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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 3, 2009
10:00 a.m.

**TESTIMONY ON H.B. NO. 984, H.D. 3
RELATING TO TECHNOLOGY**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony in strong support of this bill.

This bill consolidates 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 Hawaii's residents. The Commission will be funded from existing fees and will be directed to achieve goals, including creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit

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.

The Department would like to mention that the definition of "broadband" (page 5, line 18) is too restrictive. Broadband service is not exclusively tied to accessing the Internet, but includes a variety of other applications.

The Department would also like to comment on the requirement that cable operators provide 7 or more television channels or video streams of not less than equal value to the television channels for PEG access organization use as directed by the Commission, and up to 10 percent of the total bandwidth capacity for PEG access organization use (page 72, line 10). Presently, programming is transmitted by cable operator Oceanic Time Warner via channels to its subscribers. This would mandate an increase in the number of channels for PEG access use on the effective date of this bill (July 1, 2009) and result in PEG access organizations being provided considerable amounts of bandwidth (possibly up to 100 channels as confirmed by Mr. Jay April, CEO of Akaku, at the CPC hearing on this measure on February 18, 2009) which far exceeds available PEG resources and ability to utilize these channels for access programming. While it may be appropriate to establish a minimum number of access channels, for example, at least 5 access channels, and authorize the Commission to require additional channels or streams of programming for PEG use if requested and if appropriate justification is provided, we believe that H.B. 984, H.D. 3 is not the appropriate vehicle for those provisions. The PEG-specific provisions will distract from the focus of the bill, which is to promote broadband development in Hawaii and

consolidate the regulation of communication services. While the PEG-specific provisions merit further consideration, we respectfully recommend that a more appropriate vehicle be used for that purpose.

Additionally, the Department recommends that language be included in this bill to allow the HCC to apply for, accept, and expend federal monies under the American Recovery and Reinvestment Act of 2009 and other federal programs. We have previously provided this Committee with draft language to consider in this regard, and have attached the suggested language for the Committee's convenience.

Thank you for the opportunity to submit testimony on this very important measure.

Insert a new definition in section -1 of the new chapter created in HB984, HD3:

"American Recovery and Reinvestment Act of 2009" means the federal law, P.L. __, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes."

Add a new section to the new chapter created in HB984, HD3:

"§ -25 Use of American Recovery and Reinvestment Act of 2009 and other federal moneys. (a) The commission may apply for, and expend, federal moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The commissioner may purchase broadband facilities, services or equipment, and may enter into contracts for broadband-related projects, through the compliance resolution fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(c) The commissioner may establish a separate account within the Hawai'i communications commission special fund

and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including without limitation the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The commissioner may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the Hawai'i communications commission special fund, including forgiveness of principal, zero and negative interest loans.

(d) Any moneys applied for or received by the department under the American Recovery and Reinvestment Act of 2009 for uses related to the purpose of this Act shall be transferred to the Hawai'i communications commission upon its establishment.

(e) The commissioner shall certify that a project is entitled to priority over other eligible projects on the basis of the overall public benefit associated with the project and financial needs as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009.

(f) Contracts or purchases hereunder using moneys from the American Recovery and Reinvestment Act of 2009 shall be exempt from chapter 103D."

Add a new section to HB984, HD3:

SECTION _. There is appropriated out of the federal funds subaccount of the Hawai'i communications commission special fund the sum of \$_ or so much thereof as may be necessary for fiscal years 2008-2009 and 2009-2010 to purchase broadband facilities, services or equipment, or to fund broadband-related infrastructure projects pursuant to this Act.

The sum appropriated shall be expended by the Hawaii communications commission for the purposes of this Act.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
March 3, 2009 at 10:00 am

by

David Lassner

Vice President for Information Technology/CIO, University of Hawaii

HB 0984, HD3 – RELATING TO TECHNOLOGY

Chair Oshiro, Vice Chair Lee and Members of the Committee:

I am pleased to present this testimony today not in my capacity at the University of Hawaii, but 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 appointed by the Speak of the House and Senate President to provide recommendations on how to advance broadband within the State of Hawaii. I was honored to be elected chair by my fellow task force members.

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 made public at that time. 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 and data in our full report, which was provided to each Legislator and the Governor just before the end of the year.

Five bills were introduced this session to implement our key recommendations, including bills prepared by the House Majority, House Minority, Senate Majority and State Administration.

The "sausage-making" is now well underway. While there are many ways this Bill will continue to be improved throughout the legislative process, there are also nay-sayers and special interest requests that could make it more difficult to enact meaningful legislation that advances our broadband capabilities to those of the world's leaders.

I hope the Legislature can maintain a focus on the goals and approaches recommended to you by your Task Force. If Hawaii is able to enact the basic recommendations of the Task Force this year we will be well-positioned for the future, including through the help of federal stimulus funds that will be available for competitive award through the American Recovery and Reinvestment Act.

Marcus R. Oshiro, Chair
Finance (FIN)

House of Representatives of the State of Hawaii

Jay April
President and CEO, Akaku: Maui Community Television
Member, HCR 358 Legislative Task Force

Tuesday, March 3, 2009 10:00AM Room 308

Support of HB 984, Relating to Technology with Amendments

The Hawaii State Legislature is to be congratulated for taking a bold step into the Broadband future by drafting legislation to modernize the telephone, cable and internet regulatory framework in Hawaii. On behalf of Akaku and the people of Maui, we strongly support House Bill No.984 HD2 Relating to Technology with Amendments provided that the recommendations of the HCR358 Task Force Report and the PEG Access protection language included in 440G be fully incorporated into this proposed legislation.

It is significant that the House of Representatives in HB984 HD2 has recognized that preservation and protection of Public, Educational and Government Access to cable AND broadband is an essential component of bringing Hawaii into the forefront of the digital age. Our ability to communicate effectively with each other in a broadband future will only succeed if the fullest range of local community communications needs such as access to bandwidth, tools, skills and ideas on a fast, open internet are met for ALL residents at reasonable cost. Media literacy, digital education and open access to spectrum are the underpinnings of that success. The good news is that cost effective resources and tools to accomplish these goals are already in place. The PEG centers are the training centers that will bring digital literacy to all of our people.

Community Television operations in Hawaii are recognized as some of the best in the nation. This success is due to the fact that in 1987, the Hawaii Legislature followed the lead of the Federal Government by adopting and putting into effect a "best practice" integrated PEG model whereby independent non profits created for this specific purpose were provided channel space for unbiased gavel to gavel meeting coverage and nondiscriminatory access to the public. These nonprofits continue to provide low cost media training to the public, enable broadcast of local, state and native government affairs, fund private and public educational resources and allowed freedom of expression from diverse and varied sources.

Community Media centers have been empowering the local democratic voices of each island community without censorship, corporate control or commercial consideration for more than fifteen years and are perfectly positioned to have an

immediate positive impact on Hawaii's broadband future.

The issue of cable franchise fees and, by extension, future broadband fees being assessed for PEG 2.0 and other public interest use in exchange for the use of public rights of way is a fundamental tenet of U.S. Communications Law. This is the reason why we have public access channels on cable today. These local, non-commercial, non-corporate communications systems exist because the government intervened in the marketplace to charge monopoly cable companies "rent" for the use of our airwaves and our public property. Increased corporate control and concentration of media ownership aside under years of the FCC neglect aside, the same paradigm needs to apply to community broadband access if we are to enjoy an electronic democracy. This is why HB984 needs to be amended with specific language to guarantee that the same paradigm that currently exists with PEG access applies to community broadband as well.

Akaku has been an early adopter of real world broadband applications. Not only were we the first media organization in Hawaii to stream video in the late nineties, we were also innovators in 2007 with the first live, simultaneous multicasts via radio, television and web broadcasts of events of public importance to the entire state. We continue to stream our channels and our "Hawaiian music themed" radio station broadcasts via the internet to the state and world at large. We were also among the first in the nation to integrate live TV broadcasts using "skype" technology from Lanai and Molokai and as far away as Washington D.C and Boston (featuring Representative Mele Carroll.) Akaku is also among the more successful and innovative new media and video training programs in the state.

