

LATE TESTIMONY

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

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

Chair McKelvey and Members of the Committees:

DESCRIPTION:

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

POSITION:

The Commission supports the intent of this bill, however, opposes it in favor of Administration bill HB1077, relating to the Hawaii Communications Commission consolidating the regulation of all forms of modern communications in an effort to facilitate the development of broadband infrastructure in the State.

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 would be disruptive to the Commission because it requires transfer of its staff to this new commission. The Commission's overall operations utilize not any one individual staff 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.
- 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.
- HB1077 accomplishes the same goals as does HB984 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.
- The Commission's testimony concerning HB1077 also applies to this measure and is incorporated herein by reference.
- For these reasons, the Commission opposes this bill, in favor of HB1077.

Thank you for the opportunity to testify.

LATE TESTIMONY

HB 984

RELATING TO TECHNOLOGY

JOHN KOMEIJI
SENIOR VICE PRESIDENT & GENERAL COUNSEL

HAWAIIAN TELCOM

February 5, 2009

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

I am John Komeiji testifying on behalf of Hawaiian Telcom on HB 984. 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 imposes a new unlimited “broadband fee” solely on telecommunications carriers. Instead of enacting new fees, priority should be placed on helping providers to invest in improving and expanding broadband infrastructure. This new fee is unfairly applied and targets local exchange carriers while exempting wireless and VoIP broadband providers, since federal law limits states from regulating these providers.
- **Increased Fee**- Bill raises the current semi-annual telecommunications regulatory fee from one-fourth to three-tenths of one per cent of the prior year's gross income. On an annualized basis, telecommunications carriers would pay six-tenths of one percent of their prior year's gross income, which is a 20% increase over the current fee.
- **More Regulation and Potential Federal Preemption**- The Federal Communications Commission (FCC) has initiated efforts to deregulate a number of broadband services. For example, the FCC has declared telecommunications services that are used to access the Internet as exclusively interstate services, and thus not subject to state regulation. 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 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.

Finally, *The Hawaii Broadband Task Force Final Report* recommended the consolidation of state and county permitting and other building requirements under one governmental agency to help expedite the construction of improved broadband infrastructure. The Report also noted the substantial time and expense expended by providers in obtaining multiple state and county permits and approvals required for infrastructure deployment on all islands and the widely varying practices associated with gaining access to various easements and rights-of-way. HB 984 does not provide any language to implement this goal. This issue must be addressed in this bill or a critical benefit of this improved broadband initiative will not be achieved.

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