

LATE TESTIMONY

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 17, 2009

TESTIMONY TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

For Hearing on February 18, 2009
2:00 P.M., Conference Room 325

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 984, H.D. 2
Relating to the Technology**

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON ROBERT HERKES AND MEMBERS OF THE COMMITTEE:

House Bill 984 establishes the Hawaii Communications Commission (HCC) in the Department of Commerce and Consumer Affairs (DCCA), and transfers functions relating to telecommunications from the Public Utilities Commission to HCC and transfers functions relating to cable services from DCCA to HCC.

The Department of Human Resources Development has no position on this measure. However, we respectfully recommend that the language in Section 58, page 165, lines 17 through 22, and page 166, lines 1 through 21, relating to the transfer of personnel, be replaced with the following language:

"All employees who occupy civil service positions and whose functions are transferred by this Act shall be transferred without loss of salary, seniority, prior

service credit, any vacation and sick leave credits previously earned, and other rights, benefits and privileges, in accordance with state personnel laws and this Act. Such employees holding civil service status shall retain their civil service status and may be transferred to similar or corresponding positions, subject to state personnel laws and this Act.

Any employee who, prior to this act, was exempt from civil service and who may be transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. No employee who is transferred by this Act shall suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act. The appointing authority may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes."

Thank you for the opportunity to provide comments on House Bill 984.

LATE TESTIMONY

TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
FEBRUARY 18, 2009

MEASURE: H.B. No. 984 H.D.2
TITLE: Relating to Technology

Chair Herkes 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 is very concerned with the transfer of four of its positions to the HCC as is required in this bill and, if the measure would become law, we prefer the approach taken in HB 1077, which does not take positions from the Commission.

COMMENTS:

- The Commission, in its regulation and oversight of the telecommunications carriers operating in this state, utilizes the services of staff working in all the disciplines at its disposal. HB 984 HD2 would be disruptive to the Commission because it still requires transfer of its staff to this new commission. The Commission's overall operations do not utilize any one individual staff member devoting his or her entire, or even a substantial portion of, work time on telecommunications issues which are very broad and are evolving rapidly on the national, state, and local levels.
- Administratively, the Commission is divided into the following sections: Audit, Clerical Support, Engineering, Compliance, Legal, and Research. Within these sections, no one staff person is trained exclusively for any of the regulated industries (Petroleum, telecommunications, water, etc.). Each position is cross-trained with knowledge and expertise in each regulated industry.
- If four positions are transferred to the HCC, the Commission will lose the expertise of the staff persons with regard to the other regulated industries.
- Automatically transferring people in their current positions would adversely affect the Commission's other important and critical responsibilities, including the continued development and implementation of the State's energy policies.

- The Commission needs all available resources to address all of the issues before the Commission and all of the tasks and responsibilities given to the Commission which appear to grow day by day, even if telecommunications responsibilities are transferred.
- HB 1077 accomplishes the same goals as does HB 984 HD2 without putting the Commission in operational jeopardy because it does not transfer current Commission positions that assist across the range of regulated industries the Commission oversees.
- For these reasons, the Commission opposes this bill.

Thank you for the opportunity to testify.

LATE TESTIMONY



The Honorable Rep. Robert Herkes
Chairman, House Committee on Consumer Protection and Commerce
State Capitol, 415 South Beretania St.
Honolulu, Hawaii 96813

February 18, 2009

Re: H.B. 984, H.D. 2

Dear Chairman Herkes and Members of the House Committee on Consumer Protection and Commerce:

My name is Leslie Wilcox, the President and CEO of PBS Hawaii, the Islands' only public television station. I'm unable to attend this hearing, as I'm away on a business trip.

Please know that PBS Hawaii is deeply concerned about changes to this bill that would have a devastating impact on this nonprofit educational organization.

PBS Hawaii's exceptional programming reaches the entire State, including the underserved. Currently, we receive funding from the franchise fee that helps this statewide television broadcast organization shoulder the costs of operations, equipment and infrastructure.

The bill would eliminate this critical revenue.

Losing this funding would jeopardize our most significant link to the community – our legacy for quality local production. This includes all of our weekly local programs: "Na Mele: Traditions in Hawaiian Song," which documents and preserves Hawaiian music; "Long Story Short," featuring revealing conversations with respected individuals about values and life choices; "Leahey & Leahey," spirited discourse about sports and teamwork; and "Insights on PBS Hawaii," our community's only live hour-long call-in public affairs program. PBS Hawaii also extends guidance and opportunity to independent filmmakers from Hawaii and the Pacific/Asia region.

Should our local productions end, PBS Hawaii would no longer be able to provide essential real-world training in media production to local college students. At any given time, twenty students are learning through us. Today, throughout professional organizations and broadcast entities in Hawaii and throughout the country, you will find hundreds of men and women who participated in this program while attending local colleges and universities.

