

**HB 984**



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TO THE SENATE COMMITTEE ON  
WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, April 6, 2009  
9:30 a.m.

TESTIMONY ON HOUSE BILL NO. 984, H.D. 4, S.D. 1  
RELATING TO TECHNOLOGY

**WRITTEN COMMENTS**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, SHAN S. TSUTSUI, VICE  
CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth and I am the Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony in strong support of enhancing broadband in Hawaii by creating access on a competitive basis, increasing service quality and penetration, streamlining the permit process, and providing access to businesses and residents at speeds that will make us world leaders by consolidating the regulation of communications services under one regulator.

The Legislature demonstrated much foresight when it established the Hawaii Broadband Task Force (Task Force) in 2007. The Task Force has provided a roadmap

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that will help guide us into a future where the availability and accessibility of high speed, affordable broadband is the norm in Hawaii. This bill recognizes the convergence of technologies that are used to provide voice, data, and video services through wireline, wireless, cable and satellite infrastructure, and represents the tireless work of the Department, the Legislature, the Task Force, and many others from the telecommunications and cable industries.

The Department has been actively working with legislators, Task Force members, industry representatives, and other stakeholders in developing legislation that will implement the Task Force's recommendations. We look forward to continuing that work.

Thank you for the opportunity to present comments on this very important issue.

**HB 984, HD 4 SD 1**

**RELATING TO TECHNOLOGY**

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

**HAWAIIAN TELCOM**

**April 6, 2009**

Chair Kim and members of the Senate Ways and Means Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on HB 984, HD 4 SD 1- Relating to Technology. 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, may lead to the unintended consequence of delaying rather than speeding the deployment of advance broadband services:

- **New Fee (page 63, lines 14-19)**- The proposed bill will impose a new unlimited “broadband fee” solely on telecommunications carriers for the benefit of an unregulated service. 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 (page 62, lines 21-22)**- HB 984, HD 4 SD 1, will raise 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 information services, and thus not subject to 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 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 73, line 10 which requires cable providers to not only provide but to "install" cable television service at any school or institution of higher education. While we understand the desire of the Legislature to increase installations in each classroom, this additional requirement will greatly impair Hawaiian Telcom's 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.

Based on the aforementioned, Hawaiian Telcom shares your interest in improving and advancing broadband and telecommunications services in Hawaii. We respectfully request 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.

COMMITTEE ON WAYS AND MEANS  
Hawaii State Senate  
April 6, 2009



Re: H.B. 984, H.D. 4, S.D. 1  
(Suggested amendments)

Chairman Kim and Members of the Senate Committee on Ways and Means: My name is Leslie Wilcox, the President and CEO of PBS Hawai'i television station.

In addition to quality national programming, we have a proud legacy for quality local production, including "Na Mele: Traditions in Hawaiian Song," which documents and preserves Hawaiian music; "Long Story Short," featuring revealing conversations with respected individuals about values and life choices; "Leahey & Leahey," spirited discourse about sports and teamwork; and "Insights on PBS Hawaii," our community's only live hour-long call-in public affairs program. PBS Hawaii also extends guidance and opportunity to independent filmmakers from Hawaii and the Pacific/Asia region. We also provide essential real-world training in media production to about 20 local college students.

PBS Hawaii's exceptional programming reaches the entire State, including the underserved, as mandated by the Federal Communications Act (47 USC, Sec 309), which recognizes the vital role of public broadcasting stations, stating that:

*" it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all the citizens of the Nation;*

*it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities;*

*it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States;*

*public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs;*

*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..."*

Historically, funding has been made available from the cable franchise fee to support a statewide public broadcasting service. We urge you to continue this support in the legislation before you. Suggested amendments are attached.

Thank you for your consideration.

## PROPOSED AMENDMENTS TO HB 984, SD1

### Definition

“Public television broadcasting service” means a statewide television broadcaster holding a noncommercial educational license issued by the Federal Communications Commission.

### Annual Fee

#### § -73 **Annual Fees.**

(b) The commissioner shall adjust the fees assessed under this section, as necessary from time to time , pursuant to rules adopted in accordance with chapter 91, provided that the cable franchise fee shall be allocated for public television broadcasting services at no less than the proportions allocated in 2008.

Linda Chu Takayama  
384-9030

Written Statement of  
**YUKA NAGASHIMA**  
**Executive Director & CEO**  
High Technology Development Corporation  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
Monday April 06, 2009  
09:30 AM  
State Capitol, Conference Room 211

In consideration of  
**HB 984 HD4 SD1 RELATING TO TECHNOLOGY.**

Chairs Kim, Vice Chair Tsutsui and Members of the Senate Committees on Ways and Means.

The High Technology Development Corporation (HTDC) supports the intent of H.B. 984 HD4, S.B. No. 1680, S.D. 2, and HB984 HD4 SD1; which in varied forms proposes among other items to (i) establish Hawaii Communications Commission (HCC) and the Hawaii Communications Commissioner in the Department of Commerce and Consumer Affairs (DCCA), (ii) transfer functions relating to telecommunications from the Public Utilities Commission to HCC and cable services from DCCA to HCC, (iii) establish a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting; and, *defers to the recommendations and comments 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.*

The importance of broadband infrastructure which these bills can bring to attention, is well summarized in The Broadband Fact Book by Internet Innovation Alliance: “... you almost certainly agree that maintaining a robust, expanding Internet that delivers more and better services to more people should be one of our national priorities. Indeed, the goal of universal broadband in America unites community activists, elected officials, business executives, labor leaders and average citizens. Belief in universal broadband is bipartisan, persistent and urgent. The urgency is warranted. Broadband – high speed Internet access – is the transformative technology of our generation. Access to and effective usage of broadband connections enhances individuals’, industries’ and nation’s ability to grow, compete, and succeed. Broadband helps businesses become more productive, governments become more accessible, students become better prepared and citizens become more engaged. It is an opportunity platform that is transforming how we work, live, play and learn.” Just as building roads and other public infrastructure gave rise to the economic engines in the past, telecommunication infrastructure will give rise to new economy activities and jobs.

Further, the following taken from the Hawaii Broadband Task Force Final Report to the Legislature, December 2008, summarizes the long term, sustainable economic impact of broadband for Hawaii: “Broadband is critical infrastructure for Hawaiʻi’s 21st century advancement in education, health, public safety, research & innovation, economic diversification and public services. Senator Daniel K. Inouye summarized the imperative in a September 16, 2008 Congressional Hearing on “Why Broadband Matters.” *“Broadband matters because broadband communications have become the great economic engine of our time. Broadband deployment drives opportunities for business, education, and healthcare. It provides widespread access to information that can change the way we communicate with one another and improve the quality of our lives. This is why our discussion today is not about pipes and providers. It is about people; our citizens stand to gain the most from universal broadband adoption. By some estimates, universal broadband adoption would add \$500 billion to the U.S. economy and create more than a million new jobs. ... Add to this hundreds of millions of dollars in savings through e-government and telemedicine initiatives and untold riches we can reap by tapping the genius of web-based entrepreneurs in every corner of this country. The case for better broadband is clear.”*

Thank you for the opportunity to submit testimony in support.