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Statement of  
**THEODORE E. LIU**  
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Department of Business, Economic Development, and Tourism  
before the

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Monday, March 23, 2009

2:15 p.m.

State Capitol, Conference Room 325

**SB 1680 SD 2 HD 1**  
**RELATING TO TECHNOLOGY**

Chair Herkes, Vice Chair Wakai, and Members of the House Committee  
Consumer Protection and Commerce.

DBEDT supports SB 1680 SD 2, HD 1; 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.



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LAWRENCE M. REIFURTH  
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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, March 23, 2009  
2:15 p.m.

**TESTIMONY ON SENATE BILL NO. 1680, S.D. 2, H.D. 1  
RELATING TO TECHNOLOGY**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, GLENN WAKAI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

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

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 H.B. 984, H.D. 4 and not S.B. 1680, S.D. 2, H.D. 1. We also anticipate that the Senate will similarly replace the contents of H.B. 984, H.D. 4, with the contents of S.B. 1680, S.D. 2. Consequently, our testimony to the Senate was based on S.B. 1680, S.D. 2.

H.B. 984, H.D. 4, 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 House companion, our testimony will focus on our concerns with H.B. 984, H.D. 4.

Please note that we have been and are continuing to meet with interested parties, including legislators, to discuss the contents of this measure. We are pleased to undertake this effort, and expect that it will continue as the bill (we hope) moves on to the money committees in both houses, and thereafter into conference.

**Addressing the concerns of the cable and telephone competitors.**

The Department has been meeting with the cable operator (Oceanic Time Warner ("OTW")), the telephone company (Hawaiian Telcom ("HT")), TW Telcom, AT&T and Verizon in an attempt to address their concerns with the bill. Not everyone agrees, but 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 Committee 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 Department developed 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 the suggested language.

**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. This 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 for broadband purposes, the Department requests that the Committee incorporate the language in **Attachment 4**.

**Technical clarifications.**

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

**PEG-related issues.**

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. The Department has supported and continues to support exempting the PEG contracts from chapter 103D requirements.

**Attachment 6** provides suggested language regarding PEG-related issues.

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

## Attachment 1

To address the concern of industry members that the intent of the bill is NOT 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, but to allow the Commission 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 Commission's authority in the event that federal law on the subject changes:

Paragraph (5) on page 4 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 not prohibited by federal law;

To address concerns raised by industry members that, in certain situations, the new Commission's authority may be pre-empted by federal law, the Department suggests that

the phrase "where not prohibited by federal law" be inserted into:

1. Section \_\_\_-8(b) on page 13, line 16:

(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, where not prohibited by federal law.

2. Section \_\_\_-10(a) on page 16, line 17:

(a) [~~The~~] Where not prohibited by federal law, the commission shall have power to examine:

- (1) The condition of each telecommunications carrier, cable operator, and PEG access organization;
- (2) The manner in which each telecommunications carrier, cable operator, and PEG access organization is operated with reference to the safety or accommodation of the public;
- (3) The safety, working hours, and wages of employees of each telecommunications carrier, cable operator, and PEG access organization;
- (4) The fares and rates charged by each telecommunications carrier, cable operator, and PEG access organization;

## Attachment 1

- (5) The value of the physical property of each telecommunications carrier, cable operator, and PEG access organization;
- (6) The issuance by each telecommunications carrier, cable operator, and PEG access organization of stocks and bonds, and the disposition of the proceeds thereof;
- (7) The amount and disposition of income of each telecommunications carrier, cable operator, and PEG access organization;
- (8) All financial transactions of each telecommunications carrier, cable operator, and PEG access organization;
- (9) The business relations of each telecommunications carrier, cable operator, and PEG access organization with other persons, companies, or corporations;
- (10) Compliance of each telecommunications carrier, cable operator, and PEG access organization with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any; and
- (11) Classifications, rules, regulations, practices, and service, and all matters of every nature

affecting the relations and transactions between each telecommunications carrier, cable operator, and PEG access organization and the public or persons or corporations.

3. Section \_\_\_-16(a) on page 24, line 10:

(a) If the commission is of the opinion that any telecommunications carrier, cable operator, PEG access organization, or any person is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission, or of any provisions of its certificate of public convenience and necessity, franchise, charter, contract, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to ensure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, the commission shall in writing inform the telecommunications carrier, cable operator, PEG access organization, or the person and may institute proceedings before it as may be

necessary, where not prohibited by federal law, to require the telecommunications carrier, cable operator, PEG access organization, or the person to correct any deficiency. In that event, the commission may by order direct the consumer advocate to appear in the proceeding, to carry out the purposes of this section. The commission may examine into any of the matters referred to in section -10, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of any court or other body. The commission may also revoke or amend any provision of a certificate of public convenience and necessity, franchise, charter, or articles of association, if any, pursuant to section -31 or -71.

4. Section -66(c) on page 66, line 4:

(c) To the extent not prohibited by federal law, the commission shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.

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

Add a new section \_\_\_-54 to read:

**"§ -54 Local exchange intrastate services; fully competitive.** (a) Notwithstanding any law to the contrary, beginning July 1, 2009, and until June 30, 2010, the public utilities commission shall, and beginning July 1, 2010, the Hawaii communications commission shall, classify the state's local exchange intrastate services, under the commission'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 public utilities commission until June 30, 2010, and beginning July 1, 2010, shall be filed with the commission, 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 46, line 3) should be deleted and replaced with the following:

**§ -38 Regulation of [~~telecommunications carrier~~]  
basic residential service rates; ratemaking procedures.**

(a) This section shall apply only to increases to basic residential service rates proposed by the incumbent local exchange carrier.

(b) 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 public utilities commission until June 30, 2010, and with the commissioner beginning July 1, 2010. The rates, fares, classifications, charges, and rules of every telecommunications carrier shall be published by the telecommunications carrier in such manner as the commission may require, and copies shall be furnished to any person on request.

