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ECONOMIC DEVELOPMENT AND TECHNOLOGY AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, March 18, 2009
1:45 p.m.

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

TO THE HONORABLE CAROL FUKUNAGA AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

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.

In situations where the companion measures that affect important issues have both crossed over, the House and Senate have frequently replaced the contents of the companion bill that it received from the other body with the contents of the bill that it

transmitted to the other body. As the Department anticipates that this Committee will continue with this practice, the Department's testimony will be directed toward S.B. 1680, S.D. 2 and not H.B. 984, H.D. 4. We also anticipate that the House will similarly replace the contents of S.B. 1680, S.D. 2, H.D. 1 with the contents of H.B. 984, H.D. 4. Consequently, our testimony to the House will be based on H.B. 984, H.D. 4.

S.B. 1680, S.D. 2, 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. As the Department has already explained the importance of the bill when the Committee heard the Senate companion, our testimony will focus on our concerns with S.B. 1680, S.D. 2.

Addressing the concerns of the cable and telephone competitors.

The Department has been meeting with the cable operator (Oceanic Time Warner ("OTW")) and the telephone company (Hawaiian Telcom ("HT")) in an attempt to address their concerns with the bill. Furthermore, we have listened attentively to the comments of TW Telcom and AT&T, most of which are reflected in OTW and HT testimonies. All of the concerns expressed by the industry competitors warrant attention, and some of them, we believe, warrant amendment. **Attachment 1** contains suggested language by which we propose to address those concerns. The Department requests that the Committees incorporate the suggested language contained in **Attachment 1**.

Use of American Recovery and Reinvestment Act moneys.

To help ensure that the Hawaii Communications Commission is able to receive and utilize federal moneys, the bill contains language to authorize the Commission to apply for and use federal moneys, including those from the American Recovery and Reinvestment Act of 2009. **Attachment 2** contains suggested amendments to the provisions relating to the use of the federal moneys.

Commission staff.

To ensure that the Commission has sufficient and proper staff necessary to effectuate the purposes of the Act, the Department requests that the suggested language contained in **Attachment 3** also be incorporated into the bill. That language has been developed in concert with the Department of Budget and Finance, the Department of Human Services Development, and the Department of the Attorney General.

INET-related moneys, currently in OTW account.

To ensure that the Commission has access to those INET-related moneys currently held in trust in an OTW account for the expansion of the State's INET infrastructure, the Department requests that the Committees incorporate the language in **Attachment 4**. Additionally, the Commissioner should be able to use funds in the commissioner special fund for broadband purposes. **Attachment 4** also contains suggested language authorizing the Commissioner to use moneys in the special fund for broadband programs.

Technical clarifications.

Attachment 5 contains technical and other issues that the Department has identified. We respectfully request that the Committees incorporate the suggestions into the bill.

PEG-related issues.

Although the Department recognizes the importance of public access television, respects the role that the incumbent Public, Education, and Government (“PEG”) entities have played in developing PEG programming and PEG services, and has fostered an environment whereby Hawaii’s PEGs in many respects have become the standard to which other PEGs aspire, we respectfully suggest that this bill is not the vehicle by which to attempt to resolve issues pertaining to PEGs. The Department has supported and continues to support exempting the PEG contracts from chapter 103D requirements; nevertheless, we believe that, if possible, PEG-related issues should be taken up by the Legislature separately. We are concerned that PEG issues may prove divisive, as they have over the last several years, and may adversely affect, if not prove fatal, to the bill.

In addition, we note that the language included in the bill would not appear to accomplish its presumed objective (to exempt PEG contracts from chapter 103D), but would, instead, prohibit the Commissioner from expending revenues derived from franchise fees on anything BUT cable access (which will only represent a small percentage of the Commissioner’s expenditures).

Therefore, the Department requests that the PEG-related language be removed from SB1680 and placed into its own separate bill. **Attachment 6** provides suggested language regarding the removal of the PEG-related language.

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

To address the concern of industry members that the intent of the bill is to force them to open or share their existing infrastructure, which, except in the case of the incumbent local exchange carrier, is currently prohibited by federal law, while allowing the Commissioner to facilitate or construct State-owned infrastructure or, to require, as a condition of permitting for example, to install fiber-to-the-home in a Greenfield-style development and provide a common access point open to all providers on an equal basis without limiting the Commissioner's authority in the event that federal law on the subject changes:

Paragraph (5) on page 4, line 5 should be amended to read:

"(5) Facilitate the construction and voluntary sharing of shared telecommunications and broadband infrastructure and expand the introduction and capabilities of advance broadband communications services where appropriate and permissible under federal law;"

Similarly, to address the concerns of industry members, section ___-8(a) should be amended to emphasize

the development duties of the Commissioner, rather than its regulatory duties. Section ___-8(a) starting on line 9 on page 14 should be amended to read:

"§ -8 [~~Telecommunications~~] Communications development duties. (a) The commissioner shall strive to ensure that all consumers are provided with [~~nondiscriminatory,~~] reasonable[~~,~~] and equitable access to high quality [~~telecommunications~~] communications network facilities and capabilities that provide subscribers with sufficient network capacity to access [~~information services that provide~~] a combination of voice, data, image, and video, and that are available at [~~just, reasonable, and nondiscriminatory~~] fair and affordable rates."

To address concerns raised by industry members that, in certain situations, the new Commissioner's authority may be pre-empted by federal law, the Department suggests that the phrase "as permitted by federal law" be inserted into section ___-7(b) (General powers and duties, on page 13, line 21 to page 14, line 2). The provision should read:

"(b) The commissioner shall have general supervision over all telecommunications carriers and cable operators and shall perform the duties and exercise the powers

imposed or conferred upon it by this chapter, as permitted by federal law."

The Department and the telephone company have agreed to language regarding classifying the State's local exchange intrastate services as "fully competitive". The agreed upon language is as follows:

Add a new section ___-54 to read:

"§ -54 Local exchange intrastate services; fully competitive. (a) Notwithstanding any law to the contrary, the Hawaii broadband commissioner shall classify the state's local exchange intrastate services, under the commissioner's classifications of services related to costs, rates, and pricing, as fully competitive. In addition, with respect to all services except intrastate switched and special access with respect to wholesale customers, 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 or to bundle any service offerings into a single or combined price package; provided that with respect to basic residential service a telecommunications carrier may not charge any rate for a

service above the rate for the service included in the telecommunications carrier's filed tariff.

(b) Notwithstanding subsection (a), all rates, fares, charges, and bundled service offerings shall be filed with the commissioner for informational purposes only. Nothing herein shall modify any requirements of a telecommunications carrier to:

- (1) Provide lifeline telephone service;
- (2) Comply with carrier of last resort obligations;
or
- (3) Comply with applicable service quality standards."

Additionally, and as part of that same agreement, the new section ___-38 (starting on page 44, line 8) should be deleted and replaced with the following:

§ -38 Regulation of telecommunications carrier rates; ratemaking procedures. (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 shall be just and reasonable and shall be filed with the commissioner. 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.

(b) The commissioner shall promptly examine rate regulation alternatives including rate-of-return ratemaking and price cap ratemaking, and may issue an order imposing alternative rate regulation procedures. The examination shall include pursuing incentive regulation with local exchange carriers, one goal of which shall be to increase broadband competitive availability and affordability to consumers in the State.

(c) The commissioner may waive rate regulation and allow telecommunications carriers to have pricing flexibility for services that the commissioner determines to be effectively competitive; provided that the rates for:

- (1) Basic telephone service and for services that are not effectively competitive are regulated and remain just, reasonable, and nondiscriminatory; and
- (2) Universal service is preserved and advanced.

(d) Unless and until the commissioner waives this requirement, no rate, fare, charge, classification, schedule, rule, or practice, other than one established

pursuant to an automatic rate adjustment clause previously approved by the commissioner or the public utilities commission, shall be established, abandoned, modified, or departed from by any telecommunications carrier, except after thirty days' notice to the commissioner as prescribed in section -13(b), and prior approval by the commissioner for any increases in rates, fares, or charges. The commissioner, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section -13(b). Unless and until the commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section -13(c), at which the consumers or patrons of the telecommunications carrier may present testimony to the commissioner concerning the increase. The commissioner, upon notice to the telecommunications carrier, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed

abandonment or modification thereof or departure therefrom;

- (2) After a hearing, by order:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable;
 - (B) Prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions;
 - (C) Regulate the manner in which the property of every telecommunications carrier is operated with reference to the safety and accommodation of the public;
 - (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system;
 - (E) Regulate the return upon its telecommunications carrier property;
 - (F) Regulate the incurring of indebtedness relating to its telecommunications carrier business; and
 - (G) Regulate its financial transactions; and

(3) Do all things that are necessary and in the exercise of the commissioner's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the telecommunications carrier actually used or useful for telecommunications carrier purposes.

(e) The commissioner may in its discretion, after public hearing and upon showing by a telecommunications carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commissioner shall require by order the telecommunications carrier to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the telecommunications carrier's rate base found to be reasonable by the commissioner, received by reason of continued operation that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commissioner. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and

shall continue to accrue on the balance of the excess until returned.

(f) In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commissioner may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is necessary to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.

(g) Notwithstanding any law to the contrary, for telecommunications carrier having annual gross revenues of less than \$2,000,000, the commissioner may make and amend its rules and procedures to provide the commissioner with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the telecommunications carrier company and its customers."

The change to section ____-38 will also necessitate a change to section ___-13. Section ___-13 (page 22, line 3) should be deleted and replace with the following:

"§ -13 Notices. (a) Whenever an investigation is undertaken and a hearing is scheduled by the commissioner, reasonable notice in writing of such fact and of the subject or subjects to be investigated shall be given to the telecommunications carrier, cable operator, PEG access organization, or the person concerned, and when based upon complaints made to the commissioner as prescribed section -9, a copy of the complaint, and a notice in writing of the date and place fixed by the commissioner for beginning the investigation, shall be served upon the telecommunications carrier, cable operator, PEG access organization, or the person concerned, or other respondent and the complainant not less than two weeks before the date designated for the hearing.

(b) Any notice provided pursuant to section -38(e), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commissioner and keeping it open for public inspection.

(c) Any public hearing held pursuant to section -38(e), shall be a noticed public hearing or hearings on the island on which the telecommunications carrier is

situated. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks statewide, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing. The applicant or applicants shall notify their consumers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner and the fact of notification to be reported to the commissioner before the date of hearing."

The reason for the amendments agreed to between the Department and the telephone company is that local exchange service is NOT fully competitive in all markets. In particular, service is not competitive in rural areas of the State.

In an attempt to address concerns raised by some of the industry members regarding the vesting of authority with a single commissioner, the Department proposes to enhance the involvement of the Communications Advisory

Committee that is created in section ____-22 on page 30,
line 21 to read:

§ -22 Communications advisory committee. (a)

There is established the communications advisory committee.
The committee shall consist of five members appointed by
the governor as provided in section 26-34.

(b) The following shall each provide a list of three
names for the governor's consideration:

- (1) The president of the senate;
- (2) The speaker of the house of representatives;
- (3) The president of the University of Hawaii;
- (4) The superintendent of education; and
- (5) The chamber of commerce of Hawaii.

The governor shall select one name from each of the
lists for appointment to the committee.

(c) The committee shall meet when called by the
commissioner and may meet at any other times that the
committee deems appropriate; provided that the committee
shall meet at least on a quarterly basis.

(d) The committee shall advise the commissioner,
telecommunications carriers, and cable operators on matters
within the jurisdiction of this chapter at the request of
the commissioner or any telecommunications carrier or cable
operator. The committee may also advise the commissioner

and telecommunications carriers and cable operators on the committee's own initiative.

(e) The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses, including travel expenses, while attending meetings and while in discharge of their duties.

Industry members requested that the cable franchise renewal period be the same as in current law. Section ___-69 on page 71 should be amended to read:

"§ -69 Renewal of cable franchise. Any cable franchise issued pursuant to this part may be renewed by the commissioner upon approval of a cable operator's application or proposal therefor. The form of the application or proposal shall be prescribed by the commissioner. The periods of renewal shall be not less than five nor more than [~~fifteen~~] twenty years each. The commissioner shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational, or governmental access facilities and broadband facilities."

Amend section ____-75 on page 73 to read:

"§ -75 Use of American Recovery and Reinvestment Act of 2009, federal funds from fiscal year 2009 and fiscal year 2010 appropriation measures, and other federal moneys.

(a) The commissioner may apply for, and expend, federal moneys from the American Recovery and Reinvestment Act of 2009, federal funds from fiscal year 2009 and fiscal year 2010 appropriation measures, 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~~] commissioner special fund, using moneys from the American Recovery and Reinvestment Act of 2009, federal funds from fiscal year 2009 and fiscal year 2010 appropriation measures, and other applicable federal acts.

(c) The commissioner may establish a separate account within the [~~Hawaii broadband~~] commissioner 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, federal funds from fiscal year 2009 and fiscal year

2010 appropriation measures, 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 [~~Hawaii broadband~~] commissioner special fund, including forgiveness of principal and zero and negative interest loans.