Despite these successes there are those who characterize the current PEG framework as "controversial" or "burdensome" This point of view is greatly flawed. It is a red herring designed to persuade decision makers to abdicate more than thirty five years of progressive community communications policy in the public interest. Failure to include PEG protection language in HB984 will have a devastating effect on the public's ability to enjoy an open internet and severely damage the prospect of a continued healthy electronic forum for democracy and freedom of expression .

That is why I am happy to say that there is an easy fix. In its recent report to the 2009 Legislature, the HCR358 Task Force submitted comprehensive administrative rules that if incorporated into HB984 as amendments will resolve in one fell swoop, any perceived procurement controversy, all current regulatory "standard less discretion" issues; guarantee performance and accountability for PEGs, solve unresolved issues before DCCA, SPO and the courts as well as set metrics for PEG Access designation.

The HCR358 Task Force Report to the Legislature made recommendations overwhelmingly against procurement and provided a reasonable and well thought

out alternative method for DCCA to follow that are modeled after the current cable franchising renewal process for the designation of access corporations.

Obviously in the broadband future, much communication will move to fiber. We will see new digital protocols for delivery of many services. For this reason and more it is imperative for the legislature to safeguard our ability to communicate effectively in these new environments by providing specific language for healthy PEG migration to HB984 in order to foster an enlightened regulatory framework.

Without protective language, these community communications assets are in jeopardy. Currently there are petitions before the FCC from the Cities of Dearborn and Lansing, Michigan and others challenging discriminatory treatment for PEG access by cable giants, Comcast and AT&T. The FCC and Congress are also looking at harm being done to the concepts of localism and community media by regressive state and local governments who are rolling back public interest obligations of cable and telephone companies under massive industry pressure and influence.

Problems with cable and broadband service are not merely a mainland problem. We at Akaku are currently experiencing difficulty in obtaining acceptable service from Time Warner as well. Our efforts to achieve reliable broadband service to stream our channels to your constituents have, so far, been unsuccessful due to a combination of regulatory inaction on the part of DCCA and a lack of cable company interest exacerbated I believe by less than vigorous support for our position from DCCA and the Administration.

But we are encouraged by FCC Commissioner Jonathan Adelstein's words on his recent visit to Maui:

"Commissioner Capps and I have spoken about and acted upon the need for more localism in broadcasting and also the need for protection of community broadcasting. I think it is absolutely essential that we take steps to protect that in the future. Some of the recent actions by the FCC in changing the franchise process have undercut public, educational and governmental channels that are providing a local avenue expression and for accountability for government officials. I am very concerned about the direction it is taking. I believe it is time for us to review from top to bottom some of the steps that have been taken to look at how we can protect community access and protect localism in broadcasting and enhance it in this digital age."

We agree with the new FCC and the Obama administration that there is a place for non-commercial, fully local, community broadband media access as a natural extension of the PEG concept. We applaud amendments to this effect inserted into HB984 HD2 in order to protect and stabilize PEG access in Hawaii while at the same time assuring full accountability to the government and to the people in each franchise jurisdiction.

The winds of change are blowing in Washington D.C. This will bring in more financial resources to Community Media to help close the digital divide (like assistance for build out of broadband to rural areas, net neutrality and digital inclusion issues: and percentages from internet and cable modem fees.) Provided that neighbor island, community and public interest media are included in the equation, this broadband initiative can go a long way toward bringing all Hawaii residents into a digitally inclusive future.

TESTIMONY ON H.B. NO. 984, H.D. 3, RELATING TO
TECHNOLOGY

Tuesday, 03/03/09 10:00 AM in House conference room 308.

TO THE HONORABLE MARCUS OSHIRO CHAIR, CHAIR,
MARILYN LEE, VICE CHAIR, AND MEMBERS OF THE FINANCE
COMMITTEE:

MY NAME IS DEGRAY VANDERBILT, A RESIDENT OF MOLOKAI.

I AM IN SUPPORT OF HB 984 **CONDITIONED ON CERTAIN
AMENDMENTS INCLUDED IN HB 984 HD 2 BEING INCLUDED
FOR THE PROTECTION OF OUR DYNAMIC PEGS
ORGANIZATIONS STATEWIDE.**

DCCA has expressed concern with the PEG related amendments included in HB 984 HD 2, yet recognizes the importance of, and the excellence, of the PEGS as true assets of the people with the following statement in earlier testimony DCCA Deputy Director Ronald Boyer gave before you:

“The Department (DCCA) recognizes the importance of PEGs and has fostered an environment whereby Hawaii's PEGs in many respects have become the standard and model to which other PEGs aspire...”

I have provided the attached list of questions to DCCA's Mr. Boyer asking him to explain in more detail the general concerns he expressed with ALL of the PEG related amendments to HB 984.

Certainly, it seems, that the PEG related amendments can be further amended to mollify DCCA's concerns voiced by Mr. Boyer.

The main question is, has DCCA explained to members of the House just how the current funding source (cable access fees) and mode of operations of the PEG's statewide will be sustained if there are not some provisions included in HB 984 to provide for these protections.

Thank you for allowing me to testify, and I hope my testimony is able to be augmented by responses to the questions I posed to DCCA's Mr. Boyer.

Sincerely

DeGray Vanderbilt

Attached email and questions to Mr. Ronald Boyer, Deputy Director DCCA.

Attachments to Testimony Below:

1. Email to DCCA's Mr. Boyer
2. Questions on DCCA concerns over PEG amendments included in HB 984 HD2

ATTACHMENT 1 - Email to DCCA's Mr. Boyer:

Monday, March 2, 2009 9:38 AM

From: "pau hana ohana" <pauhanamolokai@yahoo.com>

To: "Ronald Boyer" <rboyer@dcca.hawaii.gov>

Aloha Mr. Boyer

My name is DeGray Vanderbilt. I have lived on Molokai for 30 years. I was formerly a member of the Board of Directors for Akaku Maui Community Television.

I have attached a portion of your recent testimony on HB 984 in which you raised concerns about some well-thought out and well-intended amendments that were included in HB 984 HD2 for the purposes of providing some assurances that these dynamic

community-based communication services would be protected as our state broadband industry evolves.

There is no reason the PEG's, based on their sound track records in communities throughout our state, should not be a contributing partner in the state's bold and visionary broadband initiative.

You respectfully recognized the importance of the PEGs with the following acknowledgment to state legislators in your testimony; "DCCA recognizes the importance of PEGs and has fostered an environment whereby Hawaii's PEGs in many respects have become the standard and model to which other PEGs aspire".

Thank you for that recognition. Its a recognition that has been earned by the PEGs statewide who have served their local communities diligently for many years.

In order for the public and legislator to better understand your specific concerns with all the PEG amendments, it seems there needs to be some clarification to some of the general statements you made in order for the public and legislators to grasp the depth of your concerns and how the PEG amendments might be amended to mollify your concerns and provide the protection the PEGs are seeking.

Your responses to the questions will certainly assist me in developing my testimony to the legislators in support of a win-win situation for HB 984, one that accomplishes all the good broadband initiatives included in HB 984 and includes the PEGs as an integral part of the dynamic broadband development envisioned for our state.

I hope to hear from you as soon as possible. I am planning on providing testimony for tomorrow's hearing before the House Finance Committee at 10 am Room 308.

Thanks you for any assistance you are able to provide.

Best regards,

DeGray Vanderbilt

Members of the House Finance Committee, Molokai
Akaku staff members

ATTACHMENT 2 - Questions on DCCA concerns over PEG amendments included in HB 984 HD2

Below is a portion of the testimony given to state legislators by Mr. Ronald Boyer, Deputy Director of DCCA expressing his Department's concerns over the PEG related amendments included in HB 984 HD2.

Although Mr. Boyer make specific reference to just a couple of the PEG-related amendments, he is requesting that all of the well-intended peg related amendments be stricken from HB 984.

In stating his objections to certain PEG related issues, Mr. Boyer throws out a lot of information that is vague or hard to relate to by the average person that may not be versed in PEG operations and how the future of these true community assets may be jeopardized if HB 984 is passed without some provision to preserve and protect the valued operations, which Mr. Boyer in his testimony below acknowledges that DCCA ***"recognizes the importance of PEGs and has fostered an environment whereby Hawaii's PEGs in many respects have become the standard and model to which other PEGs aspire"***

Mr. Boyer's testimony below is in italic type. Testimony that begs clarification is in bold and underlined.