(c) Beginning July 1, 2010, the commission may waive rate regulation and allow telecommunications carriers to have pricing flexibility for services that the commission 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 commission 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 commission or the public utilities

commission, shall be established, abandoned, modified, or departed from by any telecommunications carrier, except after thirty days' notice to the commission as prescribed in section -14(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, 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 -14(b). Unless and until the commission 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 -14(c), at which the consumers or patrons of the telecommunications carrier may present testimony to the commission concerning the increase. The commission, 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:

## Attachment 1

- (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 commission'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) Beginning July 1, 2010, the commission 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 commission 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 commission, 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 commission. 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 commission 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 commission may make and amend its rules and procedures to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the telecommunications carrier company and its customers."

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, 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 \_\_\_-23 on page 32 to read:

**§ -23 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.

Other suggestions made by industry members that the Department has agreed to:

1. Section -1 on page 5, line 18 (definition of "broadband"

"Broadband" means an "always on" data networking service that enables end users to access the Internet [~~that uses~~] and use a variety of applications [~~, at minimum speeds set by the commissioner~~].

2. Section -1, add a definition for

"telecommunications":

"Telecommunications" means the transmission between or among points specified by the user of information of the user's choosing, without change in the form or content of the information as transmitted and received.

3. Section -9(b) on page 14, line 18:

(b) No later than July 1, 2011, the commission shall study and develop a comprehensive policy to promote further [~~deploy~~] deployment of broadband communications, including Internet access, in the state. The study shall include consideration of communications by wire and radio, including satellite and wireless services. The commission shall develop plans and strategies to increase broadband affordability, penetration, and competitive availability in the state. The plans may include measures to streamline access to public rights-of-way and public facilities for broadband service providers and the permitting and approval processes required for such access. The plans may also include making low-cost, broadband-capable computers available to eligible recipients. The plans may further include encouraging or, with respect to state-owned property, requiring the sharing of new infrastructure used

for broadband services. The commission shall regularly update and revise the commission's studies and findings to ensure that the State's policies and initiatives remain effective in promoting the State's interests.

4. Section -11 on page 19, line 3:

**§ -11 Delegating powers.** Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the commission employed pursuant to section -5(a), -5(b), or -5(d) acting in the name and by the delegated authority of the commission and who has knowledge and experience in the area for which responsibility is being delegated. Any power, duty, or function vested in the commission by this chapter may be exercised, discharged, or performed by any employee of the department utilized pursuant to section -5(c) or -5(e) acting in the name and by the delegated authority of the commission, with the approval of the director.

5. Section -20 on page 30, line 6:

**§ -20 Telecommunications carriers, cable operators, and PEG access organizations, to furnish information.**

Every telecommunications carrier, cable operator, PEG

access organization, or other person subject to investigation by the commission, shall at all times, upon request, furnish to the commission all information that the commission may require respecting any of the matters concerning which the commission is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents related to its operations in or affecting the state by the commission or any person authorized by the commission in writing to make the examination, and shall furnish the commission with a complete inventory of property under its control or management in or affecting the state in the form as the commission may direct. Information and data that the commission requires to be produced by a telecommunications carrier, cable operator, PEG access organization, or other person that is proprietary in nature or qualifies as commercially sensitive information shall be treated and protected as confidential by the commission.

6. Section -32 on page 37, line 5:

§ **-32 Location of records.** A telecommunications carrier shall keep and maintain records, books, papers, accounts, and other documents related to its operations in or affecting the state as the commission may determine are

necessary to effectively regulate the telecommunications carrier, that can be made [~~immediately~~] accessible within a reasonable time frame when requested by the commission; provided that the original copies are made available when requested by the commission.

7. Section -63(b)(5) on page 61, line 15:

(5) Any other matters deemed appropriate and necessary by the commission including but not limited to the proposed plans and schedule of expenditures for or in support of the use of PEG access facilities [~~, and the competitive availability and affordability of broadband and other advanced services to consumers~~].

8. Section -72 on page 72, line 4:

**§ -72 Reports.** Each cable operator shall file with the commission reports of its financial, technical, and operational condition and its ownership within or affecting the state. The reports shall be made in a form and on the time schedule prescribed by the commission and shall be kept on file open to the public.

## Attachment 2

Insert a new definition in section \_\_\_-1 to read:

"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."

Add a new section \_\_\_-25 on page 34 to read:

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

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

(c) The commission may establish a separate account within the Hawaii communications commission special fund and assign to that account federal moneys appropriated

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

(d) Any moneys applied for or received by the department under the American Recovery and Reinvestment Act of 2009 for uses related to the purpose of this Act and not yet encumbered shall be transferred to the Hawaii communications commission upon its establishment.

(e) The commission 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 shall be exempt from chapter 103D."

Add a new section -75 on page 73 to read:

**§ -75 Broadband inventory maps.** The Hawaii communications commission shall designate the entity to be responsible for developing and maintaining broadband inventory maps, as well as the other initiatives described in the American Recovery and Reinvestment Act of 2009 and section 106 of the Broadband Data Improvement Act (P.L. 110-385). If not prohibited by federal law, the commission 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 commission in support of broadband mapping, reporting, and data-driven policy support. Except as provided in this Act, proprietary data on private infrastructure, including reports, working papers, recorded information, documents and copies thereof, produced by, obtained by, or disclosed to the commission or any other person in the course of their official duties, shall be confidential by law and privileged, shall not be

subject to disclosure under chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The data may be made available to the public only in a summarized form that appropriately protects the proprietary concerns of those private providers.

Add a new section to the bill to read:

SECTION \_\_. There is appropriated out of the federal funds subaccount of the Hawaii communications commission special fund the sum of \$\_\_\_\_\_ or so much thereof as may be necessary for fiscal year 2008-2009 and 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 sum appropriated shall be expended by the Hawaii communications commission for the purposes of this Act.