Our local voice is an increasingly rare presence, in a landscape of consolidated media ownership.

PBS Hawaii is a force for education in Hawaii. We present worthwhile programs on television, online and in the community. Please don't allow last-minute changes to harm this trusted and far-reaching community institution.

Thank you for your consideration.

**Sincerely,
Leslie Wilcox**

LATE TESTIMONY

HB 984, HD2

RELATING TO TECHNOLOGY

JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL

HAWAIIAN TELCOM

February 18, 2009

Chair Herkes and members of the Consumer Protection and Commerce Committee:

I am John Komeiji testifying on behalf of Hawaiian Telcom on HB 984, HD2. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to raise concerns regarding the following provisions which, if enacted, will have the unintended consequence of delaying rather than speeding the deployment of advance broadband services:

- **New Fee-** Measure (page 64, lines 1-7) allows the Department of Commerce and Consumer Protection (DCCA) to establish a new regulatory “broadband fee” solely on telecommunications carriers. This provision is in direct contravention of the explicit Broadband Task Force agreement that any legislation be revenue neutral. In addition, this new fee unfairly discriminates against local exchange carriers by exempting wireless and VoIP broadband providers from this fee, since federal law limits states from regulating these providers. Instead of enacting more regulatory fees, priority should be placed on providing companies greater financial incentives to invest in improving and expanding broadband infrastructure.
- **More Regulation and Federal Preemption-** The Federal Communications Commission (FCC) has already defined wireline broadband Internet access services as information services, the same as its deregulated counterpart cable modem service. The bill 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.

Hawaiian Telcom is also concerned with the move from a three person decision making body such as the Public Utilities Commission (PUC) to the concentration of power in a single Commissioner as proposed in this bill. While we recognize there are regulatory benefits vesting decision making authority in a single Commissioner such as expedited approvals, hearings, etc., on balance, we believe that a multi-party panel is preferable. Notwithstanding a multi-party entity, the Legislature should insist that the Commission adopt new procedures which will emphasize efficiency and expeditious treatment of issues.

In addition, we oppose the requirement that all cable providers designate seven or more television channels and up to 10% of bandwidth capacity for PEG use. While we understand the desire of PEG to obtain greater access and bandwidth capacity for the future, these additional requirements will greatly impair Hawaiian Telcom's plans and ability to enter Hawaii's video (television) services market. As a new entrant in a market which is controlled by an entrenched incumbent, the challenges we face are considerable. We believe that if the Legislature desires to provide consumers with a real choice in video services, an exemption from these requirements must be provided for any new entrant. Incentives which will allow new entrants a greater opportunity to establish a market foothold and to grow in size will serve to help encourage competition in a market which currently has no competition.

Finally, 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.

We would like to offer the following amendments which will help to level the telecommunications playing field and to clarify the original goals of this measure:

- 1) Insert in **Part II Telecommunications, subsection 38** (page 46, line 14) a new subsection (a).

(a) Notwithstanding section -34 and any law to the contrary, except for the rates, fares, and charges applicable for intrastate switched and special access with respect to wholesale customers, none of the provisions of this chapter shall apply to the rates, fares, and charges of the telecommunications carrier, and the classifications, rules, and practices implementing such rates, fares, and charges. The telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges and/or to bundle any

service offerings into a single or combined pricing package.
Notwithstanding the above, all rates, fares, charges, and bundled
service offerings shall be filed with the commission for informational
purposes only and become effective immediately upon filing.

- 2) Amend the current subsection 38 (a) (page 46, line 14) and insert as an amended subsection (b).

(b [a]) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any telecommunications carrier or by two or more telecommunications carriers jointly for intrastate switched and special access with respect to wholesale customers, shall be just and reasonable and shall be filed with the commission. [~~The rates, fares, classifications, charges, and rules of every telecommunications carrier shall be published by the telecommunications carrier in such manner as the commissioner may require, and copies shall be furnished to any person on request.~~] Delete (c) to (h).

- 3) Insert on page 38, line 10 the phrase “with the exception of section -38” after the word “contrary” and insert on page 41, line 3 the phrase “granted under this section” after the word “exemption” and insert on page 41 line 5 the same phrase “granted under this section” after the same word “exemption” to clarify that section -34 shall not preempt the provisions set forth in section -38 relating to regulatory rate flexibility.
- 4) Delete language establishing a new “broadband fee” (page 64, line 1 to 7) which is in contravention of the Broadband Task Force agreement.
- 5) Provide numerous technical amendments which we will provide to the committee.

Based on the above, Hawaiian Telcom shares your interest in modernizing and advancing broadband and telecommunication services in Hawaii. Thank you for the opportunity to testify.

LATE TESTIMONY

TESTIMONY ON H.B. 984 - RELATING TO TECHNOLOGY

TO THE HONORABLE ROBERT M. HERKES CHAIR, AND MEMBERS OF THE CONSUMER PROTECTION AND COMMERCE COMMITTEE.

