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LATE TESTIMONY

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

Thursday, February 5, 2009; 8:00 a.m.
Hawaii State Capitol, Room 312

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

Aloha Chair McKelvey, Vice Chair Choy and Committee members:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Nate Smith
President