Suggested changes to read:

1. **Subsections (a) and (c) of -5 on page 11:**

"§ -5 **Employment of [assistants.] commission 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. **Subsections (a) and (b) of section 57 of the bill on pages 152-153:**

"(a) The department of commerce and consumer affairs shall transfer all four positions from the cable television division to the service of the Hawaii communications commission[~~. The positions selected for transfer shall reasonably relate to the functions of the Hawaii communications commission.~~]; 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 communications commission, 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 communications 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) [~~Up~~] There shall be up to [an additional] ten [general funded] new temporary exempt positions [shall be transferred to] established in the Hawaii communications commission to assist the commissioner in carrying out the provisions of this Act. These positions shall be funded from the Hawaii communications commission special fund and may be filled without regard to chapter 76."

**3. Subsection (c) of section 57 of the bill on pages 153-154 should be deleted.**

**Attachment 4**

Add a new subsection (d) to section \_\_\_\_-21 on page 32  
to read:

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

## Attachment 5

To ensure that the Commission 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 \_\_\_-9(c) starting on line 14 on page 15 should be amended to read:

"(c) The commission 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. These programs may include initiatives by the State to facilitate and construct new broadband communications infrastructure that can be shared by competing providers of broadband services. The commission shall fund these programs and initiatives using fees collected pursuant to sections       -24,      -25,      -51,      -73, and 92-21 and deposited in the Hawaii communications commission special fund pursuant to section       -21. In conjunction with the funds, or alternatively, the commission may seek appropriations of funds from the State."

2. Section \_\_\_-21(b) starting on line 21 on page 31 should be amended to read:

## Attachment 5

"(b) All moneys appropriated to, received, and collected by the commission 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 Hawaii communications commission special fund including but not limited to all moneys received and collected by the commission pursuant to sections -24, -25, -51, -73, and 92-21."

3. Section 26-9(o), HRS, which is being amended in SECTION 3 of the bill at page 74, line 15 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

## Attachment 5

deposited into the compliance resolution fund. This provision shall not apply to any fee imposed by the Hawaii communications commission pursuant to chapter , including the regulatory fees in sections -24, -25, -51, and -73, the drivers education fund underwriters fee, section 431:10C-115, 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

**Attachment 5**

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.

. . . ."

To clarify that charter schools are included in the definition of schools, the definition of "school" section \_\_\_-1 on page 9, line 15 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 Commission should have the discretion in opening investigations brought by a complaint. Consequently, section \_\_\_-10(c) starting on page 18, line 12 should read:

"(c) Any investigation may be made by the commission 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

## Attachment 5

upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint."

Correct an incorrect citation. Also, for consistency, if the Commission is authorized to fine telecommunications carriers, cable operators, AND PEG access organizations, the Commission should also be able to order PEGs to cease operations if violations continue. Section \_\_\_-24(a), on page 33, line 9 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 commission, including but not limited to the grounds specified in section [~~—71~~] —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 commission after a hearing in accordance with chapter 91. The commission 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.

## Attachment 5

Technical clarification. Section \_\_\_-64(2), starting on line 13 on page 62 should read:

"(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the commission 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 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 commission 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;"

Clarify that the Commission's treatment of confidential, proprietary information must conform to chapter 92F. Section \_\_\_-20 starting on line 6 on page 30 should read:

**§ -20 Telecommunications carriers, cable operators, and PEG access organizations, to furnish information.** Every telecommunications carrier, cable operator, PEG access organization, or other person subject to investigation by the

## Attachment 5

commission, shall at all times, upon request, furnish to the commission all information that the commission may require respecting any of the matters concerning which the commission is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission or any person authorized by the commission in writing to make the examination, and shall furnish the commission with a complete inventory of property under its control or management in the form as the commission may direct. Information and data that the commission requires to be produced by a telecommunications carrier, cable operator, PEG access organization, or other person that is proprietary in nature or qualifies as commercially sensitive information shall be treated and protected as confidential by the commission pursuant to chapter 92F.

Clarify the implementation dates. Section 62 of the bill on page 156 should read:

SECTION 62. This Act shall take effect on July 1, [~~2020~~ 2009]; provided that:

- (1) Any decision or order executed by the public utilities commission prior to this Act taking effect shall remain in full force and effect until such time as the

## Attachment 5

Hawaii communications commission may amend or repeal the decision or order under the Hawaii communications commission's jurisdiction;

- (2) Provisions relating to the regulation of telecommunications carriers and telecommunications common carriers by the Hawaii communications commission contained in sections -31 to -37 and -39 to -53 in part II of the new Hawaii Revised Statutes chapter created in section 2 of this Act [~~7~~ and ~~part III of this Act~~] shall take effect on July 1, 2010; [~~and~~]
- (3) The public utilities commission shall continue its regulation of telecommunications carriers and telecommunications common carriers under chapter 269, Hawaii Revised Statutes, until June 30, 2010;
- (4) Sections -38 and -54, in part II of the new Hawaii Revised Statutes chapter created in section 2 of this Act shall take effect on July 1, 2009; and
- ~~[(3)]~~ (5) The amendments made to section 28-8.3, Hawaii Revised Statutes, in section 4 of this Act shall not be repealed when that section is repealed and reenacted by section 14 of Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22,

**Attachment 5**

Session Laws of Hawaii 2005, as amended by section 1  
of Act 306, Session Laws of Hawaii 2006.

LINDA LINGLE  
GOVERNOR



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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION & COMMERCE

March 23, 2009

2:15 PM

SB 1680, SD 2, HD 1

RELATING TO TECHNOLOGY.

Chair Herkes, Vice-Chair Wakai and committee members, thank you for the opportunity to testify on SB 1680, SD 2, HD 1. The State Procurement Office (SPO) testimony is limited to SECTION 3, PART III, page 66 and page 75.

**Page 66**, lines 15 to 18, the SPO recommends amending to read as follows:

“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 in accordance with HRS Chapter 103D. These administrative rules shall be adopted with~~ The solicitation issued shall include input from the ....”

The access services contracts are agreements between a governmental body, the Hawaii Broadband commissioner (HBC), and access organizations that are private, non-profit corporations. Under these contracts, HBC is acquiring services to manage and operate the access channels. Therefore, the access contracts are "procurement contracts" under HRS §103D-102.