(d) Any moneys applied for or received by the department under the American Recovery and Reinvestment Act of 2009 or federal funds from fiscal year 2009 and fiscal year 2010 appropriation measures for uses related to the purpose of this chapter and not yet encumbered shall be transferred to the [~~Hawaii broadband~~] commissioner special fund upon its establishment.

(e) The commissioner shall certify that a project has been identified for expenditure of funds received pursuant to the American Recovery and Reinvestment Act of 2009 and 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 or federal funds from fiscal year 2009 and fiscal year 2010 appropriation measures shall be exempt from chapter 103D.

(g) For the purposes of this section:

"American Recovery and Reinvestment Act of 2009" means the federal law, P.L. 111-5, 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.

Amend SECTION 62 of the bill to read:

SECTION 62. There is appropriated out of the federal funds subaccount of the commissioner special fund the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2008-2009 and [~~the same sum or so much thereof as may be necessary for~~] the sum of \$ _____ or so much thereof as may be necessary for fiscal year 2009-2010 to purchase broadband facilities, services, or equipment or to fund broadband-related infrastructure projects pursuant to this Act.

The sums appropriated shall be expended by the Hawaii broadband commissioner for the purposes of this Act.

This change is necessary because the amount of federal moneys that the Commissioner is able obtain may not be the same for the two fiscal years.

Because the federal rules regarding broadband inventory mapping have not been issued yet, it is prudent to provide the Commissioner with as much flexibility as practical. Therefore, we recommend the following amendment to section ___-76 on page 76:

"§ -76 Broadband inventory maps. The Hawaii broadband commissioner shall [~~be designated as~~] designate the entity within the State to be responsible for developing and maintaining broadband inventory maps, as described in the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act. If permitted by federal law, the commissioner may contract with service providers to develop the broadband inventory maps. Subject only to any limitations imposed by federal law, all providers of broadband infrastructure and services in Hawaii shall be required to furnish information requested

by the broadband commissioner in support of broadband mapping, reporting, and data-driven policy support. Proprietary data on private infrastructure furnished by private providers shall be protected from disclosure under the Freedom of Information Act or Uniform Information Practices Act and shall be made available to the public only in a summarized form that appropriately protects the proprietary concerns of those private providers.

The Hawaii broadband commissioner shall have the authority to designate **economic zones** anywhere in the State at a location that may be identified as a strategic site to create facilities that will stimulate job growth."

Additionally, section ____-76 authorizes the Commissioner to designate "economic zones". The bill does not define "economic zones". However, if the provision was intended to refer to "enterprise zones" as provided for in chapter 209E, HRS, we defer to the Department of Business, Economic Development, and Tourism as they administer chapter 209E, HRS.

Suggested changes to read:

1. **Subsections (a) and (c) of -4 on page 11:**

"§ -5 **Employment of [~~assistants.~~] commissioner personnel.** (a) The commissioner may appoint and employ [~~clerks, stenographers,~~] office assistants, agents, engineers, accountants, and other [~~assistants with or~~] personnel without regard to chapter 76 . . .

. . .

(c) The commissioner may, with the consent of the director, use staff including [~~clerks, stenographers,~~] office assistants, agents, engineers, accountants, hearings officers, and other [~~assistants~~] personnel from the department . . . "

2. **SECTION 58 of the bill on pages 167 to 168 should be deleted and replaced with the following:**

"SECTION 58. (a) The department of commerce and consumer affairs shall transfer all four positions from the cable television division to the service of the Hawaii broadband commissioner; provided that:

- (1) Employees who occupy civil service positions and whose functions are transferred by this Act shall not suffer any loss of salary, seniority, prior service credits, any vacation and sick leave

credits previously earned, or other rights, benefits, and privileges under the State's personnel laws. Employees who have permanent civil service status shall retain their civil service status and shall be transferred to similar or corresponding positions in the Hawaii broadband commissioner, subject to the State's personnel laws and this Act;

(2) Employees who, prior to this Act, are exempt from civil service and are transferred by this Act shall not suffer any loss of prior service credits, any vacation and sick leave credits previously earned, or other rights, benefits, and privileges under the State's personnel laws. The Hawaii broadband commissioner shall prescribe the qualifications and duties of such employees and fix their salaries without regard to chapter 76; and

(3) Employees, whose functions are transferred by this Act, shall be transferred with their functions and shall continue to perform their regular duties subject to the State's personnel laws and this Act.

(b) There shall be up to ten new temporary exempt positions established in the Hawaii broadband commissioner to assist the commissioner in carrying out the provisions of this Act. These positions shall be funded from the commissioner special fund and may be filled without regard to chapter 76."

Add a new subsection (d) to section ___-20 on page 30 to read:

"(d) The director may transfer any unexpended portion of the franchise fees previously collected to the commissioner by depositing such franchise fees into the commissioner special fund."

Amend subsection (a) of section ___-20 on page 29 to read:

"(a) There is established in the state treasury a commissioner special fund to be administered by the commissioner. The proceeds of the fund shall be used by the commissioner and the division of consumer advocacy of the department for all expenses incurred in the administration of this chapter, including, without limitation, the operation of programs developed by the commissioner to develop and construct, or encourage the construction of, broadband infrastructure, make broadband capable services available to low income and disadvantaged persons, or otherwise promote universal availability of communications services. The expenditures of the commissioner shall be in accordance with legislative appropriations. On a quarterly basis an amount not to

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exceed thirty per cent of the proceeds remaining in the fund shall be allocated to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o)."

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To ensure that the Commissioner is able to use all of the moneys it receives for all purposes it is authorized to engage in, and to address changes that have been made to the bill since this section was first included, the Department suggests the following amendments:

(1) Section ___-8(c) starting on line 8 on page 15 should be amended to read:

"(c) The commissioner shall develop programs and initiatives intended to facilitate the deployment of broadband communications services in the State and access to those services by users in the State. The commissioner shall fund these programs and initiatives using funds collected pursuant to sections -23, -51, -73, -75, and, 92-21 and deposited in the commissioner special fund pursuant to section -20. In conjunction with the funds, or alternatively, the commissioner may seek appropriations of funds from the State."

(2) Section ___-20(b) starting on line 5 on page 30 should be amended to read:

"(b) All moneys appropriated to, received, and collected by the commissioner that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the commissioner special fund including, but not limited to, all

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moneys received and collected by the commissioner pursuant to sections -23, -51, -73, -75, and 92-21."

(3) Section 26-9(o), HRS, which is being amended in SECTION 4 of the bill at page 78, line 21 should be amended to read:

". . .

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to any fee imposed by the Hawaii broadband commissioner pursuant to chapter , including the regulatory fees in sections -23, -51, -73, -75, and 92-21, the drivers education fund underwriters fee, section 431:10C-115,

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insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commission's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

. . ."

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To clarify that charter schools are included in the definition of schools, the definition of "school" section ___-1 on page 9, line 18 should read:

"School" means an academic and non-college type regular or special education institution of learning established and maintained by the department of education or licensed and supervised by that department and includes charter schools as defined in chapter 302B.

The Commissioner should have the discretion in opening investigations brought by a complaint. Consequently, section ___-9(c) starting on page 18, line 11 should read:

"(c) Any investigation may be made by the commissioner on the commissioner's own motion, and [~~shall~~] may be made when requested by the telecommunications carrier, cable operator, or PEG access organization to be investigated, or by any person upon a sworn written complaint to the commissioner, setting forth any prima facie cause of complaint."

For consistency, if the Commissioner is authorized to fine telecommunications carriers, cable operators, AND PEG access organizations, the Commissioner should also be able to order

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PEGs to cease operations if violations continue. Section ___-23(a), on page 31, line 10 should read:

"(a) Any telecommunications carrier, cable operator, or PEG access organization violating, neglecting, or failing in any particular way to conform to or comply with this chapter or any lawful order of the commissioner, including, but not limited to the grounds specified in section -68 for cable operators and PEG access organizations, shall be subject to a civil penalty not to exceed \$25,000 for each day the violation, neglect, or failure continues, to be assessed by the commissioner after a hearing in accordance with chapter 91. The commissioner may order the telecommunications carrier, ~~[or]~~ cable operator, or PEG access organization to cease carrying on its business while the violation, neglect, or failure continues."

Technical clarification. Section ___-64(2), starting on line 11 on page 61 should read:

"(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the commissioner shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county

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and to any [~~telephone~~] local exchange carrier or other utility and cable company in the county in which the proposed service area is located. The commissioner shall also give public notice of the application and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing;

The language in SECTION 56 on page 166 is unclear and could lead to only 50% of the moneys in the Cable Television subaccount in the Compliance Resolution Fund being deposited into the Commissioner Special Fund in fiscal year 2009-2010, which was not the intent and would not provide enough funding for the Commissioner. Therefore, we suggest the following amendment:

"SECTION 56. During fiscal year 2009-2010, fifty per cent of the moneys collected by the public utilities commission from telecommunications carriers and deposited into the public utilities commission special fund [~~and cable television subaccount~~] shall be deposited into the commissioner special fund to provide appropriations for the new commissioner.

The unencumbered balance existing on June 30, 2009, in the cable television division subaccount in the compliance

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resolution fund shall be deposited into the commissioner special fund to provide appropriations for the new commissioner."

Correct an incorrect citation. Section ___-74 on page 73 should be amended to read:

§ -74 Criminal and civil liability. Nothing in this chapter shall be deemed to affect the criminal and civil liability of cable programmers, cable operators, or public, educational, or governmental access organizations pursuant to the federal, state, or local laws regarding libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that no public, educational, or governmental access organization shall incur any liability arising from, based on, or related to any program not created by the public, educational, or governmental access organization, which is broadcast on any channel obtained under section [~~—65~~] ___67, or under similar arrangements.

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Section ____-67(f) starting on page 66, line 16 should be amended to read:

"(f) The cable operator shall designate [~~five~~] three or more channels for public, educational, or governmental use, and this designation shall be re-evaluated every other year [~~based on~~] with input solicited from the public, PEG access organizations, educational institutions, government agencies, and cable franchise holders on how best to configure public, educational, or governmental capacity in order to maximize the achievement of the objectives of public, educational, and government access.

~~[The Hawaii broadband commissioner shall have the authority to designate the PEG access organization consistent with administrative rules that shall be adopted by the commissioner. These administrative rules shall be adopted with input from the public and with recognition of the First Amendment rights of individuals who utilize PEG access services. Board of director positions on PEG access organizations shall be managed by each designated PEG access organization, including but not limited to the selection of directors, length of terms, and number of directors.]~~

~~PEG access organization assets include, but are not limited to equipment, facilities, cash, financial assets and instruments, land, and buildings. These assets will be~~

Attachment 6

~~available to the PEG access organization designated by the Hawaii broadband commissioner to provide PEG services in a particular service area. If the contract between Hawaii broadband commissioner and a PEG access organization is terminated or cancelled, these PEG assets will be held in trust for the benefit of PEG services until a new PEG access organization is designated by the Hawaii broadband commissioner.]”~~

It is unclear what section ___-67(f) is intended to accomplish. The provision appears to specify that expenditures of franchise fees by PEGs are exempt from chapter 103D. However, PEG expenditures are not currently subject to chapter 103D. Additionally, the second sentence of the provision could be interpreted to prohibit the Commissioner from expending any “cable franchise fees”, even for INET-related purposes and administering the chapter, including broadband purposes. Therefore, we recommend that section ___-67(f) starting on line 19 of page 69 to line 2 on page 70, be deleted.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND
TECHNOLOGY**
and the
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Wednesday, March 18, 2009
1:15 p.m.
State Capitol, Conference Room 016
HB 984 HD4
RELATING TO TECHNOLOGY.

Chair Fukunaga, Chair Baker and Members of the Senate Committees on Economic Development and Technology, and Commerce and Consumer Protection.

DBEDT supports HB 984 HD 4; however we defer to the Department of Commerce and Consumer Affairs as to the technical details of this measure.

High speed broadband service has become essential infrastructure for an idea-based innovation economy and a key source of competitive economic advantage. Improved broadband service will with this bill, also help Hawaii's economy and improve services from the public sector. Hawaii has an opportunity to deploy world class broadband service and re-establish itself as a key node in the worldwide telecommunication network.

Thank you for the opportunity to provide this testimony.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Economic Development and Technology
and

Senate Committee on Commerce and Consumer Protection
March 18, 2009 at 1:15 pm

by

David Lassner

Vice President for Information Technology/CIO, University of Hawaii

HB 984, HD4 – RELATING TO TECHNOLOGY

Chair Fukunaga and Baker, Vice Chair Ige and Members of the Committees:

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, which developed the recommendations at the core of this proposed legislation.

The Hawaii Broadband Task Force was established by the 2007 Legislature with a mix of public and private sector members appointed by the Speaker 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.

The Task Force gratefully acknowledges the work 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.

Summary of Report and Proposed Legislation

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, streamlines permitting and access to public infrastructure, promotes sharing to reduce costs, 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 data and detail in our full report, which was provided to each Legislator and the Governor just before the end of last year.