Question submitted to help clarify the testimony are shown in BOLD CAPITAL LETTER TYPE under each paragraph.

It is hoped that Mr. Boyer or some other representative of DCCA will respond to the questions submitted below in order to give the public and legislators a better understanding of the concerns he expressed over the PEG related amendments in HB 984, and also how DCCA plans to sustain the valued PEG operations if

provisions for their protection are not included in HB 984.

MR. BOYER TESTIMONY

TESTIMONY ON H.B. NO. 984, H.D. 2, RELATING TO TECHNOLOGY TO THE HONORABLE ROBERT N. HERKES, CHAIR, GLENN WAKAI, VICE CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Ronald Boyer, Deputy Director of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony in support of the intent of this bill but with strong concerns regarding several of the provisions that have been added.

This bill consolidates 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 Hawaii's residents.

QUESTIONS REGARDING THE ABOVE PARAGRAPH:

DOES THE DCCA ("DEPARTMENT") CONSIDER THE PUBLIC, EDUCATION AND GOVERNMENT ACCESS COMMUNITY TELEVISION STATIONS ("PEGs") AS A 'COMMUNICATION SERVICE'. IF NOT, HOW WOULD YOU CLASSIFY THE PEG SERVICES THAT ARE PROVIDED TO LOCAL COMMUNITIES THROUGHOUT OUR STATE?

IF THE DEPARTMENT CONSIDERS THE PEG SERVICES AS 'COMMUNICATION SERVICES', DOES THE DEPARTMENT ENVISION THE PEGS WILL BE UNDER THE 'ONE REGULATION' OF "A NEW HAWAII COMMUNICATIONS COMMISSION? IF NOT, HOW WILL THE REGULATION OF THE PEG SERVICES BE REGULATED?

*The Commission **will be funded from existing fees** and **will be directed to achieve goals**, including creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit 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**.*

PLEASE EXPLAIN THE SOURCE AND AMOUNT OF THE "EXISTING FEES" THAT WILL "FUND THE COMMISSION".

THE DEPARTMENT REFERENCES "GOALS" THAT THE COMMISSION "WILL BE DIRECTED TO ACHIEVE". PLEASE PROVIDE A LIST OF ANY SPECIFIC GOALS THE COMMISSION "WILL BE DIRECTED TO ACHIEVE" ON BEHALF OF THE PEGS.

THE DEPARTMENT NOTES IN ITS TESTIMONY THAT THE COMMISSION WILL "EMPOWER THE PEOPLE". WILL THESE PEOPLE BE THE SAME PEOPLE AND

OR COMMUNITIES EMPOWERED BY THE FULLY LOCAL, NON-COMMERCIAL COMMUNITY-BASED PEG COMMUNICATION SERVICE OPERATIONS STATEWIDE, AND WILL THE COMMISSION HAVE ANY TYPE OF DIRECTIVE TO PROVIDE THE SAME "EMPOWERMENT" TO THE PEOPLE AS IS PROVIDED BY THE PEGS?

Although the Department strongly supports the original intent of the bill and a number of the amendments made to it, we have identified areas of concern and have also provided suggestions to improve the bill for the Committee's consideration.

First, although the Department recognizes the importance of PEGs and has fostered an environment whereby Hawaii's PEGs in many respects have become the standard and model to which other PEGs aspire, we respectfully suggest that this bill is not the vehicle by which to attempt to resolve all issues pertaining to PEGs.

QUESTIONS PERTAINING TO ABOVE PARAGRAPH

THE DEPARTMENT SAYS THAT IT "RECOGNIZES THE IMPORTANCE OF THE PEGS". IN DCCA'S OPINION, WHAT IS THE "IMPORTANCE OF THE PEGS".

HAVE THE DEPARTMENT IDENTIFY SPECIFICALLY "THE MANY RESPECTS" IN WHICH HAWAII'S PEGS HAVE BECOME THE STANDARD AND MODEL TO WHICH OTHER PEGS ASPIRE.

DOES THE DEPARTMENT FEEL THAT H.B. 984 IS THE APPROPRIATE VEHICLE TO ADDRESS ANY PEG ISSUES? IF SO, WHAT SPECIFIC PEG ISSUES WOULD BE APPROPRIATE TO ADDRESS IN THIS BILL?

PLEASE PROVIDE A LIST OF "ALL ISSUES PERTAINING TO PEGS" THAT THE DEPARTMENT FEELS ARE ISSUES THAT STILL NEED TO BE RESOLVED, AND WHAT VENUE THE DEPARTMENT FEELS WOULD BEST SUITED TO RESOLVE EACH OF THESE ISSUES.

The Department has supported and continues to support exempting the PEGs from Chapter 103D requirements. Nevertheless, we believe that PEG-related issues should be taken up by the Legislature separately. We are concerned that many of the PEG-related items now included in this measure will generate opposition that may adversely impact if not prove fatal to the bill.

QUESTIONS PERTAINING TO THE ABOVE PARAGRAPH:

IF THE DEPARTMENT SUPPORTS EXEMPTING THE PEGS FROM THE PROCUREMENT PROCESS, WHAT SPECIFIC OBJECTION(S) WOULD THE DEPARTMENT HAVE ABOUT HAVING THE COMMISSION SUPPORT THE SAME POSITION IN ORDER TO SUSTAIN HAWAII'S LOCAL, COMMUNITY-BASED PEGS OPERATIONS, WHICH THE DEPARTMENT ACKNOWLEDGES ABOVE HAVE 'IN MANY RESPECTS BECOME MODELS

THE STANDARD AND MODEL TO WHICH OTHER PEGS (NATIONWIDE) ASPIRE”

PLEASE PROVIDE A LIST OF THE SPECIFIC PEG ISSUES THAT ARE INCLUDED IN THE HB 984 AMENDMENTS, THAT THE DEPARTMENT FEELS SHOULD BE TAKEN UP BY THE LEGISLATURE IN SEPARATE LEGISLATION.

BESIDES THE CONCERNS OVER CABLE FEES AND HOW THEY ARE SPLIT UP IN THE FUTURE TO FUND THE COMMISSION, PBS HAWAII AND/OR THE PEG, WHICH ARE NOTED IN THE FOLLOWING PARAGRAPH, PLEASE IDENTIFY SPECIFICALLY THE DEPARTMENT’S EACH OF THE “MANY PEG-RELATED ITEMS” INCLUDED IN THE HB 984 AMENDMENTS THAT THE DEPARTMENT IS CONCERNED WITH AND SPECIFICALLY IDENTIFY WHO OR WHAT ENTITY WOULD BE IN “OPPOSITION” OF EACH PEG-RELATED ITEM AND HOW THAT OPPOSITION “MAY” PROVE “FATAL TO THE BILL”.

Therefore, the Department requests that the PEG-related language added to the bill in the HD2 be removed completely.

QUESTIONS PERTAINING TO THE ABOVE PARAGRAPH:

DOES THE DEPARTMENT HAVE ANY SUGGESTIONS FOR THE LEGISLATORS OF HOW SOME OF THE “PEG-RELATED LANGUAGE ADDED TO THE BILL IN THE HD2” COULD BE AMENDED AND STILL BE INCLUDED IN THE BILL?

For example, section -70 (page 81) would immediately increase costs to Hawaii's cable subscribers, provide more money to the PEGs, and deny any funding to PBS Hawaii. Currently, the cable operator has not been ordered to collect from its subscribers the maximum franchise fee allowable under federal law. However, the bill requires the HCC to "assess the maximum access fees permitted under federal law.

QUESTIONS PERTAINING TO ABOVE PARAGRAPH:

WOULD THE DEPARTMENT SUPPORT SECTION 70 REMAINING IN HB984 TO HAWAII'S CABLE SUBSCRIBERS IF;

- A) THERE WAS NO IMMEDIATE INCREASE TO HAWAII'S CABLE SUBSCRIBERS AND THE FEES THEY PAY WHICH ARE DCCA APPLIES TO FUND AMONG OTHER THINGS THE PEGS AND PBS AND THE FEES REMAINED THE SAME,
- B) THE PEGS CONTINUE RECEIVING THE SAME MONEY THEY HAVE ALWAYS RECEIVED, AND
- C) PBS CONTINUES TO RECEIVE THE SAME AMOUNT OF FUNDING FROM THE CABLE SUBSCRIBER FEES THAT IS CURRENTLY BEING PROVIDED TO PBS?