Open procurement procedures assure that the State obtains value, and potential vendors/contractors are treated fairly and that no preferential treatment is provided. It is vital to good government to have a fair and consistent process to award government contracts that hold agencies responsible and accountable for their actions. Open bidding promotes the fair and equitable treatment of all persons who deal with the procurement system, fosters effective broad-based competition; and by doing so, increases public confidence in public procurement and thus in local government.

Chapter 103D is the single source of public procurement policy to be applied equally and uniformly. It was the legislature's intent for the Code to be a single source of public procurement policy. Fairness, open competition, a level playing field, and government disclosure and transparency in the procurement and contracting process are vital to good government. Competition produces innovation and excellence. For this to be accomplished, participation in the process with one set of statutes and rules is necessary.

**Page 75**, lines 1 to 4, the SPO recommends deleting subsection (f).

The SPO understands the purpose of this proposed language is to provide a temporary measure to assist the HBC in expediting the implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) as envisioned by President Obama. Part of the vision on the effects to the economy the ARRA proposes to bring to the States, is the underlining need for transparency and accountability to the people. This proposed exemption provision would not fulfill these requirements.

To meet these concerns the SPO understands SB 21, SD 2 and HB 1184, HD 2 address similar concerns faced by various agencies anticipating receiving ARRA funds, therefore this language on page 75, subsection (f) appears unnecessary.

Thank you



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Consumer Protection and Commerce  
March 23, 2009 at 2:15 pm

by

David Lassner

Vice President for Information Technology/CIO, University of Hawaii

SB 1680, SD2, HD1 – RELATING TO TECHNOLOGY

Chair Herkes, Vice Chair Wakai and Members of the Committee:

I am pleased to present this testimony today not in my capacity at the University of Hawaii, but as Chair of the Hawaii Broadband Task Force, 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 acknowledge 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.

In addition, since the completion of the Task Force report the Federal Government has enacted the American Recovery and Reinvestment Act (ARRA), which includes several significant activities related to broadband investment. The Bills now under consideration also vest in the proposed new Hawaii Broadband Commissioner the responsibility for those activities delegated by the ARRA to state governments.

#### **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, incumbents and competitors alike, about the unfairness and difficulty of sharing certain utility infrastructure, such as poles and access to governmental facilities. 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 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. One idea might be the creation of a broad-based selection committee to prepare nominations to submit to the Governor. While appreciative of the concerns expressed, we believe that Hawaii must have proactive, professional and cost-effective leadership to achieve Hawaii’s goals.

- Concern over New or Increased Fees

A number of testifiers expressed concern that the proposed legislation would increase fees. Your Task Force worked hard to provide recommendations that would be revenue-neutral in these difficult financial times. We would urge that all fees be kept static during the transition to the new regulatory structure, and that all authority available to the PUC or DCCA under current statute be transferred to the Hawaii Broadband Commissioner intact.

- Concern over 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 Broadband 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 that were originally addressed in other measures this session. 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 Broadband 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.

**SB 1680, SD2 HD1**

**RELATING TO TECHNOLOGY**

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

**HAWAIIAN TELCOM**

**March 23, 2009**

Chair Herkes and members of the House Consumer Protection and Commerce Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on SB 1680, SD2 HD1- Relating to Technology. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to raise several concerns with the measure as drafted.

Hawaiian Telcom's initial reservation involves 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 66**, line 1 which requires cable providers to not only provide but to "install" cable television service at any school or institution of higher education. While we understand the desire of the Legislature to increase installations in each classroom, this additional requirement will greatly impair Hawaiian Telcom's plan and ability to enter Hawaii's video (television) services market. As a new entrant in a market which is controlled by an entrenched incumbent, the challenges we face are considerable. We believe that if the Legislature desires to provide consumers with a real choice in video services, an exemption from these requirements must be provided for any new entrant. Incentives which will allow new entrants a greater opportunity to establish a market foothold and to grow in size will serve to help encourage competition in a market which currently has no competition.

Finally, Hawaiian Telcom supports the language contained in the bill intended to provide regulatory relief to telecommunications carriers in the form of pricing flexibility for retail services. The current language, however, is not clear as to whether this pricing

flexibility is immediate or whether there is a six month delay before pricing flexibility may be implemented. If the goal of this provision is to provide consumers with the full benefits of competition, including lower prices and new or different service offerings, the bill must be clarified by deleting a portion of the last sentence on **page 44**, lines 11 to page 45 lines 1-5 (“and become effective immediately upon filing, while providing for a six month transition period for incumbent local exchange carrier regulation by the public utilities commission to assist the transfer to the Hawaii broadband commissioner.”) to ensure that this pricing flexibility and the associated regulatory relief is intended to be permanent and immediate.

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

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Honorable Robert N. Herkes, Chair  
Honorable Glenn Wakai, Vice Chair  
House Committee on Consumer Protection & Commerce

**Re: SB1680, SD2, HD1 – Relating to Technology – Oppose  
House Committee on Consumer Protection & Commerce,  
Monday, March 23, 2009 - 2:15 p.m., Conference Room 325**

Chair Herkes, Vice Chair Wakai 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 SB1680, SD2, HD1.

As noted in the discussions with various members, the Department of Commerce and Consumer Affairs, and through the amendments offered by Oceanic, Oceanic continues to have concerns regarding various provisions of this bill. Oceanic respectfully requests that the Committee defer action on SB1680, SD2, HD1 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 the Committee consider amendments offered by Oceanic that have been discussed with various members and DCCA.

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 SB1680, SD2, HD1, 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.

Upon further review and analysis of the specific language of this bill, however, the provisions of SB1680, SD2, HD1 do not appear to further these goals and initiatives. 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 definitions

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, 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.

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 -- SB1680, SD2, HD1, as currently drafted, will result in significant regulatory uncertainty and confusion. As noted in more detail in various discussions with various members, DCCA, and through 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.