By the time we completed our work it was quite clear that we were facing our most difficult financial condition in decades. While the Task Force had many ideas on public support that would advance Hawaii's broadband capabilities in ways that could aid our economic revitalization, we realized that new public investments would be nearly impossible this Session. We therefore worked with the Administration to develop legislation that would be completely revenue neutral. Thus, the legislation before you implements only the Task Force's first and second recommendations. In a remarkable sign of consensus, similar bills were introduced this session by the House Majority, House Minority, Senate Majority and State Administration.

Comments on the Legislation

As the bills worked their way through each Chamber, many entities shared their concerns and recommendations. I'd like to share my perspective on the general themes of the testimony that was presented, as I ask you to continue to support legislation to implement the recommendations provided to you by your Task Force.

There was one set of comments about the specific recommendations of the Task Force as implemented in the proposed legislation. I'd like to describe four recurring concerns expressed:

- Shared Infrastructure

A number of private providers expressed concern in their testimony about the goal of increasing sharing of infrastructure for broadband. In particular, they expressed grave concern at the possible "taking" of infrastructure built with private investment and the chilling effect this would have on the kinds of future investments needed to advance.

Nothing in the Task Force report or proposed legislation proposes such a "taking." Rather, the Legislation would establish increased sharing of infrastructure as a policy objective. This recommendation stems from the observation that shared infrastructure is a common element in places that have capabilities far beyond those found in Hawaii or the U.S. We also heard many concerns from Hawaii's providers about the unfairness and

difficulty of sharing certain utility infrastructure, such as poles and conduits. It is important to note that broadband infrastructure is not just fiber optic cabling and wires, but also the towers, poles, conduits and submarine fiber landing stations that are necessary to deploy and provide services. Neither Hawaii nor our providers benefit when our providers must compete and invest to dig up roads and put up poles and pull duplicative bundles of fiber down our streets. When done well, shared infrastructure reduces costs to providers, reduces time to deployment, stimulates innovation, increases competition and results in lower prices and increased choice for consumers. Late last year the International Telecommunications Union issued a major report recommending the sharing of infrastructure as a key to economically viable advancement of broadband capabilities. There are many policy approaches to achieve this that do not involve “taking,” and the Hawaii Communications Commissioner will be well-positioned to work with the providers and the community to identify strategies that are appropriate for Hawaii. The Task Force would have no objection to any clarification in the Bill that would make it clear that we are not advocating the “taking” of purely private assets.

- Power of the Hawaii Communications Commissioner

A number of private providers expressed concern in their testimony about the potential power that would be vested in one commissioner. The Task Force recognizes the discomfort that may be caused by a shift from the current model of 3 fulltime PUC Commissioners and one fulltime DCCA Cable Administrator. We modeled our recommendation on the Hawaii Insurance Commissioner. We believe this kind of proven approach will support our goal of a streamlined and consolidated process that maintains revenue neutrality but is supportive of the kind of fast action and advocacy we heard the industry request. We also note that the proposed single Commissioner could be selected for her or his expertise in this domain, unlike the PUC commissioners who must balance an extraordinarily broad scope of responsibility. We also note that the proposed legislation reformulates the current Cable Advisory Council as the Communications Advisory Council. The Task Force would be very supportive of further improvements in the Legislation that would make it clear that this Advisory Council must be broadly representative and purposefully consulted to provide meaningful input on all key decisions.

- Concern of Attempts to Pre-empt Federal Regulation

A number of private providers expressed concern in their testimony that the proposed legislation would pre-empt federal regulation. The Task Force clearly understands this would be illegal. Rather, what the proposed legislation does is consolidate and merge the authorities that currently flow down from the federal government, which Hawaii currently assigns independently to the PUC and to DCCA. We believe this consolidation of current authorities and responsibilities will position Hawaii to be more effective now as well as better-positioned for a different future that will likely be based on new approaches to federal regulation under a new federal administration that has placed a new emphasis on broadband. The Task Force would have no objection to any amendments that make it clear that Hawaii is not attempting to illegally pre-empt any federal law or regulation.

- Concern that the Bill Does Not Streamline Permitting

A number of private providers expressed concern in their testimony that the proposed legislation does not actually streamline permitting. The Task Force spent quite a bit of time listening to our private providers describe their frustrations at the costs of the current processes in time and money. Unfortunately, the time and budget available to the Task Force were simply insufficient for us to redesign the permitting processes that hinder timely and cost-effective progress. We began to meet with County officials, since much of the work must involve both State and County agencies. Nobody had every tried to do

this before, and the Task Force observes that, at present, there is no public official at any level in any office with the mission, responsibility or authority to even attempt to streamline the broad range of permitting involved in the deployment of broadband infrastructure. We therefore urge that the Hawaii Communications Commissioner be established and empowered with this responsibility so that this important work can begin as soon as possible.

Another set of comments requested changes to the proposed legislation on matters that were not part of the Task Force deliberations at all.

- PEG Access

Your Hawaii Broadband Task Force did not address the contentious issues around PEG Access that have been unresolved for several years. Rather, the Task Force proposal was to simply take the existing PEG responsibilities from DCCA and move them over as-is to the Hawaii Communications Commissioner. Testifiers have passionately brought their concerns about PEG to this bill, including whether or not the designation of PEG entities should be subject to Chapter 103(D), what the commitment of the PEG entities should be to the first amendment rights of their communities, how the Boards of the PEG entities should be structured, whether there should be more or fewer PEG channels assigned, whether cable franchise fees should be higher or lower, whether more or less of the cable franchise fees should be assigned to PEG entities, and whether new video franchises should be subject to the same requirements as established providers.

The Task Force did not address these issues in our work, and views it as unfortunate that the Broadband bills have become the focus of these difficult, longstanding and contentious PEG conversations. We urge the Legislature to ensure that Hawaii move forward to create our broadband future regardless of which of the PEG issues you choose to address this session and which you choose to simply maintain as *status quo*.

- Regulation of the Incumbent Carrier

Finally, there has been testimony proposing the incumbent carrier be provided with certain kinds of relief from the current regulatory requirements. The Task Force did urge movement toward a more level playing field for all providers. However, we did not do the analysis necessary to address any specific proposals. Our hope was that the establishment of the Hawaii Communications Commissioner would provide Hawaii with an expert consolidated regulator who could consider all perspectives across what are currently both the PUC and DCCA arenas in a reasoned manner. As with the PEG issues, if the Legislature chooses to make changes at this time we hope you do so in a manner that does not endanger the passage of legislation to enact the recommendations of your Task Force.

Closing

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."

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

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION
Wednesday March 18, 2009
1:15 PM
State Capitol, Conference Room 016

In consideration of
HB 984 HD4 RELATING TO TECHNOLOGY.

Chairs Fukunaga and Baker, Vice Chair Ige and Members of the Senate Committees on Economic Development and Technology and Commerce and Consumer Protection.

The High Technology Development Corporation (HTDC) supports the intent of HB 984 HD4 which proposes 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 HB984 HD4 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.

HB 984, HD 4

RELATING TO TECHNOLOGY

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

HAWAIIAN TELCOM

March 18, 2009

Chairs Fukunaga and Baker and members of the Senate Economic Development and Technology and Commerce and Consumer Protection Committees:

I am John Komeiji testifying on behalf of Hawaiian Telcom on HB 984, HD 4. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to raise concerns regarding several issues which, if adopted, may 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 4 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 67**, line 13 which requires cable providers to not only provide but to also "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 plan and ability to enter Hawaii's video (television) services market and to make necessary improvements to our broadband infrastructure. 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 although we prefer the language contained in SB 1680, SD2. If it is the intent of the Legislature to provide consumers with the full benefits of competition, including lower prices and more service offerings, the bill should be amended to delete the delayed effective date of July 12, 2010 (**page 157**, line 12) before the enactment of section 2 to ensure that this pricing flexibility and the associated regulatory relief is permanent and immediate.

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



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March 18, 2009

The Honorable Sen. Carol Fukunaga
Chair, Committee on Economic Development and Technology
The Honorable Sen. Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Hawaii State Senate

RE: Request to Limit Scope of Broadband Commission in House Bill 984 H.D. 4

Dear Sen. Fukunaga, Sen. Baker, and Members of the Committees:

AT&T has many concerns about House Bill 984 H.D. 4, especially the proposal to move all regulatory responsibility for telecommunications and cable services to a new, one-person commission. We feel such a drastic change in the regulatory environment deserves much more discussion among all stakeholders.

We are especially concerned about the impact of this legislation on telecommunications providers in this very difficult economic climate. The telecommunications providers in Hawaii, including AT&T, provide hundreds of good-paying jobs. We respectfully ask the Legislature to take great care in taking actions affecting providers during this critical time.

We understand, however, the Legislature's need to designate a specific organization to manage federal stimulus funds. This can be accomplished by limiting the scope of this legislation to just creating a Broadband Authority within an existing state agency, such as the Department of Commerce and Consumer Affairs, for this purpose only. It would not be necessary to move all telecommunications and cable regulatory authority to this Broadband office at this time. This way we could use the interim between now and next year's legislative session to deal with the much larger and complex issue of regulatory authority.

"Share Infrastructure" Problematic

House Bill 984 H.D.4 also calls for creating "shared infrastructure" as a way to expand broadband services throughout the state. While this may be a viable solution in other countries, it does not fit the United States' telecommunications model, which is more free-market based, with competition successfully providing infrastructure investment and technology innovation. As a result, a variety of technologies in the U.S. are now being used to provide broadband services, including cable, DSL, Wireless, and Satellite. In all cases, private companies have invested millions of dollars in Hawaii to provide these services. By requiring competing companies to "share" infrastructure, these existing investments would be put at risk, and there would be significant disincentives to invest further in Hawaii.



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AT&T respectfully requests removing all references in the legislation to "shared infrastructure." Instead, the state should focus on creating public-private partnerships which are mutually beneficial and would provide true incentives to invest in these many varieties of broadband technologies. Here is a sample of language that could be used to replace the sections on shared infrastructure: **"Unite public and private interests to speed up implementation, reduce costs to providers, ease the deployment of broadband, and encourage entry into the competitive broadband marketplace."**

Unlimited Authority to Set Regulatory Fees

While this version of HB 984 H.D. 4 does not appear to change existing regulatory fees, we are concerned that language from previous bills, including those from the Senate, might increase costs to providers and consumers by giving the Commissioner unlimited authority to establish new fees to fund the state's broadband program. Without fully knowing what the cost of expanding broadband will be in the state, the carriers could be subject to very high fees, and without legislative oversight. AT&T requests that any consideration of new regulatory fees become part of the overall interim discussion on telecommunications and cable regulation.

Broadband Mapping Data Protection

House Bill 984 H.D. 4 should address how the state will participate in the new federal stimulus funding program for broadband services. We recommend that the new Broadband Commissioner be given the authority to name the entity that will create the required broadband maps and other aspects of the federal stimulus funding program.

This should be done, however, in a way that ensures protection of proprietary data needed to produce broadband maps. Other states have protected this data by using non-profit, third parties who are under non-disclosure agreements. This legislation should utilize these third parties with the appropriate expertise to ensure participation by telecommunications carriers in mapping projects. Mapping and other broadband programs will not be successful without the willingness of the industry to participate.

There are many other questions raised by House Bill 984 H.D. 4. A thorough discussion of these issues should occur before the Legislature moves the authority for telecommunication regulation from the Public Utility Commission to the new Hawaii Broadband Commission. Thank you for considering this request.

Respectfully Submitted,

Dan Youmans

HB 984, HD4
Relating To Technology

Robert T. Tanimura, Ph.D.
Director – Public Affairs, Policy & Communications
Verizon Communications
808-595-6521

Wednesday, March 18, 2009

Senator Carol Fukunaga, Chair
Senator Rosalyn H. Baker, Vice Chair
Senate Committee On Economic Development And Technology

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair
Senate Committee On Commerce And Consumer Protection

Comments on HB 984, HD4 Relating To Technology

My name is Robert T. Tanimura and I am testifying on behalf of Verizon on HB 984, HD4, "A Bill For An Act Relating To Technology." Verizon offers the following comments on HB 984, HD4:

Verizon supports the establishment of state policy to promote broadband access but has several concerns about this bill.

- Infrastructure Sharing. Even though infrastructure sharing was made one of the centerpieces of the Hawaii Broadband Task Force Report recommendations, little is known about exactly how this is supposed to work. Korea and Japan has been touted as examples of countries that have deployed a lot of fiber and require sharing, but other countries such as France are finding that sharing is an impediment to fiber deployment because it reduces the incentive for companies to invest in network upgrades. Last week, Saul Hansell, the editor for the New York Times Bits blog and for technology coverage on nytimes.com, posted an informative series of blogs on the broadband gap. He found that Korea and Japan have deployed a lot of fiber, not because of infrastructure sharing but because of heavy government assistance in the form of tax breaks, direct subsidies, and low cost loans. In other words, Asian-style national industrial policy, not sharing, is responsible for fiber deployment in these countries.