IF NOT, PLEASE EXPLAIN WHY?

This would have the effect of increasing the amount collected from the current 4.61 % of gross to 5% and increasing fees to subscribers by approximately \$1.14 million. The bill would also increase the PEGs' share of those fees to not less than 75% as compared to the approximate 60% of access fees they now receive. Under the current formula, in calendar year 2009, PEGs will receive approximately \$7.2 million.

IS THE \$1.14 MILLION PROJECTED INCREASE COST TO CABLE SUBSCRIBERS AND ANNUAL COST INCREASE?

HOW MANY CABLE SUBSCRIBERS ARE THERE CURRENT IN HAWAII THAT ARE PAYING THE 4.61% ACCESS FEE?

HOW MUCH ADDITIONAL COST (IN DOLLARS) A MONTH WOULD THE AVERAGE SUBSCRIBER PAY IF THE 5% OF GROSS ACCESS FEE PERMITTED UNDER THE FEDERAL LAW WAS COLLECTED INSTEAD OF THE 4.61% OF GROSS FEE THAT IS CURRENTLY COLLECTED.

WHAT IS THE ESTIMATED ANNUAL AMOUNT (BASED ON 2009 PROJECTIONS AS NOTED IN THE FOLLOWING PARAGRAPH FOR PBS) PROJECTED TO BE DISTRIBUTED FROM THE 4.61% ACCESS FEE TO PBS AND EACH OF THE PEGS ON OAHU, MAUI, HAWAII AND KAUAI, AS WELL AS, OTHERS.

	<u>PERCENT OF 4.61 FEE *</u>	<u>ANNUAL DOLLAR AMT OF 4.61% FEE *</u>
PBS HAWAII		
OLELLO PEG (OAHU)		
AKAKU PEG (MAUI)		
HOIKE PEG (KAUAI)		
NA LEO PEG (HAWAII)		
OTHER **		
TOTALS		

* PBS RECEIVES ITS PERCENTAGE OF FEE ON STATEWIDE BASIS, PEGS RECEIVE ITS PERCENTAGE FEE BASED ON FEES COLLECTED IN THEIR RESPECTIVE SERVICE AREAS.

** PLEASE EXPLAIN WHAT ENTITY RECEIVES THE "OTHER" PORTION OF THE FEES, WHAT THE FEES RECEIVED ARE USED FOR, AND WHETHER OR NOT THE FEES GOING TO "OTHER" ARE COLLECTED STATEWIDE.

*Under this bill's proposed language, **PEGs would receive about \$11.1 million**. Given the current economic and fiscal challenges faced by Hawaii's citizens, the Department believes it inappropriate to increase the fees paid by consumers. **Also, PBS Hawaii currently receives 1% of the gross (approximately \$2.9 million in calendar year 2009)**, but this section limits the uses of the access fees collected to only the PEGs and to the HCC for administering the designation of the PEG access organizations.*

QUESTIONS PERTAINING TO ABOVE PARAGRAPH.

THE ABOVE PARAGRAPH IS CONFUSING FOR ANYONE TO GRASP BECAUSE THE COPARISON OF WHAT THE PEGS GET AND WHAT PBS GETS ARE BASED ON DIFFERENT ASSUMPTIONS. IF YOU CAN PROVIDE THE NUMBERS REQUESTED IN THE CHART ABOVE, THIS WOULD BE CLEARER FOR THE PUBLIC AND OUR LEGISLATORS.

IF THE LIMITS ON USES OF THE ACCESS FEES COLLECTED IS AMENDED TO REFLECT HOW THE ACCESS FEES ARE CURRENTLY BEING USED, WHAT SPECIFIC OBJECTIONS, IF ANY, WOULD THE DEPARTMENT HAVE WITH THE AMENDED LANGUAGE PROPOSED FOR SECION 70 ACCESS FEES?

*The limitation on **expenditure of access fees** by the HCC would mean that the HCC could only use access fees to designate PEG access organizations - an **extraordinary limitation on the current cable-related duties** of the Cable Television Division being transferred to the HCC by this bill.*

QUESTIONS PERTAINING TO THE ABOVE PARAGRAPH.

PLEASE DESCRIBE THE CURRENT CABLE-RELATED DUTIES OF THE CABLE TELEVISION DIVISION (OF DCCA) BEING TRANSFERRED TO THE NEW HCC UNDER THIS BILL, AND EXPLAIN HOW THESE DUTIES ARE CURRENTLY BEING FUNDED.

IF THE PEG AMENDMENTS WERE ADJUSTED SO THAT THE EXPEDITURE OF ACCESS FEES REMAINED STATUS QUO, WOULD THE DEPARTMENT HAVE ANY OBJECTION TO HAVING THE NEW LANGUAGE IN HB 984. IF NOT, PLEASE EXPLAIN.

IF HB 984 PASSED WITHOUT ANY PEG-RELATED AMENDMENTS, WILL THE CURRENT

Second, the Department renews its request for several amendments to the bill:

REMAINDER OF MR. BOYER'S TESTIMONY NOT INCLUDED IN THAT IT DOES NOT APPLY TO THE HB984 PEG ACCESS RELATED AMENDMENTS DESIGNED TO SUSTAIN THE LOCALLY BASED PEG ACCESS STATIONS

THAT HAVE EVOLVED OVER THE YEARS INTO DYNAMIC COMMUNITY ASSETS WHICH PROVIDE THE PEOPLE OF THESE COMMUNITIES STATEWIDE WITH ACCESS TO GOVERNMENT, EDUCATIONAL OPPORTUNITIES, AND AN AFFORDABLE, EXTENDED MEDIA OUTLET TO ALLOW THEM TO COMPETE ON A MORE BALANCE BASIS IN THE DEMOCRATIC PROCESS.

End iof testimony

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEE ON FINANCE
Tuesday March 3, 2009
10:00 AM
State Capitol, Conference Room 308

In consideration of
HB 984 HD3 RELATING TO TECHNOLOGY.

Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance.

The High Technology Development Corporation (HTDC) supports HB 984 HD3 which proposes to establish the Hawaii Communications Commissioner under the administrative authority of the Department of Commerce and Consumer Affairs, and defers to the recommendations of the State Broadband Task Force, created by the Legislature in 2007 to evaluate, determine and recommend best practices for implementation of this important initiative.

Thank you for the opportunity to submit testimony in support.



February 25, 2009

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

Re: HB 984 HD 3, Relating to Technology - Oppose
Finance Hearing – Agenda #1, Tuesday, March 03, 2009, 10 am – Room 308

Aloha Chair Oshiro, Vice Chair Lee 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.

Although the stated purpose of this bill is to implement key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Communications Commission (HCC) and Commissioner in the Department of Commerce and Consumer Affairs (DCCA), to transfer functions relating to telecommunications from the Public Utilities Commission to the HCC and functions relating to cable services from DCCA to the HCC, and to establish a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature, passage of this bill will be a detriment to the communication industry and will have a chilling effect on any long-term expansion of the broadband initiative.

We do not object to the concept of establishing an HCC, however, we do have very serious concerns about the significant regulatory changes proposed in this bill. Among these include:

Sharing of infrastructure – This is a complex issue that should be examined in much greater detail prior to making any decision on whether it will further the goals of this initiative. Mandating that individual carriers share infrastructure at rates that may not be compensable to that carrier's investment will freeze any initiative to expand broadband capacity. Any mandatory sharing of infrastructure should be limited to infrastructure that is funded by the state and not by individual carriers.

Mandating regulation or deregulation – While TWTC does not object to a new HCC examining rate regulation, it not necessary or appropriate to mandate that an HCC examine any form of regulation.

We acknowledge that competition has developed since the federal Telecommunications Act and rules were developed. However, we do not agree with statements that have been made in

connection with this and other bills suggesting that the market for telecommunications is fully competitive, and that the existing regulatory scheme is unfair to the incumbent carrier, Hawaiian Telcom. If one were to look at Hawaii's market data, one would undoubtedly find that Hawaiian Telcom continues to dominate both the residential and business sectors in all relevant categories: number of customers, number of lines, revenues building connected to its own network, miles of fiber, etc. Further, such statements ignore the fact that there are a number of different market segments in Hawaii – residential, business, wholesale, retail, wireless, and wireline – which are not all subject to the same level of competition.