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."<sup>1/</sup>

For these reasons, Oceanic respectfully requests that the Committee consider the amendments offered by Oceanic or defer action on SB1680, SD2, HD1 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

---

<sup>1/</sup> Cf. 47 U.S.C. 230(b)(2).

SB1680 SD2, HD1  
Relating To Technology

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

Monday, March 23, 2009

Rep. Robert N. Herkes, Chair  
Rep. Glenn Wakai, Vice Chair  
House Committee On Consumer Protection & Commerce

Comments on SB 1680, SD 2, HD1 Relating To Technology

My name is Robert T. Tanimura and I am testifying on behalf of Verizon on SB 1680, SD 2, "A Bill For An Act Relating To Technology." Verizon offers the following comments on SB 1680, SD 2, HD1:

- 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 agrees that the provisions included in §§ 75-76 of the bill will help facilitate the state's ability to utilize federal funds from the American Recovery and Reinvestment Act of 2009.

Verizon, along with many other carriers, supports the Connect Kentucky/America model, through which useful broadband maps can be produced relatively quickly based on voluntary cooperation. Verizon is concerned that the language in § 76 that requires providers to give proprietary data directly to a government entity is problematic because the data can be jeopardized, notwithstanding language attempting to exempt them from disclosure. To avoid resistance and expensive delay, Verizon suggests modifying the language to keep the requirement but also the possibility of voluntary cooperation through a third party:

**"§ -76 Broadband inventory maps.** The 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 of 2008. 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 ~~may~~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.

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. Verizon recommends the establishment of a one year transition period before the regulatory functions of the PUC are transferred to the new commission.

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 provisions in § 38 that would reduce the amount of regulation for telecom carriers including Hawaiian Telcom. Although Verizon does not support retail rate ceilings, should the legislature find them necessary, they should be imposed on as narrow a basis as possible. Verizon suggests the following modification to § 38:

**§ -38 Regulation of telecommunications carrier rates; ratemaking procedures.** (a) Notwithstanding any law to the contrary, except for the rates, fares, and charges applicable for intrastate switched and special access with respect to wholesale customers, this chapter shall not apply to the rates, fares, and charges of the telecommunications carrier, and the classifications, rules, and practices implementing the 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 with respect to basic residential service the incumbent local exchange carrier, except upon obtaining commission approval, shall not charge any rate for a service above the rate for the service included in the

incumbent local exchange carrier's filed tariff. Notwithstanding the above, all rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for informational purposes only and become effective immediately upon filing, while providing for a ~~twelve~~<sup>six</sup> month transition period for incumbent local exchange carrier regulation by the public utilities commission to assist the transfer to the Hawaii broadband commissioner.

- **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 on pages 2 and 4 be deleted. This is not to suggest that infrastructure sharing cannot be considered, only that it needs to be studied in much greater detail before it is adopted as state policy.

Should the legislature decide that the sharing language is necessary, Verizon would support the amendment suggested by Mr. Lawrence Reifurth of the Department of Commerce and Consumer Affairs in his testimony on HB 984, HD4, which modifies page 4 as follows:

"(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;"

Thank you for the opportunity to testify.



Dan Youmans  
Director  
External Affairs

AT&T Services, Inc.  
P.O. Box 97061  
RTC1  
Redmond, WA 98073-9761

T: 425-580-1833  
F: 425-580-8652  
daniel.youmans@att.com  
www.att.com

March 23, 2009

The Honorable Rep. Robert Herkes  
Chair, Committee on Consumer Protection and Commerce  
Hawaii House of Representatives

*RE: Request to Limit Scope of Senate Bill 1680, S.D. 2, H.D. 1*

Dear Rep. Herkes and Members of the Committee:

Senate Bill 1680, S.D. 2, H.D. 1 would dramatically change the business environment for telecommunications providers in Hawaii by putting all authority for regulating telecommunications and cable services in the hands of one person. Transferring these regulatory responsibilities to a new government agency is very complex. We believe such an important change deserves far 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 altering the regulatory environment during this critical time.

We understand 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 creating a Broadband Authority within an existing state agency, such as the Department of Commerce and Consumer Affairs, for only this purpose. 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 to consider this much larger and complex issue.

This legislation also raises many critical issues, such as whether "shared infrastructure" is the 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. This bill also raises the question about how to fund the expansion of broadband services in the state. A very thorough discussion should be held among all stakeholders to address this question as well.

AT&T has a great deal of experience with developing effective "public-private partnership" programs in other states to expand broadband services. We would look forward to working with the State of Hawaii to create such a program.

Respectfully Submitted,

Dan Youmans, AT&T

To: COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Attention: Rober N. Herkes, Chair  
Glen Wakai, Vice Chair

Subject: SB1680/HB984 - Relating to Technology with peg protection  
Ammendments

Alyson Napua Barrows  
803 Ho'omau St  
Wailuku, Hi 96793

Wailuku Limu Restoration

Please keep all PEG PROTECTION AMENDMENTS inserted into SB1680 AND  
HB984.

I support progressive broadband legislation that will bring faster, more open  
internet to Hawaii but not at the expense of public access and community  
television.

I am also concerned that public interest considerations have been left out of  
these bills and that neighbor island communities have not been included in these  
discussions. PEG operations on Maui and on Oahu have been leaders in real  
world broadband application and training. Please insure that this proven method  
of providing access of all Hawaii residents to participatory media extend to the  
digital age.

Stop eliminating the public interest from matters that have proven to be  
successful in involving the general public. I have seen a great deal of  
involvement from the members of our community whom are informing the  
general public of important matters that may or may not be threatening a wide  
scope of interest. Such information are important to the general public. Their  
stories are now being seen and heard from usually the "silent public." No longer  
are they silent, for the real world broadband application and training has given  
them a voice. Stop, the bullies who are trying to keep the "silent public" quiet and  
uninformed of the real issues facing our people.