Verizon recommends that references to infrastructure sharing be deleted. Because of the likelihood of unintended consequences, infrastructure sharing needs to be studied in much greater detail before it is considered as state policy.

- Encouraging Private Investment. The most effective way to increase broadband deployment is to create an environment that is conducive to private investment.

Companies such as Verizon and AT&T have demonstrated that this approach can work, not only in the building of the next generation wireless broadband network that will be capable of delivering up to 60 Mbps download speeds, but in fiber upgrades such as Verizon's FiOS and AT&T's U-Verse. Similarly, cable companies are expected to upgrade their networks to the faster Docsis 3 standard. In the long run, this kind of robust competition between technological platforms will be much more dynamic than government mandated solutions.

However, government involvement that can be effective in increasing private investments through tax incentives, direct subsidies, and low cost loans. As such, Verizon recommends that the bill be modified along the lines of section 75 and 76 in SB 1680 SD2 to help facilitate the state's ability to utilize federal funds from the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act. However, rather than designating the commissioner as the entity responsible for developing and maintaining broadband inventory maps and the other requirements of the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act, the language should be modified to say that the commissioner shall select the entity that is responsible. This would give the commissioner flexibility to use third party entities to do this work.

A large problem for private investment in broadband in Hawaii is that its largest telecom carrier, Hawaiian Telcom is currently bankrupt. A company that is in bankruptcy will obviously have difficulty financing network upgrades. It is important that any regulatory reorganization that is undertaken does not disrupt work related to this bankruptcy.

Hawaiian Telcom is also one of the most heavily regulated carriers in the nation, which exacerbates the problem of lack of financial resources. Verizon supports the intent of the provisions in section 38 in that it would reduce the amount of regulation for telecom carriers including Hawaiian Telcom. However, it includes a provision that effectively caps all rates at the levels that are current in filed tariffs. Verizon's general response to this is that rate caps are not necessary in today's competitive environment and removing them for all carriers would be effective in encouraging network investment. But should the legislature decide that it needs rate caps, these caps should only be applied to the incumbent local exchange carrier since that is the only entity that currently has rate caps. Imposing new rate caps on fully competitive services offered by non-dominant carriers such as Verizon makes little sense. Verizon's suggested amendment is attached.

- Single Commissioner. Verizon is concerned about the concentration of power in a single individual. A multi-person panel such as the current Public Utilities Commission allows for a greater diversity of backgrounds and ideas and provides for an appropriate balance in decision making. For that reason, it is extremely rare in this country that an agency responsible for telecommunications policy is headed by a single person.
- Transition Plan. Verizon agrees with AT&T's comments that a useful transition plan for the broadband commission would be to have it begin work initially to facilitate

maximum use of federal stimulus support, while working with various work groups to develop plans, strategies, and programs to streamline regulation and to increase broadband usage. Delaying the transitioning of the regulatory functions of the PUC would ensure that any work on Hawaiian Telcom's bankruptcy is not disrupted. It would also give time for more industry and public input into the details of how a unified regulatory commission would function.

Thank you for the opportunity to testify.

Proposed Amendment to § 38

§ - 38 Regulation of telecommunications carrier rates; ratemaking procedures. (a) Notwithstanding section -34 and any other law to the contrary, except for the rates, ~~fares~~fares and charges applicable for intrastate switched and special access with respect to wholesale customers, the provision of this chapter shall not 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 or to bundle any service offerings into a single or combined pricing package; provided that ~~a telecommunications~~the incumbent local exchange carrier ~~shall~~does not charge any rate for a service above the rate for the service included in ~~the telecommunications carrier's~~its filed tariff. Notwithstanding the above, all rates, fares, charges, and bundled service offerings shall be filed with the commission for informational purposes only.

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Honorable Carol Fukunaga, Chair
Honorable Rosalyn H. Baker, Vice Chair
Senate Committee on Economic Development and Technology

Honorable Rosalyn H. Baker, Chair
Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Affairs

Re: HB 984 HD 4, Relating to Technology – Comment
Wednesday, March 18, 2009 - 1:45 PM, Conference Room 016

Aloha Chairs Fukunaga and Baker, Vice Chairs Baker and Ige and Members of the Committee:

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 on HB 984 HD4. Oceanic respectfully requests that the Committee defer action on HB 984 HD4 this session to allow stakeholders to come up with a workable solution over the interim period. However, if the Committee decides to move this bill forward, we respectfully ask that you consider amendments offered by Oceanic.

The legislature established the Hawaii broadband task force in 2007 to: 1) remove barriers to broadband access, including gaining wider access to public rights of way; 2) identify opportunities for increased broadband deployment and adoption; and 3) enable the creation and deployment of new advanced communication technologies in Hawaii. As noted in its final report, the task force recommended that a commission be created to, among other things: 1) create a level playing field for broadband providers by rationalizing fees and streamlining requirements to the extent permissible under federal law; 2) offer incentives that promote competitive broadband access at affordable costs; and 3) provide advocacy at all levels of government on behalf of broadband service providers to help overcome unnecessary barriers to progress.

As a member of the task force, and as a leading innovator of cable and internet technology, Oceanic continues to fully support these goals. Oceanic notes, for

example, that it has continued to expand its broadband infrastructure (an additional 53,000 households were made broadband capable between 2005 and 2008), and makes broadband service available to over 97 percent of households in the state. In addition, Oceanic recently announced a major initiative to further upgrade its infrastructure this year in order to introduce a new suite of internet services that are up to twice as fast as its current Road Runner services. This initiative is the beginning of a multi-million dollar investment by Oceanic to provide the technology that will allow it to provide the 100 mbps speeds set by the Hawaii Broadband task force's recommendation. Oceanic's willingness to invest in broadband -- a risk that has proven to Hawaii customers the value of broadband -- will go far toward achieving the goals of HB 984 HD4, and could lead other providers to follow suit, providing the further consumer benefit of marketplace competition and choice. And as the availability of broadband service grows, it spurs the development of new Internet businesses and applications, which in turn attract new broadband customers.

Oceanic also supports more direct attempts to increase the adoption of broadband services by Hawaii consumers. Government policies far too often focus only on solving the issue of increasing network deployment, when the more pervasive obstacle is that low-income households may not have the necessary equipment, training or educational opportunities to take advantage of the benefits of available Internet use. To succeed in achieving the goal of plugging more Americans into the benefits of broadband, the government must find a means of addressing these critical issues.

Upon further review and analysis of the specific language of this bill, however, the provisions of HB 984 HD4 do not appear targeted to achieve these goals. Instead of implementing the laudable goal of removing barriers and creating incentives that promote competitive broadband access at affordable costs as the legislature (and task force) intended, the bill's attempt to blend together different regulatory schemes and requirements for different types of services (most of which do not relate to the provision of broadband services) goes far beyond the intended goal of the task force, and will discourage investment and innovation in the deployment of broadband services. Indeed, as currently drafted, the bill appears most likely to create significant disincentives to the further deployment and adoption of broadband service by Oceanic or any other provider in the State.

As the committee is aware, cable television is already regulated by the Cable Television Division of the Department of Commerce and Consumer Affairs, which has worked to promote the interests of consumers and the availability of service. Oceanic has concerns regarding the placement and attempted integration of the existing cable television regulatory scheme under the jurisdiction of the Hawaii Communications Commission.

By creating a vast new regulatory framework for all communications services in the State -- not only broadband services, but video and voice service as well -- HB 984 HD4 will result in significant regulatory uncertainty and confusion. As noted in more detail in various discussions with you and the amendments offered by Oceanic, many of the bill's

provisions are vague, others appear unenforceable due to direct conflict with federal law or intrusion into areas of law reserved for federal authorities, and still others appear to impose significant, unnecessary new regulation at a time when cable operators and other service providers are already facing uncertain economic times. No provider can commit to risky new investments in an environment in which the cost of doing so is assuming a vague, overbroad regulatory scheme.

In fact, *any* legislation calling for government intervention in the broadband marketplace would undermine the goals of broadband deployment and adoption, and is thus a sure recipe for stifling private investment in establishing and upgrading broadband service and infrastructure. The development of the Internet, expansion of broadband networks, and creation of innovative Internet applications we have seen would not have occurred if providers were heavily regulated. The government's consistent light regulatory touch since the introduction of broadband has gotten us this far.

Additional regulation of broadband service will be detrimental and would freeze innovation and investment in place. Indeed, for this reason, Congress has declared it the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."^{1/} In recent years, confirmation that the government would not seek to interfere with developing Internet business models led to an explosion in investment, deployment and competition. Only by preserving regulatory freedom in Hawaii will providers be able to offer the investment and innovation that consumers have come to expect. HB 984 HD4 fails to meet this goal, and would be a significant step *backward* in creating opportunities for increased broadband deployment and innovation by broadband providers.

Oceanic believes that HB 984 HD4 will not further the goals of removing barriers and creating incentives that promote competitive broadband access at affordable costs, but instead will discourage private investment in broadband initiatives, which is exactly the *opposite* result intended by the legislature. The bill's attempt to broadly sweep cable television regulation with other types of regulatory schemes for different services under a single umbrella will result in less private investment, increased cost, and fewer initiatives in broadband technology.

For these reasons, Oceanic respectfully requests that the Committee consider the amendments offered by Oceanic or defer action on HB 984 HD4 to allow for further discussion of this bill over the interim period.

Thank you for the opportunity to provide testimony on this measure.

Sincerely,

Nate Smith
President

^{1/} Cf. 47 U.S.C. 230(b)(2).



March 18, 2009

The Honorable Carol Fukunaga, Chair
The Honorable Rosalyn H. Baker, Vice Chair
Senate Committee on Economic Development and Technology

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Affairs

**Re: HB 984 HD 4, Relating to Technology – Oppose
EDT/CPN Committee, Wednesday, March 18, 2009, 1:45 pm – Room 016**

Aloha Chairs Fukunaga and Baker, Vice Chair Ige and Committee members:

On behalf of tw telecom ("TWTC") 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.

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's ("PUC") 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.

While we do not object to the concept of establishing an HCC, we prefer that the committee defer action on this bill to allow stakeholders more time over the interim to work out many of the serious concerns we have with the legislation. However, if the committee chooses to move this bill forward, we respectfully request the following changes be made to address some of the very serious concerns about the bill. Among these include:

1. **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. The other issue that has not been discussed in detail is the potential for

unlimited risk and liability to be borne by the investing carrier. How are we to control security and service level quality when we have no method to control over who may use the facilities? There are many VoIP resellers who would love to have access to facilities but may not possess the depth and breadth of expertise to adequately plan for and to maintain the services. In the end user customers will get burned without better methodology to manage the infrastructure. If this committee wishes to address sharing of infrastructure in this bill, we have attached some proposed revisions addressing the issue of infrastructure sharing.

2. **Mandating regulation or deregulation** – TWTC recommends that all language relating to telecommunications rates be deleted from this bill. The stated purpose of the bill is to advance Hawaii broadband capabilities and use, and the regulation or deregulation of telecommunications rates is unrelated to that purpose. As this committee may know, other bills have been introduced that deal specifically with telecommunications rate deregulation, and TWTC believes that those bills are the appropriate vehicle to address regulatory issues.

If this committee wishes to address telecommunications rates in this bill, TWTC believes that the following language in Section 2, § -9 of the bill, as revised below, is the correct way addressing this issue:

§ - 9 Commission Development Duties.

No later than July 1, 2011, in accordance with section -34 and the commission's rules relating to competition in telecommunications services, the commission shall investigate the extent to which telecommunications services provided to residential and business customers are available from multiple providers in Hawaii and whether to reclassify any telecommunications services provided to residential and business retail customers as "partially competitive" or "fully competitive" communications.

The PUC rules relating to Competition in Telecommunications Services (the "Rules") provide for three classifications of service: non-competitive, partially competitive and fully competitive, with corresponding levels of pricing flexibility for each classification.

TWTC believes that the correct way to implement pricing flexibility is under the existing Rules based on factual findings of the extent of competition in various market segments. The legislative process is simply not designed for making the types of detailed factual findings that are required to determine the extent of competition in different market segments, and blanket statements that there is robust or effective competition are simply not supported. For example, TWTC only provides service to business customers, providing managed network services, specializing in Ethernet, transport data networking, Internet access, local and long distance voice, VoIP, VPN and security, to large organizations and communications services companies in Hawaii. However, for smaller businesses that require fewer than lines and services, the only current alternative to Hawaiian Telcom's service is VOIP or wireless, where they are available, and these services don't meet the service quality and reliability needs that many businesses require. There are likely many other market segments that likewise do not have effective competition. The investigation contemplated under this section would allow the commission to determine the extent of competition faced in various market segments. TWTC therefore believes that this language is the best way to address the issue of telecommunications pricing flexibility.

§ - 38 Regulation of telecommunications carrier rates; ratemaking procedure.

TWTC strongly objects to § - 38 of this bill, which would deregulate telecom rates, subject to limited exceptions. It should be noted that this language is inconsistent with § - 9 above, since the purpose of the investigation contemplated under § - 9 is to determine the appropriate extent of any pricing flexibility or deregulation.

