

Testimony, Netra Halperin
CPC
SB1680 - support- with amendments
March 23, 2009
Rm 325 2:15

LATE TESTIMONY

Aloha Chair Herkes

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

I support SB1680, with amendments that consider increased funding and broadband improvements for our islands' public, educational and governmental (PEG) access organizations because of their benefit to rural and urban communities.

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

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

Please retain language in SB1680 to also protect PEG access. These services will support not just Maui's rural communities on outer islands, but all of Hawaii's diverse communities.

Thank you for hearing my testimony.

LATE TESTIMONY

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
MARCH 23, 2009**

MEASURE: S.B. No. 1680 S.D.2 H.D. 1
TITLE: Relating to Technology

Chair Herkes and Members of the Committee:

DESCRIPTION:

This bill creates the Hawaii Broadband Commissioner ("HBC") as an independent agency administratively attached to the Department of Commerce and Consumer Affairs by consolidating the regulation of telecommunications carriers and cable operators under the HBC by removing these carriers from the jurisdiction of the Public Utilities Commission ("Commission") and the Cable Television Division of the Department of Commerce and Consumer Affairs, respectively.

POSITION:

The Commission appreciates the intent of this bill, to consolidate the regulation of all forms of modern communications in an effort to facilitate the development of broadband infrastructure in the State, and defers to the Legislature's judgment on how best to consolidate regulatory functions and equalize regulatory schemes, provided it does not disrupt the other functions and operations of the Commission.

COMMENTS:

- This committee should be aware that Section 23 of this bill as amended would effectively remove rate regulation from telecommunications services.
- The Commission defers to the Legislature with respect to the issue of whether rates for telecommunication services should no longer be regulated, so long as this committee understands that the Commission will no longer have the authority to see that rates are just and reasonable to protect consumers.

Thank you for the opportunity to testify.

**Testimony on S.B. 1680, SD2 HD1
Relating to Technology
House Committee on Consumer Protection & Commerce
Keali'i Lopez, President and CEO of 'Ōlelo Community Television
Monday, March 23, 2009**

Chair Herkes, Vice-Chair Wakai and members of the House Consumer Protection and Commerce Committee. Thank you for the opportunity to provide written comments on S.B. 1680 S.D.2 H.D.1. 'Ōlelo supports the goal of the Bill, which is to provide advanced broadband services to all sectors of our community. We recognize that greater and faster connectivity has the potential to increase civic participation, and that is an integral part of 'Ōlelo's mission as O'ahu's public, educational and governmental (PEG) access organization. Such Broadband deployment would allow 'Ōlelo to enhance and expand our ability to deliver broadband services for Public, Educational and Governmental access purposes. A good example would be the Broadband stream of Senate legislative proceedings which was launched on Monday, February 2, 2009. Broadband capability was a significant component of 'Ōlelo's input to the DCCA regarding Oceanic Time Warner Cable's franchise renewal for O'ahu. The availability of Broadband would allow 'Ōlelo to leverage present and future technology to increase 'Ōlelo's ability to meet current and future needs of the community. We look forward to the DCCA's effective negotiation of these public benefits.

'Ōlelo has been engaged in delivering Public, Educational and Governmental access services on O'ahu for almost 20 years. We manage six community access channels on the Oceanic Time Warner Cable system. Educational institutions, government agencies, non-for-profit organizations, and public citizens delivered almost 6,000 hours of programming in 2008 on four of the PEG access channels alone. We have seven Community Media Centers throughout O'ahu and are considered a national role model for community access. The services that we provide to the community are seen as very valuable in our ability to provide access to technical training, quality production resources, development of social capital and valuable airtime on Oceanic cable. In November of 2008, a survey of cable subscribers on O'ahu indicated that 86% of those surveyed believe these programs and services are valuable to the community. We know the members of the House Consumer Protection and Commerce Committee are aware of this value and we appreciate the support PEG access has received from the Hawaii State Legislature.

Our general concern about the proposed Hawaii Broadband Commission ("HBC") is that it treats the public, educational and governmental (PEG) access organizations in the same manner that it treats the large public utilities and the cable operator. The PEG access organizations are considerably smaller than the public utilities and/or the cable operator. Hoike's annual gross revenues ranging from as low as \$400,000 to as high as \$4.5 million on O'ahu ('Ōlelo and Hawai'i Educational Network Consortium combined). By contrast, the 2008 gross revenue for the cable operator, Time Warner Entertainment, was over \$220,000,000 for O'ahu alone.

The proposed scheme for a new HBC is similar to the current Public Utilities Commission, and requires a much more cumbersome and costly process to address administrative and operational issues. To the extent that the PEG access organizations may be required to operate under such a scheme, a large proportion of the PEG access funding will necessarily have to be devoted to administrative costs. However, unlike the larger utilities, the PEG access organizations simply do not have the resources to pay for such costly processes.

As an example, SB1680, SD2 HD1 sets forth a proposed new Chapter entitled "Hawaii Broadband Commissioner." That proposed Chapter, at section 23 ("Penalties"), provides that cable operators and PEG access organizations shall be subject to a penalty of up to \$25,000 per day for certain types of violations. For a company as large as Time Warner Entertainment, such a penalty would be challenging; for the small PEG access organizations, however, the same penalty could be devastating.

Because the PEG access organizations are all private, non-profit corporations, any requirement for the PEG access organizations to pay for costly administration would result in a dollar-for-dollar reduction from the funds available to deliver PEG access services.