Thank you

A N Barrows

**Sharon Sagayadoro**

---

**From:** Darla J White [onareef@yahoo.com]  
**Sent:** Sunday, March 22, 2009 10:51 AM  
**To:** CPCtestimony  
**Subject:** Testimony in Support of SB1680/HB984

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Robert N. Herkes, Chair  
Glen Wakai, Vice Chair

Monday ,March 23, 2009 2:15 PM Room 325

Darla White  
755 Kupulau Drive  
Kihei, HI 96753

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

I support progressive broadband legislation that will bring faster,  
more open internet to Hawaii but not at the expense of public access  
and community television.

Please make sure that all PEG PROTECTION AMENDMENTS are inserted into  
SB1680 and HB984.

I am also concerned that public interest considerations have been  
left out of these bills and that neighbor island communities have not  
been included in these discussions.

PEG operations on Maui and on Oahu have been leaders in real world  
broadband application and training. Please insure that this proven  
method of providing access of all Hawaii residents to participatory  
media extends to the digital age.

Thank You  
Darla White

Darla J White  
Cell: 808-345-2312; Fax 888-570-2641  
onareef@yahoo.com



## Sharon Sagayadoro

---

**From:** PReco92184@aol.com  
**Sent:** Saturday, March 21, 2009 6:58 PM  
**To:** CPCtestimony  
**Subject:** SB1680/HB984

I support progressive broadband legislation that will bring faster, more open Internet to Hawaii but not at the expense of public access and community television.

Community Television here on Maui has been vital to our community in order that the little voices can be heard.

Akaku television has been fighting for their life for the last few years now and it is important that this important part of our American Constitution representing free speech isn't lost in our community.

Please make sure to protect Broadcast and Community television rights in any new legislation.

Sincerely,  
Michael P. McCormick  
3445 Kaha Drive  
Kihei, HI 96753

(808) 874-6846

\*\*\*\*\*

Feeling the pinch at the grocery store? Make meals for Under \$10. (<http://food.aol.com/frugal-feasts?ncid=emlcntusfood00000002>)

**Sharon Sagayadoro**

---

**From:** Community Media Producers Association (CMPA) [cmpa@hawaiiintel.net]  
**Sent:** Sunday, March 22, 2009 9:58 AM  
**To:** CPCtestimony  
**Subject:** CPC SB 1680 SD2 HD1 Monday, March 23, 2009 2:15 p.m Conference Room 325  
**Attachments:** 2009BudgetnPlan.PDF

CPC SB 1680 SD2 HD1 Monday, March 23, 2009 2:15 p.m Conference Room 325

# CMPA

**Community Media Producers Association**

**1658 Liholiho #506**

**Honolulu, Hawaii 96822**

**808 239-8842**

**cmpa@hawaiiintel.net**

Aloha Chair Herkes, Vice chair Wakai, and members of the Consumer Protection & Commerce Committee,

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" <sup>1</sup> (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 HD1 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

Remove in its entirety page 69 lines 9- 13 [**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. Currently DCCA Cable Television division administrative rule HAR 16-131-70 requires Access Organization contracts to go out for competitive bid.

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*

Secretary, Community Media Producers Association

*P.S. Please post this testimony in PDF preserving the original look and the functionality of all hyperlinks.*

"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**

Representative Robert Herkes, Chair  
Representative Glenn Wakai, Vice-Chair  
Consumer Protection & Commerce Committee

## House of Representatives of the State of Hawai'i

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

Monday, March 23, 2009  
Support SB No. 1680, SD2, HD1, Relating to Technology

I represent Akaku: Maui Community Television, the access organization serving the cable subscribers of Maui County. Akaku and the people of Maui strongly support Senate Bill No. 1680, Senate Draft 2, House Draft 1, Relating to Technology.

The bill provides for a clear and rationalized form of regulation and oversight of PEG access organizations. The modifications to Haw. Rev. Stat. 440G relating to PEG access organization designation present in this current draft address the underlying long-term structural 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.

Thank you for the opportunity to present this testimony.

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Representative Robert N. Herkes, Chair  
Representative Glen Wakai, Vice Chair

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

Monday, March 23, 2009 2:15PM Room 325

**Support of SB1680 HD1, Relating to Technology with “PEG Protection Amendments”**

On behalf of the people of Maui, we strongly support Senate Bill Number SB1680 HD1 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 SB1680 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 SB1680 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.

**Written Statement of  
YUKA NAGASHIMA  
Executive Director & CEO**  
High Technology Development Corporation  
before the  
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
Monday, March 23, 2009  
2:15 PM  
State Capitol, Conference Room 325

In consideration of  
**SB 1680 SD2 HD1 RELATING TO TECHNOLOGY.**

Chair Herkes, Vice Chair Wakai and Members of the House Committee on Consumer Protection & Commerce.

The High Technology Development Corporation (HTDC) supports SB 1680 SD2 HD1 which proposes to establish the Hawaii Broadband Commissioner under the administrative authority of the Department of Commerce and Consumer Affairs, and defers to the recommendations of the State Broadband Task Force, created by the Legislature in 2007 to evaluate, determine and recommend best practices for implementation of this important initiative.

We cannot summarize more clearly why for Hawaii there is a critical need to support SB 1680 SD2 HD1 than what has already been published by the Internet Innovation Alliance in their recent publication The Broadband Fact Book: *“... 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.”*

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 Hawai'i'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.

## Sharon Sagayadoro

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**From:** Linda Werner [lwerner@hotmail.com]  
**Sent:** Sunday, March 22, 2009 11:53 AM  
**To:** CPCtestimony  
**Subject:** crossover bill sb1680 & hb984

Representative Herkes  
Representative Wakai

Testimony in favor of SB1680/HB984 but only with PEG Protection amendments

Aloha Representatives,

I am asking that you read my testimony. I know you are busy but please, this is important and I think you should take a moment to really read this.