Timing – While TWTC does not object to the formation of an HCC, we question whether the timing is correct for transfer of telecommunication regulation to a new agency. As you know, Hawaiian Telcom is presently in bankruptcy, which could result in the restructuring or sale of the company. The sale of the company from Verizon to the Carlyle Group, and the resulting high debt levels and back office problems were factors that led to bankruptcy. The PUC (or a new HCC) will have to approve any restructuring or sale. The PUC is familiar with all of the issues that arose during the last sale. A new commission will not have that insight or experience. Further the PUC is familiar with the types of issues that need to be addressed in the restructuring or sale of a major utility, whereas, a new commission may not be as prepared.

Impact on Interconnection Agreements – TWTC is a facilities-based competitive local exchange carrier (“CLEC”). We rely primarily on our own network to provide telecommunication service, but need certain facilities and services from the incumbent local exchange carrier (“ILEC”), Hawaiian Telcom. This includes the need to interconnect TWTC's calls with Hawaiian Telcom's network to enable our customers to make calls to, and to receive calls from each other. We also “collocate” equipment in Hawaii Telcom's offices to obtain interconnection and access to certain facilities and services that we use to service our customers. Our ability to obtain interconnection and related services from Hawaiian Telcom is critical to our ability to serve our customers. We obtain these services primarily pursuant to federal law, but the PUC is responsible under both federal law and Hawaii statute to arbitrate and to enforce interconnection agreements. The way in which interconnection is provided is changing, with many ILECs migrating to an Internet Protocol (“IP”) technology. TWTC would like assurance that any changes in telecommunication laws do not adversely impact its continued ability to obtain interconnection and related services and facilities from Hawaiian Telcom, and do not affect PUC oversight of these matters, regardless of the technology being used.

Specifically, we would like assurance 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/

Lyndall Nipps
Vice President, Regulatory Affairs

tw telecom
(AZ, CA, CO, HI, ID, NM, OR, UT, WA)
Office: 760-832-6275
Email: Lyndall.Nipps@twtelecom.com

Attachment: 1

Executive Summary Interconnection Resolution

It is indisputable that interconnection between the incumbent local exchange carriers (ILECs) and other telecommunications carriers is necessary to a competitive telecommunications environment. NARUC has long supported the non-discriminatory interconnection of networks for the exchange of voice traffic as fundamental to the emergence of a "network of networks." The purpose of this Resolution is to prevent federal pre-emption of State commissions' authority to mediate, arbitrate, and approve interconnection requests for the exchange of voice traffic, consistent with the federal Telecommunications Act of 1996, as managed packet technology replaces circuit-switched technology for the transmission of voice calls.

Managed packet technology promises to accelerate the deployment of advanced networks and transform the traditional public switched telephone network into an all-packet network. Telecommunications carriers' managed packet networks do *not* use the public Internet, where packets move on a "best efforts" basis. Rather, managed packet networks are designed to identify and route voice packets using specific protocols and routing instructions to meet the real-time needs of voice services. In this way, managed packet networks avoid the quality and security issues that limit the usefulness of the public Internet to provide reliable voice services.

Initially, the deployment of managed packet voice networks occurred in the form of isolated islands which individual carriers had designed to ensure within-network quality-of-service for their voice service products. Managed packet networks are now being deployed by both ILECs and new entrants, with voice traffic volumes transported in managed packet form growing rapidly. Today, these networks must convert voice traffic to a circuit-switched format at the edge of the ILEC's network in order to complete the exchange of such voice traffic, even where both the ILEC and its competitor have deployed managed packet technology in their transport network. The nation is approaching the tipping-point, however, where it will be more efficient to exchange voice traffic in managed packet form between both carriers' networks.

Just as technologically neutral federal and state interconnection policies promoted the transformation from analog to digital transmission, these same policies should govern the transition from circuit-switched transmission to managed packet format. Preserving reliable and high-quality voice services as the nation's networks evolve to a packet-architecture must remain a public policy goal. Quality voice service is uniquely important to our lives, security, social structure and our economy. As such, assuring the efficient interconnection of managed packet networks is no less important to achieving quality voice service in the future than the interconnection of circuit-switched networks has been in the past.

The proposed Resolution makes clear that NARUC supports technologically neutral interconnection policies, under Section 251 of the federal Telecommunications Act, that do not distinguish between the legacy circuit-switched network architecture of the past over the managed packet network architecture being deployed today. Moreover, the Resolution reinforces NARUC's commitment that the important role of State commissions, set forth in Section 252, to act as the arbiter of interconnection disputes must be preserved. This Resolution will remove any uncertainty with the Federal Communications Commission that NARUC stands behind the continued application of Sections 251 and 252 to the interconnection of networks for the exchange of voice traffic irrespective of the transport technology being used.



Dan Youmans
Director
External Affairs

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March 3, 2009

The Honorable Rep. Marcus Oshiro
Chair, Committee on Finance
Hawaii House of Representatives
State of Hawaii

RE: Concerns regarding House Bill 984, HD3

Dear Rep. Oshiro and Members of the House Committee on Finance

On behalf of AT&T, I am writing to express deep concerns over the new, and largely unknown, telecommunications environment that would be created by House Bill 984, HD3. Under this legislation, a new Hawaii Communications Commission – under the direction of one person – would acquire sweeping regulatory authority over telecommunications, cable, and other technology companies in the state. Before taking this critical step, AT&T requests additional time to fully understand the impact this will have on existing telecommunications services in state and the future of broadband technologies in Hawaii.

AT&T is a strong supporter of broadband programs throughout the United States. We have worked with many states to map the availability of broadband services and to create new opportunities for broadband deployment and adoption. Programs such as Connect Kentucky, using the Connected Nation model, are very successful thanks to strong public-private partnerships. AT&T very much wants to work with the State of Hawaii to develop such a partnership and move forward together in creating a viable broadband program.

The concern AT&T has with HB 984, HD3 is that it appears to place the responsibility for creating a broadband program in the state – along with total regulatory authority over telecommunications – into the hands of one person. This new Commissioner would be provided a term of six years, which is two years beyond the term of the governor appointing this government official. With the existing Public Utility Commission, the regulatory authority over telecommunications is shared by three individuals, which can provide a diversity of views and expertise. This benefit would not be available with only one person determining the direction for many critical technology issues for the state.

Adding to AT&T's concerns are some of the specific responsibilities that the Commissioner would have, such as regulating the "sharing" of telecommunications facilities. As a company that has invested millions of dollars in our networks in Hawaii, it should be clear why we would want a much better understanding of the new Commissioner's intentions for these facilities.



There is also the question of the costs of this new program, including how this government agency would be funded and, more importantly, how new broadband networks, as envisioned by the new Commission, would be financed. With the economic challenges we have today, is it the right time to establish a new government office?

Great care must also be taken in how new broadband services are developed and built. Many companies have already invested heavily in high-speed Internet services, and the marketplace is only becoming more competitive as we are seeing technologies such as cable, DSL, fiber, wireless and others offer broadband services. It is very important that the regulatory environment created by government not serve as a disincentive to new investment by technology companies.

These are just some of the concerns raised by House Bill 984, HD3. AT&T suggests that more time is needed to understand the full implications of this particular approach to expanding broadband services and regulating the telecommunications industry. We suggest that much more dialogue is needed – among policy makers, telecommunications companies, and many other stakeholders – before this legislation moves forward.

Thank you for this opportunity to comment on this very important legislation.

Dan Youmans
AT&T

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2009 5:39 PM
To: FINTestimony
Cc: holter@maui.net
Subject: Testimony for HB984 on 3/3/2009 10:00:00 AM

Testimony for FIN 3/3/2009 10:00:00 AM HB984

Conference room: 308
Testifier position: comments only
Testifier will be present: Yes
Submitted by: Lance Holter
Organization: Hawaii Democratic party
Address: PO Box 790656 Paia, HI 96779
Phone: 808-579-9442
E-mail: holter@maui.net
Submitted on: 3/2/2009

Comments:

I will present my testimony in person at the hearing. Primarily, administrative rules should be adopted after public testimony and should be consistent with those rules adopted by the commissioner. PEG access should be protected and the public's free speech 1st amendment rights likewise protected.
Lance Holter, Chair Maui Democratic party

HB 984, HD 3 – Agenda One

RELATING TO TECHNOLOGY

**JOHN KOMEIJI
SR. VICE PRESIDENT & GENERAL COUNSEL**

HAWAIIAN TELCOM

March 3, 2009

Chair Oshiro and members of the Finance Committee:

I am John Komeiji testifying on behalf of Hawaiian Telcom on HB 984, HD 3. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to raise concerns regarding several provisions which, if enacted, will have the unintended consequence of delaying rather than speeding the deployment of advance broadband services.