Testimony from Molokai by DeGray Vanderbilt, IN SUPPORT OF HB984 HD 2 *with the amended language which has been included to assure future operations of the community-based PEG public access television stations are sustained statewide.*

Aloha Chair Herkes and Members:

My name is DeGray Vanderbilt. I am a 30-year resident of Molokai and a former member of the Akaku Community Television Board of Directors.

It is admirable to see the State Legislature moving legislation along to enhance broadband efficiencies throughout our State.

I was pleased to read the amended language included in HB984 HD 2, which includes provision to sustain and enhance the future operations of the community-based PEG public access television stations statewide. The PEG's serve are true community assets. Over the past couple of decades, they have evolved into efficient, high-tech operations through hours and hours of volunteer community interaction and the dedication of under paid employees who truly have "the public's best interest" at heart.

Heart is what PEGs are all about.

The PEGs represent the public's "soap box " and provide the only affordable, extended local television coverage that is free to the public.

The mandate of the PEG's, and their local community empowerment, are testaments to the "public" movement that swept our Nation recently with the election of President Barack Obama.

Hope for the "little guy".

PEGs are all about the "little guy".

The PEG's represent a key ingredient in the mission of communities statewide to become truly sustainable....a goal which is the basis of the State's recently adopted 2050 Sustainability Plan.

I have heard there may be some who see retaining the PEG language in HB984 as threatening or in conflict with some other industry agenda.

For those who may take exception to the PEG amendments, whether they be legislators, an industry representative or some other member of the public, I hope that as part of your Committee's process the following questions will be asked to determine just why anyone would be against retaining the amended PEG language in HB984:

1. Is the future operation of the PEG's as local community public access television stations better served with the inclusion of the PEG amendments in HB984?

If the response is "no", please explain why.

If the response is "yes", then ask if there is any overriding reason not to retain the HD 2 PEG amendments that justify sacrificing the overwhelming "public good " and "public empowerment:" that continue to result from the community-based PEG operations?

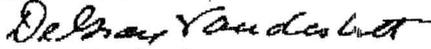
2. If HB984 is approved without the PEG amendments, will the future of the PEG operations be compromised in any way, as far the value of these stations to their respective communities and their respective value as the public's only truly affordable extended local television media coverage?

The Hawaii 2050 Sustainability Plan is based on sharing and the balancing out or sustaining of our State's economic, environmental and social resources.

The Broadband bill includes telephone, cable and internet as resource services. The PEGs also qualify as a true social resource and the language in HB984 HD 2 should be retained in order to insure that all of our State's valued resources are sustainable for future generations to enjoy.

Thank you for your consideration of my testimony.

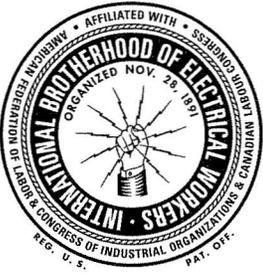
Respectfully submitted



DeGray Vanderbilt

Box 1348, Kaunakakai, Molokai, Hawaii 96758 email: pauhanamolokai@yahoo.com

).



International Brotherhood of Electrical Workers

Telephone Local Union 1357
2305 S. Beretania Street #206 • Honolulu, Hawaii 96826
Telephone (808) 941-7761 • Fax (808) 944-4239



Scot F. Long
Business Mgr. / Financial Sec.

Ted M. Furukado
President

HB 984 HD2
RELATING TO TECHNOLOGY
SCOT F. LONG
BUSINESS MANAGER / FINANCIAL SECRETARY
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL UNION 1357
FEBRUARY 18, 2009

Chair Herkes and Members of the House Consumer Protection and
Commerce Committee:

I am Scot Long, testifying on behalf of IBEW Local Union 1357, on HB 984
HD2, "Relating to Technology". IBEW Local Union 1357 offers comments
on this measure.

One of the purposes of HB 984 HD2 is to create a communications
infrastructure that will increase Hawaii's ability to compete in the global
economy. To accomplish this, this measure includes many moving parts,
but does not, on a practical level, include any changes to the outdated
regulatory framework that currently prevents our incumbent local exchange
carrier (ILEC) from truly competing. In fact, it adds additional fees that
would increase the already heavily-burdened ILEC.

IBEW Local Union 1357's members know first-hand that the outdated regulation mandated upon the local exchange carrier results in a very unlevel playing field where competitors have little or no regulation.

We ask for your consideration of amending HB 984 HD2 to allow the wireline provider to have some regulatory parity so that it can immediately offer products and services at competitive prices in the same way wireless and VoIP providers currently have the freedom to do—no matter who the regulating body will be. In addition, we request that any additional fees imposed onto the ILEC be respectfully removed.

Thank you for the opportunity to testify.