### **Why is public, educational and government (PEG) access important?**

On Oahu, there are many television stations that report relevant "Oahu-centric" information such as human interest, nonprofit issues and events, etc. to the residents of the entire state. However, the content on these television stations about the neighbor islands centers around tragedy and crime. The local sports shows viewed are almost exclusively about the OIA and the ILH. Occasionally, a neighbor island team is highlighted at a state tournament but it is not the norm. The stations cite the cost of travel as the culprit.

On the neighbor islands, local residents always see themselves and their neighbors but only on PEG, the public access stations. The issues and programming are localized in nature and created by the people that understand the content the best because the PEG access centers teach them to do this.

Akaku: Maui Community Television is well-known and vitally utilized by the residents of Maui County and it is reflected in the following ways:

- 661 Maui County residents were trained in video production, producer gatherings and media salons and they submitted 575 hours of programming from Maui/Lanai AND concurrently, 98 individual shows were submitted from the island of Moloka'i from 22 newly trained community producers.
- There were 18,600 newly created hours of locally produced programming submitted in FY08, (10% more already in FY09)
- There were 800 hours of local residents "hot set" open mic segments on our Monday-Friday venue for only ½ of the year in FY08 and this is well over triple that number already in FY09 (3-5 minute segments)
- There was 3,937 hours of local Bulletin Board information from the local nonprofit community informing the public about local events that nonprofits sponsor in the community
- Akaku was honored with 201 volunteer hours for events, 657 student intern volunteer hours and 154.5 education enrichment volunteer hours.
- The Akaku studio was used for series and live shows by 818 people in fy08 for a total of 3,212 viewing hours. This number does not include the hot sets, nonprofit PSAs or the Maui Daily magazine news show. The studio's numbers have also increased in FY09.
- 73,838 hours of camera time was provided to community producers on Maui and 6,786 hours of editing bay time for post-production was logged.
- Akaku covered 27 County Board & Commissions meetings for a total 142.72 hours of new programming and 194 County Council meetings for a total of 2,322 hours of new programming. All Akaku segments have the capability of being viewed at a time convenient to local residents through Akaku's website "Video On Demand" feature. And this feature is utilized regularly and strategically by the public.

- Akaku also streams Channel 54 on the website and would stream all three channels regularly if broadband technology on Maui made this possible. Many residents in Maui County cannot even receive cable access and this would allow them to watch the channels and see information relevant to their community through the internet.
- Akaku has developed strong relationships with the nonprofit community and develop three minute PSAs regularly (2-3 a week) and also cover local events in rural areas such as Lanai High & Elementary Career Day, Moloka'i Ohana Night and Makahiki Events, the East Maui Taro Festival in Hana, the Haiku Ho'olaulea Flower Festival, Whale Day and the Barry Fest. These events allow local residents a chance to "shout-out" their viewpoints about local issues and see themselves in their own communities. It also allows Akaku to mentor new video producers in the field.
- A highlight of the Akaku educational program was realized last December when Akaku Certified Producer, Destin Daniel Cretton, returned as the Media Salon presenter with a screening and discussion of his HBO film, "Drakmar: A Vassals Journey", to give back to the community by telling the story of his success in the film industry. Since that night, Destin won first place at the prestigious Sundance Film Festival for his short film, "Short Term 12", gaining significant recognition in the world of film professionals and exhibiting three sold out showings. Another Akaku producer, Melissa Torres, is now an anchor for a television station in Las Vegas, Nevada.
- The Maui Daily Magazine News Show airs a new show weekly and highlights Maui County issues and events. Shows are produced and hosted by both Akaku staff and the community. Recently, Nonprofits have provided the hosting duties of the show. This show allows the folks in the county that will never pick up a camera the right to use the station in the form of "electronic soapbox" time.

**WE NEED YOUR HELP TO PROTECT THESE RIGHTS.**

The word irony is a noun which demonstrates an occurrence, result, or circumstance notable of incongruity between what might be expected and what actually occurs. The Broadband task force was tasked with the goal of creating a plan to improve technology in the state of Hawaii to enrich, improve and enlighten the lives of all Hawaii residents; especially important in the rural communities. The irony is that the public testimony for this task force was held on the island of Oahu and despite the ability of video-conferencing technology available; the neighbor islands were not afforded an opportunity to use the technology that is already available. A bad omen for residents of the neighbor islands to believe that any trickle down from the czars of broadband technology on Oahu would take into consideration the needs of the rural, isolated neighbor islands of Hawaii.

**A state-wide dialogue is a necessity in a fair and open democracy.**

There are two reasons that I bring this to the attention of this committee. The first is that during the formation of the report of this task force, if there had been opportunity for the neighbor islands to participate, residents of the island of Maui who support Akaku: Maui Community Television would have already suggested to add in PEG protection language to this report from the beginning and PEGs role in broadband would have already had the opportunity for a fair and factual dialogue on this subject from the beginning. The irony in this is that Akaku already uses broadband technology to reach the rural residents of Maui County and could have afforded valuable insight into this report. Often because we are isolated from Oahu, the information is not relayed to us in a quick, informative way. Maui Representative Kyle Yamashita sat on this task force but made absolutely no effort to inform us. No public meetings, no emails, no nothing. We don't have the resources to be in Oahu continually. There has been nothing fair about the evolution of Broadband technology thus far; how ironic.

**I do believe this can change but we need your help.**

The second reason is that the very testimony for this meeting suffers from the irony that in Maui County and the other rural neighbor islands there is a result that despite Broadband technology available (like video-conferencing) for neighbor island testimony from home base; the technology is not being used. Instead the only way to testify for this bill is to be able to fax, email or spend the \$200 expense to fly over in person. The reason this is a problem is that one must submit testimony in advance and this meeting was not even posted until Friday afternoon. The truth is that technology in Maui County is substandard and many people do not even have it. Many of the older folks continue to use the mail. So, if they even heard about this meeting (which is posted online?) not in the newspapers, on the public access channels or on the radio, they could not mail in their testimony. Sounds ridiculous? Well, it is a fact that on Maui, many residents of Kula and Haiku don't even have the ability to watch television anymore because the conversion boxes don't work at their homes and

cable access is not available. This is a fact. Going paperless and online for everything is very progressive but it really disables the people who cannot afford and have no access to technology to testify which is the a good reason for improved Broadband in the first place. **How ironic** it is that some people do not have the opportunity for a "voice" to testify and advocate in improving their own lives. Something **IS** wrong with this picture. If you don't fix it, you are unfairly denying the neighbor islands their deserving place at the table. After all, it is not like we can just drive to the capitol.

