

HB 492

RELATING TO THE HAWAII COMMUNICATIONS COMMISSION

**JOHN KOMEIJI
SENIOR VICE PRESIDENT & GENERAL COUNSEL**

HAWAIIAN TELCOM

February 5, 2009

Chair McKelvey and members of the Economic Revitalization, Business, & Military Affairs Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on HB 492. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to provide a few comments.

As you are aware, the Federal Communications Commission (FCC) has initiated efforts to deregulate a number of broadband services. For example, the FCC has declared telecommunications services that are used to access the Internet as exclusively interstate services, and thus not subject to state regulation. HB 492, however, appears to require state regulation of broadband services by imposing specific and/or additional obligations on telecommunications carriers which, on its face, appear contrary to these FCC efforts. If state regulation of broadband is envisioned, federal preemption may prevent the state from regulating in this area. Moreover, the above FCC actions have served to remove unnecessary broadband regulations and provide Hawaii's consumers with an opportunity to receive a wide array of new broadband products and services at competitive prices more effectively than would be available with additional regulation.

What is missing in HB 492 is language implementing the recommendation of *The Hawaii Broadband Task Force Final Report* supporting the consolidation of state and county permitting and other building requirements under one governmental agency to help expedite the construction of improved broadband infrastructure. The Report noted the substantial time and expense expended by providers in obtaining multiple state and county permits and approvals required for infrastructure deployment on all islands and the widely varying practices associated with gaining access to various easements and rights-of-way. HB 492 does not provide any language implementing this goal. This issue must be addressed in this bill or a critical benefit of this improved broadband initiative will not be achieved.

Hawaiian Telcom supports the language contained in the bill intended to provide regulatory relief to telecommunications carriers in the form of pricing flexibility for

tariffed services. However, the language is not clear as to whether this pricing flexibility is immediate or whether additional procedures must be followed before pricing changes can be implemented. If the goal of this provision is to provide consumers with the full benefits of competition, including lower prices and new or different service offerings, the bill must be clarified to ensure that this pricing flexibility and the associated relief to level the playing field is intended to be permanent and immediate.

Based on the above, Hawaiian Telcom shares your interest in improving and advancing broadband and telecommunication services in Hawaii and respectfully requests a careful review of the comments raised before enacting regulatory provisions which may lead to unintended and counterproductive consequences. Thank you for the opportunity to testify.

LATE TESTIMONY



February 5, 2009

LATE TESTIMONY

Honorable Angus McKelvey, Chair
Honorable Isaac Choy, Vice Chair
House Committee on Economic Revitalization, Business & Military Affairs
Hawaii State Capitol, Room 312
Honolulu HI 96813

**Re: HB 492 – Relating to the Hawaii Communications Commission
HB 984 – Relating to Technology
HB 1077 – Relating to the Hawaii Communications Commission
SUPPORT INTENT WITH COMMENT**

EBM Hearing, Thursday, February 5, 2009, 8:00 a.m. – Room 312

Aloha Chair McKelvey, Vice Chair Choy and Committee members:

On behalf of tw telecom which has operated in Hawaii since 1994 and manages approximately 25,000 access lines in the State of Hawaii, thank you for the opportunity to submit testimony today. I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom.

While we do not object to the concept of establishing a Communication Commission, we respectfully request that time be allowed to consider significant regulatory changes proposed in the bill. This would allow impacted stakeholders the opportunity to review and to provide input on proposed changes offered in this legislation. Among other things, we would like to assure that any regulatory changes remain consistent with the interconnection and other policies reflected in sections 251 and 252 of the federal Telecommunications Act.

Attached for your information and consideration is a National Association of Regulatory Utility Commissioners (NARUC) resolution that was passed last summer. NARUC sets national policy for the country's state public utility commissioners and this particular resolution is timely since it reflects the importance of these policies.

For these reasons, we respectfully request that you consider deferring action on this bill.

Sincerely,

/s/

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Attachment: 1

**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. 492

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 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.

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LATE TESTIMONY

Honorable Angus McKelvey, Chair
Honorable Isacc Choy, Vice Chair
House Committee on Economic Revitalization, Business & Military Affairs

Thursday, February 5, 2009; 8:00 a.m.
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Re: HB 492 – Relating to the Hawaii Communications Commission
HB 984 – Relating to Technology
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SUPPORT INTENT WITH COMMENT

Aloha Chair McKelvey, Vice Chair Choy and Committee members:

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to nearly 350,000 households, schools and businesses and currently employs over 900 highly-trained individuals, we appreciate the opportunity to submit testimony today. I am Nate Smith, president of Oceanic Time Warner Cable.

As a member of the Broadband Task Force, Oceanic supports the idea of having a Communications Commission to promote broadband availability and the adoption of broadband services by Hawaii consumers. This is to be achieved by streamlining and simplifying the regulation to reduce cost and time to provide new and innovative services. However, some of the provisions in the bill do not support the intent discussed by the Task Force. Specifically, the bill in some cases does not streamline or simplify the process for cable, it actually increases regulation by:

- Reducing the maximum franchise term from 20 years to 15 years; and
- Adding the ability for the Consumer Advocate to be involved with all cable regulation adds additional steps to the process.

These additional steps add time and cost to the process. Further, cable is not a regulated rate-based service and should not be regulated by the same policies as telephone service.

These bills make it a requirement for all infrastructures installed in public right-of-way to be accessed by any authorized provider at a fair-cost-based price, but it does not explain how to compensate for the risk and expense that entity underwrites for building the infrastructure. This becomes a disincentive for companies to invest in new infrastructure. This is not good for the State or its residents. The State should be pursuing policies that promote investment.

While the State is promoting more robust broadband technology for Hawaii, ultimately the Federal Communication Commission (FCC) has the authority to regulate Broadband Internet Access high speed data service (HSD). And, though the state is federally preempted from regulating HSD, it can do other things to stimulate the demand for HSD. For example, in order to meet the goal of "establishing broadband communications to all households, businesses, and organizations throughout the State by 2012 at speeds and prices comparable to the average speeds and prices available in the top three performing countries in the world," permitting should be simplified and the timeframes shortened. These bills do not contain provisions to shorten the times to approve or to respond to a permit request by government or by private entities. Currently, there is no limit. This stymies the process. Additionally, it would be helpful to see fewer requirements for obtaining permits for simple work. For example, currently replacing wiring in buildings with new coaxial cable may require obtaining permits.

Since FCC preempts states from regulating HSD, the provision to have HSD as a consideration for franchise renewal is problematic. Oceanic's franchise is to provide video - or traditional cable - and does not include HSD. This is an area that is preempted in light of the FCC's ruling that HSD is an information service and affirmed by the Supreme Court in Brand X.

Finally, while the goal of these bills is to not create any new taxes or fees for the service providers or for consumers, for the State to fund new infrastructure, it will need additional funds. Where will these funds come from?

As one of the leading countries in broadband service, the investment in South Korea to build and to promote its system was not cheap. The Korean government estimates the cost of developing the technology, building the infrastructure and marketing the system to be \$30 billion between 2000 and 2005.

In Japan, they established a super-fast, nationwide fiber system via a combination of tax breaks, debt guarantees and subsidies.

In closing, if the emphasis of these bills is to reform and to streamline the current system, we should not work against these goals by adding new barriers or increasing regulatory obstacles. We ask the state to support ways to stimulate investment by streamlining and eliminating extraneous requirements that add to the cost of doing business in Hawaii.

For these reasons, there are many practical issues raised by these bills that require additional thought and consideration. We respectfully request members of the committee to consider deferring action on these bills.

Sincerely,

Nate Smith
President