TWTC also has serious concerns about this section as it relates to rates for both wholesale and retail services. These include:

1 Wholesale Services, Facilities and Functions. Any bill which seeks to deregulate telecommunications rates must include a complete exception for all wholesale services, functions and facilities. TWTC is a facilities-based competitive provider of local telephone service, also known as a competitive local exchange carrier ("CLEC"). TWTC relies primarily on its own network to provide telephone service, but it also needs certain facilities and services from the Hawaiian Telcom, the incumbent local exchange carrier ("ILEC"). Most importantly, TWTC and other CLECs need to interconnect their networks with Hawaiian Telcom's network to enable their customers to make calls to, and receive calls from, each other. TWTC and other CLECs also "collocate" equipment in the incumbents' central offices, both to obtain interconnection and to access certain incumbent facilities and services that the CLECs use to provide service to their own customers. TWTC's ability to obtain interconnection and related services from Hawaiian Telcom is critical to its ability to offer consumers a viable alternative source of telecommunications services.

It is therefore essential that any deregulation bill contains a complete exception for "wholesale" facilities, functions and services provided by one telecommunications carrier to another, and that this exception be technologically neutral, i.e. that it will continue to apply even if HT migrates its services to internet protocol or other "next generation" facilities. While this bill contains a limited exception for switched and special access, that language doesn't cover all necessary services and facilities. TWTC requests that any bill which deregulates telecom rates contain the following exception:

Subsection _____ shall apply to retail rates charged for services to end-user consumers only and shall not apply to wholesale rates charged for services, functions or facilities provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider, including, without limitation switched network access rates or other intercarrier compensation rates for interexchange services, special access, or interconnection and other wholesale obligations, and the commission shall continue to have authority to regulate such wholesale rates, interconnection rights and traffic exchange obligations without regard to the technology used to provide such services, functions or facilities.

2. Retail Rates. TWTC also has concerns about the complete deregulation of retail rates proposed in this bill. By way of background, price regulation for the ILEC prior to the existence

of full competition is necessary both to ensure that prices are not too low and that they are not too high. The ILEC is in the unique position of having "captive customers" who do not have other options to obtain telephone service. Without regulation, the ILEC can raise its rates for services to these customers, and use the revenues from these rates to subsidize any losses it incurs from its more competitive services. Thus, some level of regulation is required to ensure that prices are not too high. There are also concerns with pricing that is too low.

First, if the ILEC prices its services too low, it will drive away its competition. The ILEC is in a unique position to charge prices for more competitive services below its costs, and to subsidize any losses it incurs from its competitive services with rates charged to customers of non-competitive services. Because CLECs face competition for all of their services, they do not have this same opportunity to cross-subsidize services, and must cover all of their costs through the prices for their services if they are to survive. Thus, this can drive away competition.

Second, if the ILEC prices its service too low, it will not have sufficient funds to maintain its network, which is of critical importance to the State. For example, "technical difficulties with Hawaiian Telecom caused a phone outage" for about 2-1/2 hours this past New Year's Eve. This caused flights in and out of Honolulu International Airport to be disrupted for several hours because airlines were unable to electronically process and check in customers.

Third, this bill would classify all services as fully competitive, virtually deregulating rates. TWTC believes that this simply goes too far too fast. If there is to be deregulation of retail rates, certain protections must remain in effect, including price floors and continued commission jurisdiction over rates. TWTC thus proposes that the language of the bill be amended to classify retail services as "partially competitive" under the Rules. This classification would eliminate two requirements that HT has objected to: providing cost studies for all of its services and obtaining prior approval for bundled offerings. With this change, HT would essentially have regulatory parity with CLECs with respect to retail rates. However, such rates would continue to be subject to tariff filings, price floors, and commission oversight. Further, HT would still have the ability under the Rules to request greater pricing flexibility where it can demonstrate that a particular market is "fully competitive". To provide this flexibility we suggest including the following language in the bill:

"§269- Local exchange intrastate services; partially competitive. (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 shall be just and reasonable, shall be set forth in tariffs filed with the commission in accordance with the commission's rules.

(b) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall classify the State's local exchange intrastate telecommunications services as partially competitive under the commission's classifications of services related to costs, rates, and pricing. In addition, unless otherwise ordered by the commission, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to bundle any service offerings into a single or combined price package.

(c) Subsection c shall apply to retail rates charged for services to end-user consumers only and shall not apply to wholesale rates charged for services, functions or facilities provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider, including, without limitation switched network access rates or other intercarrier compensation rates for interexchange services, special access, or interconnection and other wholesale obligations, and the commission shall continue to have authority to regulate such wholesale rates, interconnection rights and traffic exchange obligations without regard to the technology used to provide such services, functions or facilities.

(d) Nothing herein shall modify any requirements of a telecommunications carrier to provide lifeline telephone service, comply with carrier of last resort obligations, or comply with applicable service quality standards.

For these reasons, we respectfully request that you consider deferring action on this bill. Should you decide to move this bill forward, we respectfully request that you include the suggested amendments to 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.

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

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

Wednesday, March 18, 2009 1:15PM Room 016

Support of HB984, Relating to Technology with “PEG Protection Amendments”

On behalf of the people of Maui, we strongly support House Bill Number 984 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 or alternatively, the language included in HB984 HD2 be reinserted in the public interest. (see Appendix A attached)

Preservation and protection of Public, Educational and Government Access extends to broadband and is an essential component of bringing Hawaii into the forefront of the digital age. Our ability to communicate effectively with each other 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, net neutrality and open access to spectrum are the underpinnings of broadband development. PEG access centers already in place, will provide cost effective tools and resources as well as aggregate the social capital necessary to accomplish these goals and bring digital literacy to 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 provide low cost media training to the public, enable broadcast of local, state and native government affairs, support private and public educational programming and allow freedom of expression from diverse and varied sources. Akaku has been empowering local democratic voices without censorship, corporate control or commercial consideration for more than fifteen years and is perfectly positioned to have an immediate positive impact on Hawaii’s broadband future. This is why it makes perfect sense that the PEG language currently in 440G travel to the legislation that will replace it.

This is particularly important because 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 themed" radio station broadcasts via the internet to the state and world at large. We were among the first in the nation to integrate live TV broadcasts with "skype" technology from Lanai and Molokai and as far away as Washington D.C and we provide our Maui Nui residents with one of the more successful and innovative new media and video training programs in the state.

Despite these successes there are a few in the Administration and others who, for reasons that are unclear, wish to separate the current PEG framework from broadband entirely. This shortsighted point of view is without merit and contrary to emergent national broadband policy. It is 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, severely damage the prospect of a healthy electronic forum for democracy, deepen the digital divide and potentially cut off an existing, highly functional engine for broadband adoption by Hawaii residents.

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.

More than a decade of regulatory disregard for this fundamental right of local communities to express themselves through access to media has resulted in an alarming concentration of ownership and corporate control over virtually all media. In the past two years we have seen the elimination of PEG access stations across the country fueled by a sophisticated state by state lobbying campaign by media conglomerates such as AT&T, Comcast and Time Warner. It is fair to say that were it not for the PEG protection language in 440G, the attack on Hawaii PEGs by the Administration may well have succeeded. This is why HB984 needs to be amended with specific language to guarantee that, at minimum, the regulatory framework that currently exists with PEG access applies to community broadband as well.

In its recent report to the 2009 Legislature, the HCR358 Task Force submitted administrative rules that if incorporated into SB1680 as amendments will resolve in one fell swoop, any perceived procurement controversy, current regulatory

“standard less discretion” issues; provide performance and accountability for PEGs, resolve issues before DCCA, SPO and the courts as well as set metrics for PEG Access designation.

Obviously in the broadband future, 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 broadband 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.

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 this legislation 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.

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.

APPENDIX on Proposed Amendments on SB 1680

§ -1 Definitions. ***

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

§ -8 General powers and duties. (a) The commission shall have the authority expressly conferred upon the commission by, or reasonably implied from, the provisions of this chapter.

(b) The commission shall have general supervision over all telecommunications carriers and cable operators, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter.

(c) The commission has the authority to adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

(d) The commission shall have the authority to designate and select PEG access organizations, the authority to contract with the PEG access organizations and enforce the terms and conditions of the contracts, and general supervision over PEG access in the State. general supervision over public, educational, or governmental access facilities and public, educational, or governmental access organizations.

§ -67 Cable system installation, construction, operation, removal; general provisions. ***

(f) The cable operator shall designate three seven or more television channels or and video streams of not less than equal value to the television channels for public, educational, or governmental use as directed by the commissioner.

§ - 75 Access organization designation, generally . (a) The commissioner shall designate for

each county one access organization to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section -67.

(b) No access organization shall be initially designated except upon written application therefor to the commissioner, and following public hearing upon notice, as provided in this chapter.

(c) An application or proposal for designation shall be made in a form prescribed by the commissioner by rule and shall set forth the facts as required by the commissioner to determine in

accordance with this chapter whether an access organization should be designated, including facts as

to:

- (1) The management and technical experience of the organization, and its existing or proposed staff;
- (2) The public media, community media, and/or PEG access experience of the organization and its existing or proposed staff;
- (3) The applicant having among its missions/purposes (as demonstrated by its articles of incorporation, bylaws, or similar corporate documents) to provide training, education and outreach to permit individuals and organizations the ability to use communication tools to effectively convey their messages;
- (4) The ability of the organization, and its existing or proposed staff, to provide the PEG access services requested by the commissioner;
- (5) The organization's short-term and long-term plans for PEG access services for a designated county;
- (6) The financial capacity of the organization ;
- (7) Whether the organization agrees to expand the marketplace of ideas, and is committed to allowing members of the public to express their First Amendment free speech rights;
- (8) The ability of the organization, through the use of electronic media tools, to foster and engage in civic and cultural development and engagement in communities it has served;
- (9) Any other matters deemed appropriate and necessary by the commissioner.

(c) A proposal for designation of an access organization shall be accepted for filing in accordance

with this chapter only when made in response to the written request of the commissioner for the submission of proposals.

(d) The commissioner is empowered to designate access organizations upon the terms and conditions provided in this chapter.

(e) After public hearing, the commissioner shall designate an applicant as an access organization in accordance with the public interest. In determining the designation of an access organization, the commissioner shall take into consideration, among other things, the content of the application or proposal, the public need for the services, the ability of the applicant to provide PEG access services, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the services for which designation is requested, any objections arising from the public hearing, the local needs of each community within each county, the communications advisory committee and any other matters as the commissioner deems appropriate in the circumstances.

(e) The period of an initial designation shall be for the period of the franchise or franchises granted

under section -67 and any renewal periods granted thereto unless the designation be revoked for

cause. In such cases of mid-term revocation of designation, the subsequent designation shall be for

a period of the remaining time of the franchise or franchises granted.

(f) The commissioner shall promulgate rules consistent with this chapter for the designation and

regulation of access organizations.

§ - 76 Access services, terms of designation . (a) Every access organization shall provide safe ,

adequate, and reliable service in accordance with applicable laws, rules, and designation requirements.

(b) The commissioner shall include in each access organization designation a statement of services

to be provided, performance standards for such services, fees for such services, and all terms and

conditions of service, in the form and with the notice that the commissioner may prescribe. Prior

to finalizing the terms of the designation, the commissioner shall seek input from the communications advisory committee regarding the appropriate terms.

(c) The commissioner shall ensure that the terms and conditions upon which PEG access services

are provided are fair both to the public and to the access organization, taking into account the

appropriate service area, input received during the designation process and the resources available to

compensate the access provider.

(d) If a designation period has ended, the designation shall be extended upon mutual agreement of

the PEG access organization and the commissioner, provided:

(1) The period of each extension is coextensive with any extension of the relevant franchise or franchises;

(2) The commissioner makes a written determination that it is not practical to designation another access organization; and

(3) The terms and conditions of the designation remain the same as the original designation, or as amended by the designation; or if not the same or as amended, they are fair and reasonable.

(e) No access organization designation or contract therefor, including the rights, privileges, and

obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily

or involuntarily, directly or indirectly, including by transfer of control of any access organization,

whether by change in ownership or otherwise, except upon written application to and approval by

the director. A transfer of an access organization designation shall authorize the new access organization to provide services for the remainder of the term of the existing contract.

§ - 77 Access fees . The commissioner shall assess the maximum access fees permitted

under federal law based upon the gross revenue of each operator. The access organizations shall receive not less than seventy-five percent (75%) of the access fees assessed except that the commissioner may cap access fees distributed to access organizations serving counties with more than 500,000 residents, as provided by rule. Whatever fees are not distributed to access organizations and not used by the commissioner for administering the designation of access organizations shall be distributed to institutions of higher learning, schools, the state legislature, and the counties, as provided by rule, for development and production of residential cable access television purposes.