**I do believe this can change but we need your help.**

I personally collected hundreds of signatures in support of SB1680/HB984 with PEG protection amendments. Getting them to this committee is a chore because of the time and logistic limitations. As legislators, I think you can do better for us. As for Representative Yamashita; it is my belief that he is not doing his job in representing us.

Representative McKelvey, Senators Tsutsui, Baker and English have helped us. They believe in public access for the rural neighbor island communities.

**I do believe we need all you to help.**

Akaku has accomplished all these tasks with employees that have **NO CERTAIN JOB SECURITY** due to the continuing shaky future of PEG access in Hawaii. Imagine the quality of employees we could attract if our organization held some security and a stable funding source in franchise fees from the cable access provider as originally intended by state law. **And** franchise fees have been held back in six month increments with a bare minimum investment return (1%) disabling any interest/dividend investments that were once previously earned by smart planning further downsizing funding available to the PEGs. It has also been extremely difficult to secure grant funding due to the unstable nature of the continuing detractors who would put the PEGs up for procurement. It has been impossible to create a "sustainable" nonprofit with available funding sources disabled by lack of support.

**I do believe this can change and we need your help.**

In 2004, the DCCA created a plan to help the PEGs become "sustainable". This plan included more financial support for rural communities. It is especially important for Maui County with the consideration that we have four very remote, rural communities on three islands. The DCCA ignored it's own plan and no additional funding was ever generated. Akaku proceeded to buy a building to comply with this mandated plan. As funding sources shrink, even the easy additional funding of interest/dividends through investment has been taken away. How ironic.

I am available to answer any compliance questions at any time if you really want to know if we are accountable, relevant or necessary. My personal phone number is 870-1503 and I am available 24/7. Since 2006 which is when I began at Akaku, we have successfully passed independent audits, workers compensation audits, inventory audits, irs audits and DCCA oversight. No one has the right to say we are not accountable unless they take the time to review our history. If you folks have never visited our station, I urge you to do so. Akaku is an effective "tool" for Maui County residents and legislators if they choose to use it.

**PLEASE HONOR THE HCR358 TASK FORCE AND PUT THE LANGUAGE IN THE BILL THAT THIS COMMITTEE HAS RECOMMENDED. ANYTHING ELSE IS SHIBAI.**

**THANK YOU FOR THE OPPORTUNITY TO TESTIFY.**

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## Attachment 6

- (1) DCCA recommends that the bill mirror the language currently found in HRS 440G(f) (i.e., "three or more channels for public, educational, or governmental use") (keeping the law the same wherever possible). In practice, the current number of channels is 5, as applied to the Oceanic Time Warner system pursuant to Decision & Order Nos. 261 and 291. Keeping the language the same will allow the Commission the ability to treat any new entrant into the cable market differently if necessary (for instance, if expected system size or market share dictated a different handling).
  
- (2) Regarding the provision which would require re-evaluation of channels every other year (section 440G(f) does not currently provide for an automatic re-evaluation), nothing in DCCA's experience suggests that this is a pressing issue (or should be a concern for anyone).

In D&O Nos. 241 and 291, DCCA directed that 5 access channels be made available for activation on each island. Currently, PEG access organizations may ask for additional access channels at any time. Over the years, Olelo has made two such requests (1995 and 2004). The first request was granted effective January 1, 1996, without condition.

## Attachment 6

The second request was granted on a temporary basis (pending completion of the RFP process). The other PEG organizations each have requested activation of access channels which were promptly granted so that Akaku and Na Leo now have 5 full-time access channels, and Hoike has only asked to activate 4 full-time access channels.

If this committee, nevertheless, concludes that more regular re-evaluation of channel numbers is desirable (note that this comes at a possible risk to the PEG entities, now that digital viewership data is available from Oceanic), then DCCA suggests that re-evaluation take place upon the request of a PEG access organization with justification, or upon the commissioner's initiation, and that other stakeholders, such as "E" and "G" sectors have input on PEG channel capacity. This provision should also be amended to allow the commission to consider input from stakeholders but not require that the decision be based solely on this input.

Add a new subsection (f) to section -67 on page 67, line 19:

(f) The cable operator shall designate and activate three or more channels for public, educational, or governmental use.

## Attachment 6

The commission may initiate, or a PEG access organization, educational institution, or government agency may, at any time, request the commission to require the cable operator to designate and activate additional channels; provided that the commission shall have the sole discretion to grant, deny, or modify the request based upon the best interest of the public, requester, cable operator, and the State.

We also propose additional language in the proposed § - 67(f). The section paragraph addresses the methodology by which the Commission will designate PEG access organizations. The proposal focuses on the adoption of administrative rules, which are subject to the requirements and process contained in chapter 91, HRS, which contains requirements for public notice and public hearings. DCCA suggests that the bill be amended to clarify that the adoption of administrative rules are subject to chapter 91 and that when developing the administrative rules, the commission can take into consideration factors as the 1<sup>st</sup> Amendments rights of individuals.

Additional language to the new section -67(f) should read:

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The Hawaii communications commission shall have the authority to designate and select PEG access organizations pursuant to administrative rules adopted in accordance with chapter 91. The commission shall consider input from the public and take into consideration the First Amendment rights of individuals who utilize PEG access services when adopting such rules. 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 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.

## Attachment 6

If it is the legislature's intent to exempt PEG access services contracts from public procurement, DCCA recommends that a new subsection (j) be added to section -67.

Add a new subsection (j) to section -67 on pages 69 to read:

(j) Contracts between the commissioner and PEG access organizations for PEG services shall be exempt from chapter 103D.