California's Broadband Task Force Report to encourage the deployment of wireless broadband in unserved areas by providing access to state rights-of-way at cost for wireless infrastructure.<sup>2</sup> A sharing requirement in the statute would preclude this solution and numerous others from even being considered. Hawaii needs to consider the entire panoply of potential broadband solutions and not box itself into only certain types of solutions, especially unproven ones such as infrastructure sharing. For these reasons, infrastructure sharing should not be a state goal.

- Finally, Verizon applauds the intent of the provisions to "promptly examine rate regulation for telecommunications carriers" and "[i]nvestigate the possibility of implementing incentive regulation for telecommunications carriers to increase investment in broadband infrastructure within the state." This acknowledges that the vast majority of new broadband infrastructure will continue to come from private investment. In order to ensure that carriers have an incentive to pursue innovation and invest in broadband, they must have the ability to earn a return on that investment. A good example of this is wireless communications, which is not rate regulated or subject to regulatory infrastructure mandates. Because it operates in an environment that is conducive to private investment, Verizon Wireless is spending \$9.4 billion on new wireless spectrum and billions more to build the next generation broadband network with download speeds of 75 megabits versus less than 5 today. Similarly, wireline carriers like Hawaiian Telcom, which is one of the most tightly regulated local exchange carriers in the nation, must have the financial strength and incentive to spend capital and invest in network upgrades. The examination of telecom rate regulation and incentive regulation will help to address this issue. While I cannot tell the state government how it should organize and structure its operations, I do wonder whether creating a new commission at this time would distract resources from the regulatory reviews that are urgently needed. I am also concerned about the concentration of power in a single individual. A multi-person panel such as the current Public Utilities Commission allows for a greater diversity of backgrounds and ideas and provides for an appropriate balance in decision making. For that reason, it is extremely rare in this country that an agency responsible for telecommunications policy is headed by a single person.

Thank you for the opportunity to testify.

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<sup>2</sup> Final Report of the California Broadband Task Force – January 2008, *The State of Connectivity, Building Innovation Through Broadband*, p. 58.