Senator Carol Fukunaga, Chair
Committee on Economic Development and Technology

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection

Senate of the State of Hawai'i

Lance D. Collins, Esq.
Attorney for Akaku: Maui Community Television

Wednesday, March 18, 2009
Support of HB No. 984, HD 4, Relating to Technology with Amendments

I represent Akaku: Maui Community Television, the access organization serving the cable subscribers of Maui County. Akaku and the people of Maui strongly support House Bill No. 984, Relating to Technology, with amendments, which would give the public and access organizations a clear and meaningful process by which the administration designates and regulates cable access.

The bill provides for a clear and rationalized form of regulation and oversight of PEG access organizations. However, the “cut and paste” transporting of the current Chapter 440G, Haw. Rev. Stat. does not address the underlying long-term problems in the area of regulation and oversight of PEG access organizations.

The Cable Communications Policy Act of 1984 (hereafter '1984 Cable Act') amended the federal Communications Act to explicitly allow cable franchising authorities to require cable operators to set aside channel capacity for PEG use and to provide adequate facilities or financial support for those channels. While the federal law leaves to the discretion of cable franchising authorities the discretion to require channel capacity for PEG use, Hawai'i state law requires it: “The cable operator shall designate three or more channels for public, educational, or governmental use.” Haw. Rev. Stat. 440G-8.2(f)

Consistent with its erratic and politically motivated interpretations of the Public Procurement Code (hereafter 'Code'), the Administration attempted to radically change public policy regarding access organization designation – claiming the director's power was subject to the Code. Aside from the illegal delegations of power necessary to fulfill this policy change, the underlying intent of the Code and the 1984 Cable Act's PEG provisions are inherently incompatible.

Federal law's inclusion of PEG access in the powers of local franchising authorities was intended to recognize that access to media and exercise of other First Amendment rights simply are not supported by free market conditions or the structure of the commercial television market. To

counteract the problems of concentrated ownership of media, the federal law was amended to allow local franchising authorities to require PEG access. In 1987, the Legislature made PEG access mandatory in Hawai'i.

The principles of public procurement is intended to remove barriers and open up new, non-discriminatory and competitive markets through a legal and rational process offering the State and the people of Hawai'i the highest quality goods and services at the lowest reasonable price.

However, there are no instances where the free market supports PEG access services. The requirement of access channels and services is a direct intervention in the free-market by the federal and state government to provide a public benefit that the market simply cannot provide. There are a number of reasons for this, including the complex and indirect way that consumers "buy" programming and the power of cable operators to control content.

This is also exacerbated by the structure of the current cable television or broadcast television paradigm that are unable to support the types of programming access provides because the mechanisms for attracting capital to viewpoints that are not popular, minority, minoritarian, fringe or unfamiliar. Even popular viewpoints in small communities cannot compete with nationally distributed cable networks. For this reason, the logic of highest quality, lowest price does not work for these services.

Some have argued that the services themselves can be subject to the free market model. This is also not supported by the evidence. Market-based television and cable network stations are supported by the capital their programming attracts from advertisers through viewership. Yet, the government has intervened in the marketplace to require PEG access because PEG programming is not likely to attract the kind of capital necessary to support itself.

The result is that the use of procurement in the long-term, will likely undercut the public benefit the original market intervention intended to support. The original intent of providing funding to access organizations linked to the profits and rates of the cable franchisee is a rational method of funding access in proportion to the overall use of the cable franchise.

Cost-effectiveness and cost-savings are not the same policy consideration. While cost-savings is not appropriate for the access model, cost-effectiveness can be appropriate. This is an issue of proper regulation and oversight. By treating access organizations under the same rational principles of oversight as cable operators, cost-effectiveness can be achieved without undercutting the purpose of PEG access by subjecting it to the very conditions the market intervention was designed to avoid.

Attached is language which would conform HB 984 HD 4's language with SB 1680 SD 2 starting at page 66, line 16. Thank you.

APPENDIX WITH PROPOSED AMENDMENTS

“ § -67 Cable system installation, construction, operation, removal; general provisions.

(f) The cable operator shall designate seven 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 ten per cent of the total bandwidth capacity for PEG access organization use, as directed by the commission by rule applicable to all franchises uniformly; and this designation shall be re-evaluated every other year based on input solicited from the public, PEG access organizations, and cable franchise holders on how best to configure public, educational, or governmental capacity in order to maximize the achievement of the objectives of public, educational, and government access in a changing environment.

The Hawaii broadband commissioner shall have the authority to designate the PEG access organization consistent with administrative rules that shall be adopted by the commissioner. These administrative rules shall be adopted with input from the public and with recognition of the First Amendment rights of individuals who utilize these PEG access services. Board of director positions on these PEG access organizations will be managed by each designated PEG access organization, including but not limited to the selection of directors, length of terms, and number of directors.

PEG assets include, but are not limited to equipment, facilities, cash, financial assets and instruments, land, and buildings. These assets will be available to the PEG access organization designated by the Hawaii broadband commissioner to provide PEG services in a particular service area. If the contract between Hawaii broadband commissioner and a PEG access organization is terminated or cancelled, these PEG assets will be held in trust for the benefit of PEG services until a new PEG access organization is designated by the Hawaii broadband commissioner.”

*** re-letter HD4 subsections “(f)”, “(g)” and “(h)” to “(g)”, “(h)” and “(i)”

(j) The expenditure of cable franchise fee revenues by a PEG access organization shall not be subject to the requirements set forth in chapter 103D. Any revenues derived from cable franchise fees shall not be considered appropriations or public funds of the State or be expended by the State in any manner.

From: Community Media Producers Association (CMPA) [cmpa@hawaiiintel.net]
Sent: Tuesday, March 17, 2009 10:18 PM
To: EDTTestimony
Subject: EDT/CPN HB 984 HD4 Wednesday, March 18, 2009 1:45 pm Conference Room 016 - TESTIMONY
Attachments: 2009BudgetnPlan.PDF

EDT/CPN HB 984 HD4 Wednesday, March 18, 2009 1:45 pm Conference Room 016

CMPA

Community Media Producers Association

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

Aloha Chairs Fukunaga & Baker, Vice chairs Baker and Ige, and members of the COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY and the COMMITTEE ON COMMERCE AND CONSUMER PROTECTION committees,

PEG funds are **public funds**. Read the [SUPREME COURT OF THE UNITED STATES DENVER AREA EDUCATIONAL TELE COMMUNICATIONS CONSORTIUM, INC. PETITIONERS 95-124 v. FEDERAL COMMUNICATIONS COMMISSION et al. ALLIANCE FOR COMMUNITY MEDIA, et al., PETITIONERS 95-227](#)

and note no one has contested that reality.

"Access channel activity and management are **partly financed with public funds**--through franchise fees or other payments pursuant to the franchise agreement, or from general municipal funds, see Brenner, ¶6.04[3][c]; Aufderheide, App. 59-60--and are commonly subject to supervision by a local supervisory board. See, *e.g.*, D. C. Code Ann. §43-1829 (1990 and Supp. 1996); Lynchburg City Code §12.1-44(d)(2) (1988). " (emphasis added)

Not even the petitioner Alliance for Community Media, of which 'Olelo \$110,000.00 a year CEO Keali'i Lopez is vice chair of their board of directors, has contested it. I thought this broadband bill was to get Hawai'i up to speed in current technologies and it appears one intent is to foster competition, making way for innovation and excellence. Competition is good for broadband providers, but not for those that should have already taught citizens to utilize it ?! All Hawai'i PEG access organizations "has no members" ¹ ([ARTICLES OF INCORPORATION](#)). If you look at ['Olelo's 990 IRS tax returns](#) you can see they refer to the millions of dollars of public funds they receive annually as "Government contributions (grants)". By Legislation and DCCA's decision, We The People shall pay a franchise fee (aka a tax) which is a fee assessed to cable operators in exchange for the use of our public right of ways, so in essence we pay for the cable operators' use of our public property. If we don't pay the fee, the state monopoly cable operator, Oceanic Time Warner Cable, will disconnect our cable. Do not exempt the PEG organizations from the state procurement code. We The People deserve the very best nondiscriminatory free speech provider our money can buy! Especially now that we are dead last in the country regarding most broadband related issues.

CMPA is in support of the intent of [SB 1680 SD2](#) 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:

"Access organization" means any nonprofit organization **with voting members under part VI of chapter 414D** designated by the commissioner **to provide for the first amendment rights of Hawai'i citizens, and** 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.

and

PLEASE **DO NOT** INSERT your prior EDT/CPN amendment, snuck in after it was heard by WAM, to [SB 1680 SD2](#) page 69 lines 19- 21 and page 70 lines 1 & 2 [**PART III. CABLE** section -67 (j)]:

" (j) The expenditure of cable franchise fee revenues by a PEG access organization shall not be subject to the requirements set forth in chapter 103D. Any revenues derived from cable franchise fees shall not be considered appropriations or public funds of the State or be expended by the State in any manner."

If you amend the definition of "Access organization" 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](#),

CMPA was the first registered Public Access Television related nonprofit corporation in the state, and is the only nonprofit media access corporation in the state advocating for at least one specially designated "Public Access Channel" (as defined in [HAR 16-131](#)-32), 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 most recently 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. On 12/23/2005 [DCCA signed a Procurement Violation](#).

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 is 'Olelo's minimal 2009 annual budget and operating plan for the millions of dollars of public funds required by their agreement with DCCA. It was approved in a closed executive session by their board of directors as minimally noted in their [agenda](#) and [minutes](#). This has been done for at least the last four years!

Please stop [Keeping the Public Out of Public Access Hawaiian Style](#).

Mahalo for doing what's pono.

Sincerely,

Jeff Garland

"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

Hawai'i needs its own submarine fiber optic cable (10 years ago) :(



October 31, 2008

Board of Directors

Marsha Bolson
Chair

Roy Amemiya
Verna Bays
Koren Dreher
Bennette Evangelista
Robert Filus
John Flanagan
Pat Garvey
Keali'iolu Gora
Chris Parsons
Melissa Pavlicek
Diana Peters-Nguyen
Steve Van Ribbink
Gerald Sumida
Vivian Yasunaga

Keali'i S. Lopez
President and CEO

Mr. Clyde Sonobe
Cable Administrator
Department of Commerce and Consumer Affairs
P.O. Box 541
Honolulu, HI 96809

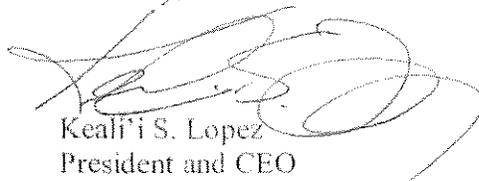
Dear Mr. Sonobe,

I am requesting an extension to submit 'Ōlelo's Board-approved 2009 annual Operating and Capital Budgets.

The budgets are currently in draft form and will be reviewed when the Board of Directors meets in early November. We would like to submit the final, approved 2009 budgets in condensed form to your office following the Board Meeting and anticipate that we will be able to do so no later than November 30, 2008.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Keali'i S. Lopez
President and CEO

cc: Larry Reifurth, Director

LINDA LINGLE
GOVERNOR



FILE COPY
LAWRENCE M. REIFURTH
DIRECTOR

JAMES R. AIONA, JR.
LIF GOVERNOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS
335 MERCHANT STREET
P. O. BOX 541
HONOLULU, HAWAII 96809
(808) 586-2620
FAX (808) 586-2625

VIA FACSIMILE ONLY (836-2546)—HARDCOPY TO FOLLOW

November 3, 2008

Ms. Kealii Lopez
President and CEO
'Olelo Community Television
1122 Mapunapuna Street
Honolulu, Hawaii 96819

Re: 'Olelo's Request for an Extension to Submit Its Operating and Capital Budgets

Dear Ms. Lopez:

This is in response to your October 31, 2008 letter, requesting an extension to submit the 2009 operating and capital budget reports by November 30, 2008. As you know, these reports are due annually on November 1st, and the Department would like to bring to your attention that 'Olelo managed to submit these reports by the due date only once in the last three years.

The Department is concerned that a pattern has developed regarding the delinquent submittals of these reports, therefore the Department denies 'Olelo's request for an extension to submit its reports by November 30, 2008. Furthermore, the Department requests that 'Olelo expedite its internal process to have these reports submitted as soon as possible. Until such time as the Department receives 'Olelo's reports, they are deemed as delinquent.

Should you have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Clyde S. Sonobe".

Clyde S. Sonobe
Cable Television Administrator

C: Lawrence Reifurth, Director

**‘Ōlelo Community Television
2009 Operating Budget Narrative
November 12, 2008**

2009.11.10 10:14
✓

Overview

Activities planned for 2009 are derived from the 2008 strategic initiatives and the overall strategic plan. The strategic plan is in the process of being updated for Board adoption in early 2009. In the interim, ‘Ōlelo will continue to support on-going projects and initiatives at Mapunapuna and the other community media centers. This includes training and mentoring clients, volunteer incentive programs, channel and program promotion, other client services and staff development. Funds for Youth XChange are also included in the 2009 budget. Projected increases in utility and ground rent costs for 2009 could result in a reduction of some services as expenditures for salaries and wages are reduced to minimize the impact on reserves.