As you are aware, 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. HB 984, HD 3 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 on page 72 that all cable providers designate seven or more television channels and up to 10% of bandwidth capacity for PEG use and 10% of total channel or bandwidth capacity for lease by third parties. 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 state retail telecommunications playing field in the form of pricing flexibility similar to the degree currently afforded wireless and voice over internet protocol (VoIP) providers and to clarify the original goals of this measure:

- 1) Insert in **Part II Telecommunications, subsection 38** (page 46, line 13) 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 3) and insert as an amended subsection (b) after the proposed new subsection (a).

(~~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.~~]

- 3) 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.

<http://www.capitol.hawaii.gov>

Testimony of Sean McLaughlin
Regarding HB 984 to Establish the Hawaii Communications Commission
March 3, 2009, 10:00am
House Finance Committee, State Capitol

Committee Chair Oshiro, Vice Chair Lee, and Committee Members -

Thank you for considering these comments and those of U.S. Senator Daniel Inouye's broadband policy initiative in 1994, also on behalf of Hawaii Consumers.

By creating a Hawaii Communications Commission, the proposed legislation HB 984 has the potential to address deficiencies and liabilities of the current State regulatory regimes for communications in Hawaii. An ethical and progressive reform could position Hawaii to regain leadership with regard to development of broadband media access.

Our immediate challenge is the incompetence and corruption of DCCA's cable TV regulation, particularly over the past decade. Unfortunately, the Governor's Broadband Task Force is tainted by the controlling participation of self-interested State bureaucracies and the lack of independent vision and local community voices.

But the underlying goals of HB 984 are important, so it may be worth salvaging this legislation to establish a Hawaii Communications Commission. Perhaps if ethical leadership would step forward to correct the process deficiencies, there is still hope...

If you do choose to advance this radical regulatory initiative, Hawaii Consumers' recommends that you include the public interest across diverse local communities on each island - and guarantee a deciding role for local jurisdictions and community voices.

Senator Daniel Inouye's initiative fifteen (15) years ago may prove instructive. He drafted legislation, the "National Public Telecommunications Infrastructure Act of 1994," to secure public, education and government interests in the development of broadband infrastructure. The term "broadband" was not in common use at the time, so similar capacity is called "all appropriate available telecommunications distribution technologies."

We fully endorse US Senator Inouye's Findings in S.2195 (1994) and recommend them to you for consideration of the public policy issues for broadband access you are seeking to address for the State of Hawai'i.

Findings in S.2195 (1994)
"National Public Telecommunications Infrastructure Act of 1994"

(1) The United States Government has consistently encouraged the development

and dissemination of public telecommunications services in broadcast and nonbroadcast technologies through, among other things, the Public Broadcasting Act of 1967, the Public Telecommunications Financing Act of 1978, and the Public Telecommunications Act of 1992, wherein Congress found that 'it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies. . . '.

(2) The Government has a compelling interest in ensuring that all citizens of the United States have access to noncommercial governmental, educational, informational, cultural, civic, and charitable services through all appropriate telecommunications networks.

(3) New telecommunications technologies will enhance the ability of schools, libraries, local governments, public broadcast institutions, and nonprofit organizations to deliver and receive noncommercial governmental, educational, informational, cultural, civic, and charitable services throughout the United States.

(4) It is in the public interest that these entities be granted access to capacity on telecommunications networks for the purpose of disseminating and receiving noncommercial governmental, educational, informational, cultural, civic, and charitable services throughout the United States.

(5) It is necessary and appropriate that these entities have access, without charge, to the capacity on telecommunications networks to enable the public to have affordable access to the governmental, educational, informational, cultural, civic, and charitable services provided by such entities.

(6) Telecommunications services, including cable television programming, basic telephone service, and telecommunications services not yet available, are likely to become an increasingly pervasive presence in the lives of all Americans.

(7) Most Americans are currently served by telecommunications networks that lack sufficiently open architecture, sufficient capacity, and adequate nondiscriminatory access terms necessary to provide open access to a diversity of voice, video, and data communications.

(8) Private telecommunications carriers are likely to control access to telecommunications networks that lack sufficiently open architecture, sufficient capacity, and adequate nondiscriminatory access terms. Without narrowly tailored governmental intervention, the existence of these private 'gatekeepers' is likely to restrict access to these networks.

(9) Private telecommunications carriers respond to marketplace forces, and therefore are most likely to exclude those members of the public and institutions with the fewest financial resources, including but not limited to small town and rural residents, low income people, minorities, individuals with disabilities, the elderly, and noncommercial organizations such as schools, libraries, public broadcasters, and nonprofit community and civic organizations.

(10) To facilitate widespread public discourse on a range of public concerns between and among all Americans, the Government has a compelling interest in providing broad access to telecommunications networks for a diversity of voices, viewpoints, and cultural perspectives, including access for members of the public whose voices are most likely to be excluded by private telecommunications carriers.

(11) Assuring access to a diversity of voices, viewpoints, and cultural perspectives over telecommunications networks benefits all members of the public who use telecommunications networks to disseminate or receive information.

(12) Government support and encouragement of a diversity of voices, viewpoints, and cultural perspectives over telecommunications networks furthers a compelling governmental interest in improving democratic self-governance, and improving and facilitating local government services and communication between citizens and elected and unelected public officials.

(13) Telecommunications networks make substantial use of public rights-of-way in real property and in spectrum frequencies.

(14) Because of the Government's compelling interest in ensuring broad and diverse access to telecommunications networks for the purposes of disseminating and receiving noncommercial educational and informational services, and in exchange for the use of public rights-of-way accorded telecommunications networks, it is appropriate for Congress (through the assertion of concurrent Federal jurisdiction over rights-of-way held or controlled by State or local governments) to require that owners and operators of telecommunications networks reserve capacity on such networks for public use.

(15) The least restrictive means to ensure that those members of the public whose voices are most likely to be excluded from telecommunications networks can access those networks is to require those networks to reserve a portion of their capacity for that access.

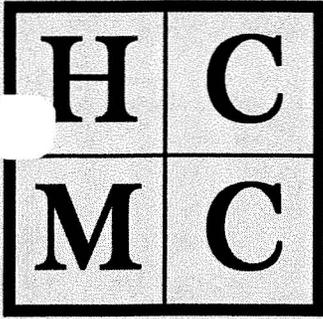
(16) It is in the public interest that reserved network capacity for public

use be accompanied by funding to facilitate use of such capacity to provide noncommercial governmental, educational, informational, cultural, civic, and charitable services for the public.

Thanks to US Senator Daniel Inouye for his historic and continuing leadership with regard to broadband media policy!

Feel free to contact Sean McLaughlin, cel: 808-283-3174 (Maui) or 808-447-9610 (O'ahu) or via e-mail at sean808@earthlink.net if you would like more information.

30



Honolulu Community Media Council

Since 1970

President:

Chris Conybeare

Vice-President:

Beth Ann Kozlovich

Treasurer:

Teresita Bernales

Secretary:

Marya Grambs

Board Members at Large:

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rald Kato

Jean King

Michael Largarticha

Richard Miller

Sarah Vann

March 3, 2009

To: The Honorable Marcus R. Oshiro, Chair, and Members of the House Committee on Finance

Fr: Chris Conybeare, President HCMC

Re: HB984HD2
Hearing Date: March 3, 2009

The Honolulu Community-Media Council is in support of the general intention of this legislation, but expresses concern that strong language needs to be inserted to protect PEG Access channels and their continued operation for the benefit of the people of our state.

Hawaii's PEG Access operators have received high marks from numerous sources for their ability to enhance freedom of expression and communication in the public interest. As we find ourselves firmly in the digital age, these channels and the use of associated cutting-edge technology by PEG operators will be of increasing importance.