2009 OPERATING BUDGET	
REVENUE	
PEG Franchise Fees	\$ 4,714,972
Less: 25% Educational – HENC	\$ 1,178,743
Net PEG FRANCHISE FEES	\$ 3,536,229
Other Revenue	\$ 1,072,726
Total REVENUE	\$ 4,608,955
EXPENSES	
Grant & Contracts	\$ 55,779
Support & Client Services	\$ 6,010,100
Total EXPENSES	\$ 6,065,879
NET	\$(1,456,924)

**‘Ōlelo Community Television
2009 Capital Budget Narrative
November 12, 2008**

2008 NOV 14 0 1:14

Overview

The proposed Capital Budget for 2009 will result in an additional \$165,240 in reserves. The capital budget is primarily composed of replacement equipment. However, a number of systems (Featherpacks, camcorders, EFP equipment, etc.) that were scheduled to be replaced in 2009 will not be purchased since the current units are functioning well. It would be in ‘Ōlelo’s best interest to use this existing equipment until it is no longer serviceable. This decision should not impact current operations because existing items are still in excellent condition. Remaining replacement purchases were forecast in the Five Year Capitol Projections.

These replacement purchases include Apple and PC computers and software, as well as operating system upgrades for existing computers that will remain in service. ‘Ōlelo also plans to purchase additional storage capacity for the on-air automation system. This will help keep up with the growing number of client programs being submitted as we migrate away from tape playback.

2009 CAPITAL BUDGET	
2009 PEG Equipment & Facilities Funds	\$ 823,000
2009 Capital Budget Requests	\$ 657,760
Capital Reserve Net Gain(Loss)	\$ 165,240

fukunaga4 - Michelle

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2009 12:17 PM
To: EDTTestimony
Cc: michael@permaculturemaui.com
Subject: Testimony for HB984 on 3/18/2009 1:15:00 PM

Testimony for EDT/CPN 3/18/2009 1:15:00 PM HB984

Conference room: 016
Testifier position: oppose
Testifier will be present: No
Submitted by: Michael S Howden
Organization: Permaculture Maui
Address: 2020 Olinda Rd Makawao, HI
Phone: 808-573-5225
E-mail: michael@permaculturemaui.com
Submitted on: 3/17/2009

Comments:

I strongly support the statutory support for PEG access and the continuation of Akaku on Maui as it is presently constituted. Akaku has played a major role in disseminating timely information on the workings of our governmental bodies to the communities of Maui Nui.

fukunaga4 - Michelle

From: Sen. Carol Fukunaga
Sent: Tuesday, March 17, 2009 12:21 PM
To: fukunaga4 - Michelle
Subject: FW: Ensure Maximum Public Access Protection in Broadband Bill - HB 894

Hi Michelle,
Please include this as part of the email testimony on HB 984.

Mahalo,
carolf

----- Forwarded Message

From: David Fisher <dfisherhi@gmail.com>
Date: Tue, 17 Mar 2009 10:15:49 -1000
To: Rosalyn Baker <senbaker@capitol.hawaii.gov>, Carol Fukunaga <senfukunaga@capitol.hawaii.gov>
Cc: "Rep. Angus McKelvey" <repmckelvey@capitol.hawaii.gov>, Gil Keith-Agaran <gkeithagaran@gmail.com>, Kyle Yamashita <repyamashita@capitol.hawaii.gov>, "Rep. Mele Carroll" <repcarroll@capitol.hawaii.gov>, "Rep. Joe Bertram III" <repbertram@capitol.hawaii.gov>, Joseph Souki <repsouki@capitol.hawaii.gov>, "Sen. Shan Tsutsui" <sentsutsui@capitol.hawaii.gov>, Kalani English <senenglish@capitol.hawaii.gov>
Subject: Ensure Maximum Public Access Protection in Broadband Bill - HB 894

I am writing to express my conditional support of the Broadband Bill HB 894. If maximum protection for public access to these public resources, including support for our PEG operations, is NOT included, I would be against the bill. Rep. McKelvey argues well both the free speech and economic development case for maximum PEG protection in HB 894 in the video clip posted at Akaku's website <http://tinyurl.com/cmqwht>. It is my understanding that there is a version of the bill that would have the effect of killing public access in Hawaii.

One of my earliest exposures to entrepreneurship and the workings of small business was in community broadcasting working as a dj, sales person, treasurer and general manager at the non-profit Yale Broadcasting Corporation (WYBC FM) New Haven, CT while in college in the 1970's. Half of the members of WYBC FM were non-Yale students from the broader New Haven community, and it was from this working exposure and appreciation of diversity: racial, economic, professional, and cultural that has stayed with me to this day. This is also where I got my first experience with technology, splicing audio tape and producing commercial spots and PSA's for local small businesses and community organizations. (We were challenged by the IRS on the commercials, and won at the U.S. Supreme Court).

It was this experience that later led to my teaching one of the first Internet classes on Maui in 1990 taught at the new VITEC facility (in the old Maui News building) showing small businesses and community members how to access EcoNet, and Hawaii's brand new Legislative AccessNet.

Now with close 20 years of economic development experience in Hawaii, focused in the innovation sector, I very much appreciate the value represented by the broadband bill. However, if the bill does not include strong public access

provisions, and the ability for individuals not affiliated with large businesses or institutions to have easy affordable access, we will do great harm to our potential for innovation. As Rep. McKelvey has well noted, many of our most successful businesses started off small in bedrooms, garages, with minimal resources but with easy access to the public via a competitive media and communications environment.

Please ensure maximum public access protection in Broadband Bill - HB 894.

--

David B. Fisher
PO Box 792138
Paia, HI 96779
808-269-1031

----- End of Forwarded Message

fukunaga4 - Michelle

From: Scott Crawford [scott@aloha.net]
Sent: Tuesday, March 17, 2009 10:49 AM
To: EDTTestimony
Subject: Support of HB984, Relating to Technology with "PEG Protection Amendments"

Re: HB984
Committees on EDT/CPN
Hearing 03-18-09 1:15pm in conference room 016

Chairs Carol Fukunaga and Roz Baker,

I support HB984, but I oppose the effort to use this bill to threaten community access TV.

Please make sure that strong PEG protection language is inserted into this bill.

Akaku here on Maui is a very valuable resource for the community and it could be seriously threatened or eliminated if this protective language is not inserted.

Mahalo for your consideration,

Scott Crawford
PO Box 645
Hana, HI 96713
808-248-8808

fukunaga4 - Michelle

From: John Bruce [jonthebru@gmail.com]
Sent: Monday, March 16, 2009 10:13 PM
To: Sen. Roz Baker; Sen. Carol Fukunaga; Sen. Clayton Hee; EDTTestimony; Sen. David Ige; Sen. Sam Slom; Sen. Les Ihara, Jr.; Sen. Josh Green
Subject: Testimony for HB984 WITH PEG Amendments. John Bruce Maui, Hawaii.

John Bruce Akaku Board Member Haiku, Hawaii

Testimony for HB984 WITH PEG Amendments.

The committee(s) on EDT/CPN , chaired by Carol Fukunaga and Roz Baker.

Senate joint committee hearing WEDNESDAY, 03-18-09 1:15pm in conference room 016. 10 Copies

I don't have any fancy, pretty letterhead showing that I am a big Government expert or University executive or a large telecommunications firm. I just know what I have learned over the past three years on the Akaku Board. and as a lifelong Maui Resident.

This bill HB984/SB1680 RELATING TO TECHNOLOGY: Hawaii Communications Commission; Broadband Regulation; Broadband Franchising; Broadband Permitting is an important Bill that could be a real trendsetter for the Nation. But the Amendments relating to PEG Access Protection MUST be included in the Law to set the trend.

I am very aware that special interests wish to keep the Public out of the Broadband bill but that is the very reason the Public (Us!) should be included. The head of DCCA has commented, in his truly bureaucratic articulate manner, that the PEG issue could be handled another way. Most certainly, he means His Way!

Lets see now; PEG is Public, Education, and Government. If we can just drop these pesky citizens, the Public, from the bill we can dole out the funds and channels to the impotent, friendly groups whom we choose. It can be just like PBS , totally innocuous or like the UH unable to keep its own house in order, or like a government agency with very close ties to the industry it is supposed to regulate. Mandate that Government, Education, and Industry run this thing with out the activist citizens who always seem to get in the way.

Regardless of the fact that the whole idea of open democracy is being pushed aside for the narrow special interests of a few individuals who wish to dominate the future of Hawaii's Communication systems, the People should be grateful. Remember the "Golden Rule" Those with the gold, rule.

Like I said above, members of the Committee, regardless of the pressure you are receiving on this issue, should include the amendments Protecting PEG Interests in the Bill being considered.

Even as the DCCA, The University and the Industry put the pressure on, you need to do the right thing. Consider the Source. Just because they don't want the amendments to be included doesn't mean they should get what they want. Do the right thing.

I want our station to not be a political football. I want our operation to be autonomous of Political interference or pressure.

Did I mention that the amendments that will protect PEG access should be in the final form of HB984/SB1680?

John Bruce, Akaku Board Member Maui, Hawaii

Testimony, Netra Halperin
EDT/CPN
HB984 - support- with amendments
March 18, 2009
Rm 016 1:45 p.m.

Aloha Chair Baker and Chair Fukunaga and members of the committees,

My name is Netra Halperin. As a resident of Hawaii I support broadband technologies and I also support language to protect public access and community television being inserted into the broadband bill.

I support HB984, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural and urban communities.

As a Maui county council Candidate, I have personally received great benefit from Akaku community television. I have taken their classes on television production, produced my own programs and then aired them on Akaku. Other bills talk about campaign reform, of the need to make the ability to run for office open to new candidates who aren't wealthy. Akaku is already contributing to campaign finance reform. Their classes cost almost nothing. Use of their professional quality equipment, editing lab and air-time do cost nothing. Maui, especially because the County council members are elected by at large voting, and it isn't possible to meet all of the constituents personally, needs to have media available for new candidates, with new ideas to even have a chance.

Additionally, I understand that while Capitol TV films the House and Senate sessions and many of the committee meetings, it is Olelo that aires them. Many people aren't able to come to the legislature as they must work during the day. If we are serious about maintaining government transparency, it is crucial that we keep these meetings easily accessible to the public, and that is what PEGs do.

Please amend HB984 to also protect PEG access. These services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you for hearing my testimony.

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

Testimony in Support of SB1680/HB984, Relating to Technology, with PEG PROTECTION Amendments.

I am a concerned resident of Hawaii who supports broadband technologies and also supports language to protect public access and community television to be inserted into the broadband bill.

Please accept this as my testimony in support of SB1680/HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

Alan Arakawa
Former Mayor of Maui County

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka'i, Lana'i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Lucrezia Oddie

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

Testimony in Support of SB1680/HB984, Relating to Technology, with PEG PROTECTION Amendments.

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I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

ROBERT MEYER

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka'i, Lana'i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Jon Ashley

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

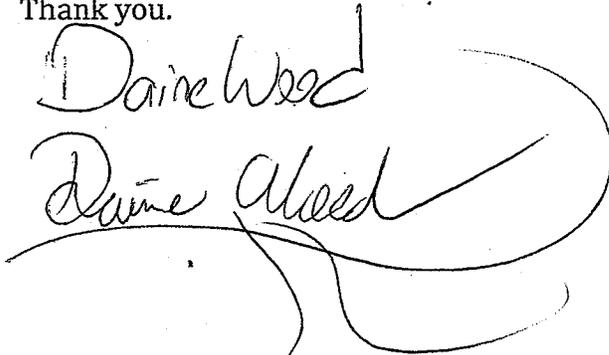
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I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

Daine Wood


MAR 17 2009

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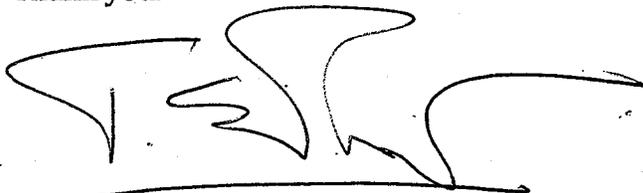
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Thank you.



THOMAS S. TALBOT

P.O. BOX 791904

PAIA, HI 96779

03-16-09

MAR 17 2009

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Economic Development and Technology (EDT)

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Thank you.



Matthew Robinson

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Thank you.

Renee Sakurada

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Thank you.

A handwritten signature in cursive script that reads "Amy DeWae DeLisi". The signature is written in black ink and is positioned below the typed text "Thank you."

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Thank you.

Joan L. Desouza

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Thank you.

STEPHANIE SACAS

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Thank you.

MAUREEN VAN DENBURGH

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Thank you.

BRUCE McDONALD

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Thank you.

JACQUELYN COLMAN

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Thank you.

ROBERT COLMAN

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Thank you.

DALE FUJiyAMA

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ROXANNE FUJIYAMA

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Thank you.

GENE VAGANON

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Thank you.

JAMES HERRINGTON

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Thank you.

ERIC YOSHIDA

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Thank you.

Michael Ryals

michaelryals@yahoo.com

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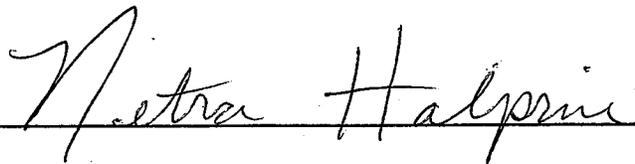
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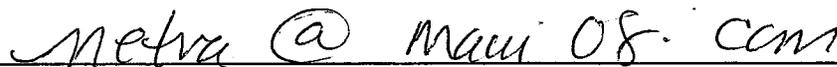
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Thank you.

Robert Jeffcoat . jeffcoat007 @ g-mail . com

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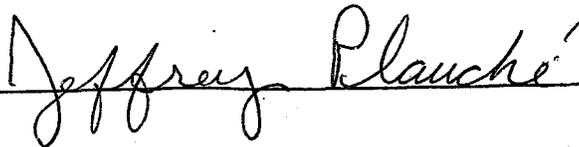
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Thank you.

Milton Oyama

hokulani5@hawaiiAntel.net

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Thank you.

A handwritten signature in cursive script that reads "Maj Scheidler". The signature is written above a horizontal line.

A handwritten email address "maj@purechange.com" written in cursive script above a horizontal line.

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Thank you.

Bob Stone

stonebob@maui.net

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Thank you.

Gene Weaver

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Thank you.

Georgie Hunter

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Thank you.

Gina Sansone

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Thank you.

Fred Ruge

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Thank you.

Judy Caparida
Kaunakakai, Molokai

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I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

Michelle Maioko
Kaunakakai, Molokai

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Thank you.

Joseph Mawae
Kaunakakai, Molokai

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Thank you.

Alestra Mendez
Kaunakakai, Molokai

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Thank you.

Thomas Copper

email - ctnrcooper@hotmail.com.

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Thank you.

Roy Bendell

email - sunupwaterman@yahoo.com

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Thank you.

Evan Mazingo

email - mazingocountry@hotmail.com.

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Thank you.

Annie Rutenber

email - Erin.rutenber@gmail.com

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Thank you.

Mari Sheets

Sheets@maui.net

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Thank you.

Stan Sheets
Sheets@maui.net

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Thank you.

① James ~~McClean~~ ^{McClellan}

email - burns.mcclellan@gmail.com

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Thank you.

① Robert McLean

bubba mclean@aol.com

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Thank you.

Ron ~~Tanaka~~ Tolbert

email - rdtolbert007@aol.com

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Thank you.

Cynthia Clarke
cynthia@chameleon talent.com

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Thank you.

Melissa Ross
melissa@bbbsmaui.org

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Chris Tronolone

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Thank you.

Kevin Saiiki
ktsaiki12@aol.com

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Thank you.

Kirk McWabb
ledfootpilot@yahoo.com

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Thank you.

Taylor Wilson

taylorwilson9300@yahoo.com

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Jon Morgan

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Cindy Paulos

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Colette Ladera

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John Croteau

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Dan Shigeta

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Daniel Grantham

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Thank you.

Lucienne DeNaie

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Thank you.

Darla Palmer

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Thank you.

Darlynn Swajka

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Thank you.

Cayelin Halley

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**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka`i, Lana`i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Wyatt Hall

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka`i, Lana`i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Kirk Heiner

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

Testimony in Support of SB1680/HB984, Relating to Technology, with PEG PROTECTION Amendments.

I am a concerned resident of Hawaii who supports broadband technologies and also supports language to protect public access and community television to be inserted into the broadband bill.

Please accept this as my testimony in support of SB1680/HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

Paul Cleveland

MAR 17 2009

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Economic Development and Technology (EDT)

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Wednesday, March 18, 2009 1:15PM Room 016

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Thank you.

Carey Yashon

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Thank you.

Calvin Kuamoo

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Thank you.

Bethany Romias

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Thank you.

Stanton Cohen

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Thank you.

Brett Phillips

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Thank you.

Jaqueline Prouty

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Thank you.

Matthew Roberts

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Thank you.

Malia Nordman

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Thank you.

Sharon Goldenberg

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Thank you.

Jenette - Koki Foster

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Thank you.

Wailani Ka'ai

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Thank you.

Ingrid Thronson

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Thank you.

Jamie Musshorn

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Thank you.

Kaao Kepani

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Thank you.

Chris Fagerlund

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Thank you.

Frazier Benson

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Thank you.

Jerry Morgan

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Thank you.

LUKE SUTHERLAND

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Thank you.

Alli Waters

MAR 17 2009

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Richard Gesch

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Thank you.

Vincent Suki

Email- palukabugga@yahoo.com.

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Thank you.

Theresa Roberts

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Thank you.

Adele O'Neill

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Thank you.

Aimee Johnson

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Thank you.

Ann Arakawa

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Thank you.

Alexander Ignath

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Thank you.

Ann Pitcaithley

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Thank you.

CHRISTINA McDONALD

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Thank you.

LAWRENCE BOOKER

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Thank you.

LAUREN YOUNG

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

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Thank you.

LARRY GIBBS

MAR 17 2009

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Economic Development and Technology (EDT)

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Thank you.

LEROY FOREMAN

MAR 17 2009

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Thank you.

LEAH TUNAKARA

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Thank you.

LEHUALANI AQUINO

MAR 17 2009

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Thank you.

JULIAW GAYTAN

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Thank you.

LORAYNE LIPPS

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Thank you.

LOU DILLBERTO

MAR 17 2009

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Economic Development and Technology (EDT)

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Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka'i, Lana'i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Joel C. Miller

MAR 17 2009

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Wednesday, March 18, 2009 1:15PM Room 016

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I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

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Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

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Thank you.

JORDAN K. HUEU

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Thank you.

LANCE HOLTER

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Thank you.

LAKI P. KAAHUMANU

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Thank you.

HELEN KRITZLER

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Thank you.

Pema Gilman, Kihui, MAUI
pemagilman@yahoo.com

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CARR JOHNSON
LAHAINA, MAUI

Johnsonzoo@hawaii.rr.com

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Thank you.

Jenabe Caldwell
Wailuku, Maui

jebc@msn.com

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Thank you.

Lola Corrao
WAILUKU HEIGHTS, MAUI

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GUY GAUMONT
KEOKEA, MAUI
guygaumont@hawaii.rr.com

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Carol Takamori

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Thank you.

HEALANI CALLUM

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Thank you.

A handwritten signature in cursive script that reads "Emily Sullivan". The signature is written in black ink on a white background.

MAR 17 2009

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Thank you.

Bettye Gulman

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Thank you.

Betty Babcock

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Thank you.

Bennett Yashon

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Thank you.

Benjamin Booth

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Thank you.

Mike Knowles

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Thank you.

Kevin Kennedy

kk

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Thank you.

Tyson Saucier

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Thank you.

Kevin Collins

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Thank you.

Karen Bouris

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Thank you.

Kenny Hultquist

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

Testimony in Support of SB1680/HB984, Relating to Technology, with PEG PROTECTION Amendments.

I am a concerned resident of Hawaii who supports broadband technologies and also supports language to protect public access and community television to be inserted into the broadband bill.

Please accept this as my testimony in support of SB1680/HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Mahalo

Hugh L. Simpson

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Mahalo

Judy Harris

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Max Harris

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Mahalo

Matamoana Kaauwai

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Mahalo

Brenda Pua

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Mahalo

Mark Sacco

email - msacco2@juno.com

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Mahalo

Dave Garrison

email - daveg@akaku.org

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Mahalo

Betty Green

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Mahalo

Malie Ladera

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Mahalo

Makana Eharis

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Mahalo

Mae McCarter

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Mahalo

Mahealani Ventura-Oliver

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Mahalo

Susan Welck

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Thank you.

Evelyn Zayas

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Thank you.

Paul Marinos
Kaunakakai, Molokai

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Thank you.

Charisse Manley
Kaunakakai, HI

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Myron Akutagawa
Kaunakakai, Molokai

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Michael D'Addario

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Thank you.

Josh Mendes

ph - 281 - 6677

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Patrick Jepperson

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Michael Unger

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Jasmine Pahukoa

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Inda Gallagher

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Alison Fahland

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Randall Fahland

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Wallace Thompson

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Randall Endo

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Randy Hufford

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Renee Beauvais

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Donna Richmond

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Richard Marks

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Roan Browne

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Thank you.

Lonnie Hardesty

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**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

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The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Rich Owen

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Keith Ranney

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Chris Taylor

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Blaine Beanings

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Kai Nishiki

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Linda Orset

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Vajra Evison

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Randy Baygood

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KATHY KNOWLTON

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Ruth April Carter, Mountain View HI.

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

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The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.

Ruth Breslin April, Mountain View Hawaii

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Thank you.

Robert Osborne

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Thank you.

Bonnie Wietecha

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Thank you.

Maggie Bruck

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Sam Young

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Scott Jensen

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Kat Lvi

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Thank you.

Curtis Paddock

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Thank you.

Annie Mellah

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Tom Coravos

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Thank you.

Mauricio Lopez

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Thank you.

Bryan Stewart

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Testimony in Support of SB1680/HB984, Relating to Technology, with PEG PROTECTION Amendments.

I am a concerned resident of Hawaii who supports broadband technologies and also supports language to protect public access and community television to be inserted into the broadband bill.

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I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

A handwritten signature in black ink, reading "Hon. Sabrina Kaeing". The signature is written in a cursive style with a large, looping flourish at the end.

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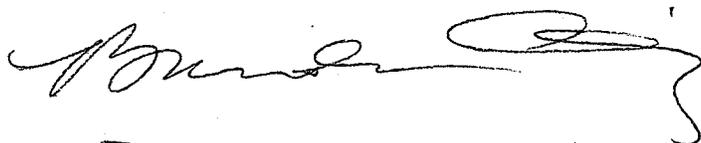
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BRENDA CHING

MAR 17 2009

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Cody Sheets

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Commerce and Consumer Protection (CPN)

Wednesday, March 18, 2009 1:15PM Room 016

**TESTIMONY IN SUPPORT OF SB1680/HB984, RELATING TO TECHNOLOGY, WITH
PEG PROTECTION AMENDMENTS**

I am a concerned resident of Hawaii, who supports broadband technologies and also supports community access television-the missing link in HB984.

Please accept this email as my testimony in support of HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

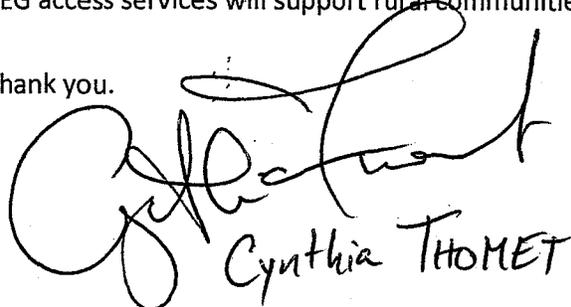
Thanks to internet technologies, I was able to appreciate the value that PEG access organizations can contribute to communities at the local level. Akaku: Maui Community Television made it possible for Maui residents to participate in the democratic process in a meaningful way. In fact, during the elections season, I realized how much Akaku is like a digital community center, where the voices of television viewers and internet surfers like me can be on a level playing field with the voices of politicians, media watchdogs, and community opinion leaders.

For the first time in the history of Maui, residents witnessed the first live broadcasts from such rural areas as Moloka'i, Lana'i and Hana-the underserved communities and areas that would benefit most from expanded broadband technologies-on the night of the State Primaries. Imagine, real voices from rural areas were heard in real-time on elections nights-all thanks to internet technologies!

The role that PEG access centers play in enabling a real-time on-the-air conversation between all of Hawaii's islands open up a world of possibilities for bringing rural voices to the digital discussion.

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities.

Thank you.



Cynthia THOMET

MAR 17 2009

Carol Fukunaga, Chair
Economic Development and Technology (EDT)

Rosalyn H. Baker, Chair
Commerce and Consumer Protection (CPN)

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I am a concerned resident of Hawaii who supports broadband technologies and also supports language to protect public access and community television to be inserted into the broadband bill.

Please accept this as my testimony in support of SB1680/HB984, Relating to Technology, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural communities.

I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you.

Curt Bennett

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Thank you.

Sharyn Stone
Huelo

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Thank you.

Shannon Winter
Kihei

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Thank you.

Sean Hoski-Merck.
Kula, HI

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Thank you.

SOLANA REHNE

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Thank you.

Sita Schwesler
Haiku, HI

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Thank you.

Mario Salamone

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Thank you.

Kenneth Gonzales

opih99 @ ~~the~~ @ wave.
hivu.net

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Thank you.

Maati Kaaawa

Opini 99 @ wave.hicv.net

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Vanessa Gonzalez

opih99 @ ^{Wave} ~~maui~~.hawaii.net

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Thank you.

Elle Cochran

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Thank you.

Nambe Cardellini

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Thank you.

Wayne Cardellini

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Thank you.

T.C. Callison

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Thank you.

Emily Sullivan