The Honolulu Community-Media Council strongly urges that the recommendations of the HCR358 Task Force Report and the PEG Access protection language included in 440G be fully incorporated into this proposed legislation. Thank you.

Article 19 of the Universal Declaration
of Human Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

CMPA

Community Media Producers Association

1658 Liholiho #506
Honolulu, Hawaii 96822
808 239-8842
cmpa@hawaiiantel.net

Aloha Chair Oshiro, Vice-Chair Lee, and members of the Finance committee,

The Community Media Producers Association (CMPA) is in support of the intent of HB984 HD3 RELATING TO TECHNOLOGY Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting with the following amendments:

Part I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

"Public, educational, or governmental access organization" or "PEG access organization" means any nonprofit organization with voting members under part VI of chapter 414D designated by the commissioner to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section -67, and any officers, agents, and employees of an organization with respect to matters within the course and scope of their employment by the access organization.

If you amend the definition to include voting members, it would remove the appearance of taxation without representation by giving voluntary as well as involuntary contributors a real stake in the organizations. This should provide a place at the table for all to share and implement their ideas. It is not appropriate to exempt the PEGs from procurement without providing for the openness and accountability DCCA believes are crucial,

Thank you for deferring decision making on HB984 HD3, allowing for comments on the half truths and disinformation provided you in other testimony. CMPA is the only nonprofit media access corporation in the state advocating for at least one specially designated "Public Access Channel," individual Public producers' rights, and membership and transparency in PEG organizations. As such CMPA is in opposition to exempting public, education and government (PEG) access organizations' contracts from the procurement code unless PEGs are required to adhere to state law providing for true

openness and accountability to citizens. We do, however, support the overall intent of the measure which is to lower the impediments to broadband users, providers, and the marketplace of ideas.

To date there has been no compelling argument provided for why PEG organization contracts should be exempt, quite the contrary. The AG, Chief Procurement Officer, and the Procurement Policy Board, have all opined that competing for the contracts would provide for innovation and excellence, which are necessary tools to catch up from being 10 years behind the cutting edge.

Those familiar with procurement law are aware that reports and studies have recognized that exemptions increase the possibility of litigation that would be unlikely if there were strict adherence to the procurement code. Since the State Procurement Office (SPO) granted DCCA an exemption in 2005, hundreds of thousands of dollars have gone to 'Olelo & Akaku's attorneys rather than towards their real purpose in their articles of incorporation.

CMPA and SPO believe competition fosters innovation and excellence. "DCCA believes openness and accountability are crucial", as stated in DCCA's yet unimplemented 2004 PEG Plan, but perhaps DCCA doesn't really want PEGs to be open, accountable, innovative or successful and that is the reason they haven't implemented the plan after almost 5 years and now want Hawai'i PEG organization contracts exempt from the procurement code.

The attached PDF concludes membership PEG access organization boards are more democratic, and that non-membership boards tend to become self-serving. CMPA respectfully requests that this committee amend the bill so that the funding it mandates the public pay to support the PEGs facilitates democracy and not self-serving in-groups.

Please stop Keeping the Public Out of Public Access Hawaiian Style.

Mahalo for doing what's pono.

"The world is too dangerous to live in - not because of the people who do evil,
but because of the people who sit and let it happen."

Albert Einstein

CABLE SCAN

Community Service Cable Television

The Nonprofit Access Corporation: A Guide to Incorporation

By Kathleen T. Schuler

Identifying who should manage a public or community channel is a complex and frequently controversial decision. Increasingly, cities are exploring the formation of an independent, nonprofit community-based access corporation as an answer to the dilemma.

However, the idea of turning over channels, equipment, studios, and programming responsibilities to an independent community group raises serious concerns, and sometimes the hackles, of city councils and cable operators alike.

In response to numerous requests for information about access corporations, CableScan offers this overview of access corporations and, in the accompanying article, a checklist to the incorporation of a nonprofit community agency.

So Why An Access Corporation?

Cities are exploring the benefits of establishing a nonprofit access corporation to work with the community channel, benefits which include:

#1 — A Buffer

If established as independent from local government, an access corporation provides the city with a buffer against liability for programming on the channel and First Amendment violations. The nonprofit, not the city, establishes policies and procedures for the channel and makes the programming and scheduling decisions.

#2 — Focus is Access

A nonprofit access corporation has only one focus: the access channel. Cities, cable systems and schools, it is argued, are in other businesses, and, therefore, a relatively low financial, political, and administrative priority may be given to the access channels.

#3 — Less Bureaucracy

Compared with local government and schools, a nonprofit is relatively free of bureaucracy, which can result in enhanced effectiveness and cost efficiencies.

#4 — Legal Benefits

Incorporation as a California nonprofit and federal tax-exempt status bring a number of benefits. Staff and Board of Directors are provided a degree of protection from liability. Most income is exempt from Federal and state taxes. A nonprofit has greater flexibility in fundraising than does local government or the cable company, and is eligible for bulk mail privileges.

#5 — Shallow Pockets

In the case of a lawsuit the access corporation has relatively "shallow pockets" compared to the city, school, or cable company.

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Institutionalizing I-Nets

By Evelyn Pine

Institutional networks were proposed in a number of California cities as a result of cable franchises drawn up in the early eighties. Seen as cable's initial foray outside of the entertainment business, an institutional network (or I-net) is a local cable network, separate from the subscriber loop.

According to City of Torrance Cable Officer, Warren Carter, "There's nothing mystical or magical about an I-net. It's a wire which provides point to point information delivery. Institutional networks are not high tech. They are very, very basic."

According to the wisdom of the early eighties, I-Nets would be used to transmit voice and data as well as video for governments, schools, hospitals and businesses. If interactive video was the glamour service of the franchising gold rush, I-nets were perceived as cable's workhorse.

Five years later, however, most I-nets remain unconstructed or in disuse. Those that are operating are underutilized, with most I-net applications in California for city governments. The development of nongovernmental uses has been slow; the development of commercial applications nonexistent.

Nonetheless, the Foundation's recent survey showed a rekindled interest in I-nets. Hawthorne, which received a previously unused I-net in a transfer accord with Paragon Communications, is working with the City of Lawndale to test the I-net's effectiveness for data transfer and videoconferencing. The County of Stanislaus plans to use several

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Dr. Martin Rieckler, Coordinator of Special Projects for the Santa Barbara County Alcohol Program, is the recipient of the Robert W. Wetzel Award, the highest honor given by the State Advisory Board on Alcohol Related Problems. Specially cited was his series, "Discussions on Alcohol" produced in cooperation with a county-wide consortium of agencies and shown on Cox Cable Santa Barbara and Comcast Cable. (photos by Tom Campbell of Santa Barbara)

How to Incorporate: A Checklist

Establishing an access corporation is basically a two-step process.

Filing with the state:

- Identify one or more persons who will serve as incorporators, signing the founding documents and acting on behalf of the organization until it has received its tax-exempt status. The incorporators may or may not be the initial Board of Directors.
- Select a name. You can check with the Secretary of State to see if the name is available and reserve it early. However, once you've reserved a name, you must file the Articles of Incorporation within 60 days.
- Prepare the Articles of Incorporation.
- Prepare the By-laws.
- Prepare the California Application for Exemption (FTB 3500).
- Submit the Application for Exemption package along with a \$10 filing fee to the Franchise Tax Board.
- File the Exemption package plus the original and two copies of the Articles of Incorporation with the Secretary of State who will certify the articles and forward one copy along with the Exemption Package to the Attorney General's Office (\$20 filing fee). If there are no problems, it will take two weeks for the Secretary of State to certify the Articles and another 45 days to receive your Tax Exemption Letter from the Franchise Tax Board.

At this stage you've obtained your state tax exemption and are a California nonprofit corporation. Now you are ready to file your Federal Exemption application under section 501(c)(3) of the I.R.S. Code.

Filing with the IRS:

- Prepare the Federal Exemption Application (Package 1025) and the Application for Employer Identification Number (Form 990-E).
- File the applications with the IRS District Office in San Francisco or Los Angeles. It will take from two to six months for the IRS to send you the determination letter that you are tax-exempt.
- File a copy of the Federal Determination Letter with the State Franchise Tax Board.

Fees for filing in California are approximately \$50, while the IRS now charges \$300 to apply for tax exemption. Incorporation should take about six months. If you have a lawyer draw up the papers, there will be additional legal fees.

To guide you through the process:

Mancuso, Anthony, *The California Non-Profit Corporation Handbook*, Nolo Press, Berkeley
Orangel, Robert and Buske, Sue Miller, *The Access Manager's Handbook*, Focal Press, Boston

IRS Publication 557 — *How to Apply for Recognition of Exemption*

IRS Publication 578 — *Tax Information for Private Foundations and Foundation Managers*
Sample Articles of Incorporation and By-laws are available from the Foundation.

Incorporation

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Hazards

Access corporations, however, are vulnerable to funding and political vagaries. When formed, these agencies are not self-sufficient, and usually rely on the city and/or cable company for start-up money and the base level funding in the beginning. Access channels are relatively new concepts for any given community. And, in most cases, an access corporation is the "only game in town". Therefore, there is rarely anyone in the community — from the city council to community groups — with any experience with access agencies.

Most common hazards facing an access corporation include:

- An unstable funding base.
- Insufficient start-up funding.
- The assumption that the nonprofit can readily generate its own budget from traditional funding sources, from memberships, or from revenue-producing activities.
- Lukewarm support from the city council and city manager.
- Poor or unclear relationship with the cable operator.
- Unclear scope of responsibilities.
- Pressure to begin operations before developing a plan, budget, policies and procedures, and/or internal systems for the organization.
- Dependency on totally volunteer labor.
- A Board of Directors that is uncommitted, unsure of mandate, and/or ineffectual.

Establishing the Organization

The first steps in creating a nonprofit access agency is to incorporate under California's nonprofit code and to receive tax-exempt status from the IRS (see sidebar). Once the by-laws are in place — and you're awaiting word from the IRS — the next steps are to organize the corporation and develop a plan and budget.

1. Select the Board of Directors if an interim group or a partial Board incorporated the agency.
2. Organize the Board: elect officers, establish committees, create job descriptions for officers and committees, provide training, develop a Board calendar.
3. Hire Executive Director, if possible.
4. Develop at least a one-year operational plan.
5. Prepare a one-year budget based on that plan.
6. Establish facilities and secure equipment, if necessary.
7. Create the policies and procedures for the channel the corporation is to manage.
8. Develop the major programs and supporting materials, to include training programs, public relations and outreach materials, producer liability forms, release forms, equipment checkout procedures, etc.
9. Cablecast the first program, award first grant, conduct first training class, etc.

It is important to have the core plans, policies and organization in place before beginning operations!

Key Decision Points

As the planning progresses for a nonprofit access corporation, there are at least six key decision points:

1. Role of the Access Corporation

Major problems develop if all parties fail to agree on the short and long term role of the corporation. Unrealistic expectations and unclear mandates rival lack of funding as the root causes of most early problems with access corporations. Since the community rarely participates in the initial negotiations and planning, they tend to test ill-defined limits.

In California access corporations undertake a wide range of activities; there is no standard for the "typical access corporation". Current agencies:

- provide policy direction for the channel
- serve as the coordinating body for multiple user groups
- manage a local production grant program
- provide programming
- promote the channel
- offer training to the community
- manage the channel with the responsibility for all of the above

Sometimes the corporation is limited initially to giving grants or fundraising, for example, with plans that it will assume full responsibilities for the channel within a given period of time.

Since the channel(s) may be dedicated to one or more purposes, the jurisdiction of the corporation must be defined.

- Is it responsible for the public, educational and/or any other dedicated channels?
- Are other agencies — the community college, fire department, the library, for example — to produce programming, too.
- Does it have a coordinating or other role vis-a-vis municipal or other non-public programming?

2. Funding Model

The source of startup money and the long-term funding model for the organization must be identified. The model should include any expected support from the operator for equipment, facilities and/or maintenance; the city's contribution from franchise fees, general fund or other; and any other proposed sources of funding.

If there is no commitment for funding by the city or the operator, plans for an access corporation should be closely re-assessed, for other sources of revenue are either limited or take a period of time to cultivate. Expectations that a corporation can quickly generate large amounts of revenue from fees, membership support, underwriting and grants from traditional funding sources like foundations have not been borne out by experience to date.

In addition to an identifiable source of startup funding and a stable funding base for the first years of operation, a corporation should develop a long range funding strategy early on.

3. Relationship with the City and Cable Company

The mandate given the corporation, sources of funding and needed political support all impact the corporation's relationships with the city, the cable company, and the community at

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large. For the city, the greater the independence of the access group, the more protection from liability and First Amendment challenges it provides the city. However, the city is reluctant to relinquish control unless the nonprofit can be held accountable for the channel and for any other resources the city provides the organization.

While protected from program content liability on access channels by the NCCA, the cable system also wants assurances that its resources are responsibly used and that the local programming will be attractive to its subscribers.

With the community the issues become how can the corporation be responsive, educate the public about the channel, generate programming, and develop community support when the community has little or no understanding of access or the corporation.

Balancing the needs for independence with accountability to all three groups is a delicate act.

The relationship between the corporation and the city, the cable company and the community is usually defined through the composition and election of the Board of Directors (see below), funding criteria, and reporting requirements.

Any reporting requirements or criteria for funding should contain pre-determined, non-intrusive performance standards or benchmarks i.e., hours of programming, training a given number of people, maintaining an active Board of Directors, reaching fundraising goals,

meeting financial management standards, etc.). Such standards must not in any way touch upon program content.

4. Incorporating the Nonprofit

Who should prepare the founding documents and incorporate the organization? Over the last 5 years it has been common for city staff — and sometimes cable system personnel — to prepare the Articles of Incorporation and By-laws and to staff the Board of Directors. Concern about First Amendment violations have lead some cities to turn these responsibilities over to a founding Board of Directors or recruit community representatives to serve as the incorporators and to bring on the first Board of Directors.

5. The Board of Directors

The Board of Directors is legally responsible for the policies and operations of the access corporation, and must provide leadership and expertise, ensure effective operations of the agency, keep the organization responsive to the community, act as liaisons with the community, city and cable system and with other institutions, and protect the corporation's financial well-being.

City and/or cable representation on the Board is usually an issue. Their serving on the Board can enhance communications, promote political and financial support and answer concerns about the corporation's "accountability".

There are a number of potential problems, however. City and cable company representatives may exert too much control, especially if they also fund the agency. A city representative

serving on a Board which directly or indirectly sets programming policy poses First Amendment questions. The more "city" seats, the greater the question becomes. There is also the potential for conflicts of interest when voting on issues that impact the city or cable system.

To avert the problems but to maintain communications, Boards have established non-voting, ex-officio seats for the cable operator and the city or put them in advisory roles.

6. Selection of the Board of Directors

Currently, the California nonprofit corporation code differentiates between two types of 501(c)(3)s: membership and nonmembership. The law stipulates more stringent voting and meeting requirements for membership organizations.

If "members" are given the rights to vote for the election of Board members, amendments to the by-laws, distribution of assets or the dissolution of the organization, the organization is legally a membership group. If these rights are held by the Board of Directors only, then no matter what supporters or contributors are called, the organization is legally a non-membership group.

Membership groups are regarded as the most democratic form for access corporations, keeping the corporation close to its constituency. Members that elect the Board and vote on key policy issues create the greatest "arm distance" protection for the city. Memberships can also be a source of revenue and of political support.

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However, membership groups are more cumbersome to manage, and recruitment, voting and meeting requirements build in additional costs. It is more difficult to ensure that the Board will have a balance of members or have necessary expertise. Quorum requirements must be low enough to make sure action can be taken but high enough to keep a small interest group from dominating the organization.

Most access corporations in California now do not have a formal membership. Boards are elected in a number of ways:

- City council serves as the Board
- City council appoints the Board
- Institutions within the community select representatives or fill identified "slots"
- The Board of Directors is self-perpetuating

The court decisions in Palo Alto and Santa Cruz raise serious First Amendment questions when the city council serves on or appoints a significant number of members.

Non-membership groups are generally more efficient and less costly to operate. Board membership can be "fine-tuned" to bring on needed expertise or to represent specific groups. There is usually more continuity with non-membership groups. Conversely, such groups run the danger of becoming self-serving and losing contact with their constituencies. In the absence of memberships, other means of community involvement and buy-in must be developed.