We understand that it is not the intent of this bill to adversely affect PEG access but rather ensure effective deployment of broadband technology and services. We appreciate that the intent of including PEG access in the bill is based on the value of the services to the community as well as PEG access being tied specifically to Cable Franchising. As the Committee considers modifications to SB1680 SD2 HD1, we request that PEG access not be entirely removed from the proposed legislation. SD1680 SD2 HD1 repeals 440-G in its entirety, and may unintentionally eliminate PEG access provisions as they exist. There clearly are sections that refer to PEG access that should be removed and others that require modification. We provide some examples within these comments.

In addition to the general concerns noted above, there are specific concerns about specific subsections of the proposed new Chapter, as drafted in SB1680 SD2 HD1.

Section 67 ("Cable system installation, construction, operation, removal; general provisions"), subsection (f) contains a paragraph giving authority to the Hawaii broadband commissioner to designate PEG access organizations "consistent with administrative rules to be adopted by the commissioner." I understand this provision to reflect the intention to exempt the PEG access service contracts from the competitive provisions of the State Procurement Code, Haw. Rev. Statutes Chapter 103D. However, the procurement exemption still remains unclear in the current proposed text. It is my understanding that the Hawaii broadband commissioner would not have the authority to establish a Procurement Code exemption through agency regulations. For this reason, I request that the language be revised to clearly state that the Commissioner's designation of PEG access organizations shall be exempt from Chapter 103D.

Section 67, subsection (f) also contains a paragraph about "PEG assets," of which the meaning of the paragraph is not clear and, as a result, subject to any number of interpretations. As drafted, it may be interpreted to mean that a PEG access organization would be obligated to turn over to a successor contractor all resources that it owns, including resources purchased with grant funds from private sources. Another interpretation might be that the PEG access organization would be provided upon request, at the start of its contract, all of the equipment, cash, financial assets and instruments, land and buildings that it deemed necessary provide all PEG access services within its designated geographical area, without limitation. I know that neither interpretation is the intended meaning of this paragraph. In any event, to the extent that this paragraph attempts to identify the specific terms of a contract between the State and the PEG access provider, such terms are properly contained in the contract, rather than in the statute.

We appreciate that the intent of including PEG access in the bill is based on the value of the services to the community as well as PEG access being tied specifically to Cable Franchising. We look forward to the reassurance that the proposed legislation will not significantly change the way in which the PEG access contracts are managed and services are provided.

Mahalo.



LATE TESTIMONY

March 23, 2009

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

**Re: SB 1680 SD 2 HD1, Relating to Technology - Oppose
CPC Hearing – Hawaii State Capitol, Conference Room 325 - 2:15 p.m.**

Aloha Chair Herkes, Vice Chair Wakai and Committee members:

On behalf of tw telecom which has operated in Hawaii since 1994 and manages approximately 25,000 access lines in the State of Hawaii, thank you for the opportunity to submit testimony today. I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom.

Although the stated purpose of this bill is to implement key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Communications Commission (HCC) and Commissioner in the Department of Commerce and Consumer Affairs (DCCA), to transfer functions relating to telecommunications from the PUC to the HCC and functions relating to cable services from DCCA to the HCC, and to establish a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature, passage of this bill will be a detriment to the communication industry and will have a chilling effect on any long-term expansion of the broadband initiative.

While we do not object to the concept of establishing an HCC, we prefer that the committee defer action on this bill to allow stakeholders more time over the interim to work out many of the serious concerns we have with the legislation. However, if the committee chooses to move this bill forward, we prefer HB984 HD4 over the Senate version and respectfully request the following changes be made to address some of the very serious concerns about the bill. Among these include:

1. **Sharing of infrastructure** – This is a complex issue that should be examined in much greater detail prior to making any decision on whether it will further the goals of this initiative. Mandating that individual carriers share infrastructure at rates that may not be compensable to that carrier's investment will freeze any initiative to expand broadband capacity. Any mandatory sharing of infrastructure should be limited to infrastructure that is funded by the state and not by individual carriers.
2. **Mandating regulation or deregulation** – TWTC recommends that all language relating to telecommunications rates be deleted from this bill. The stated purpose of the bill is to

advance Hawaii broadband capabilities and use, and the regulation or deregulation of telecommunications rates is unrelated to that purpose. As this committee may know, other bills have been introduced that deal specifically with telecommunications rate deregulation, and TWTC believes that those bills are the appropriate vehicle to address regulatory issues.

If this committee wishes to address telecommunications rates in this bill, TWTC believes that the following language in Section 2, § -9 of the HB 984, as revised below, is the correct way addressing this issue:

§ - 9 Commission Development Duties.

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

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

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

TWTC strongly objects to § - 38 of this bill and HB 984, which would deregulate telecom rates, subject to limited exceptions. It should be noted that this language is inconsistent with § - 9 above, since the purpose of the investigation contemplated under § - 9 is to determine the appropriate extent of any pricing flexibility or deregulation.

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

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

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

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

Retail Rates. TWTC also has concerns about the complete deregulation of retail rates proposed in this bill. By way of background, price regulation for the ILEC prior to the existence of full competition is necessary both to ensure that prices are not too low and that they are not too high. The ILEC is in the unique position of having "captive customers" who do not have other options to obtain telephone service. Without regulation, the ILEC can raise its rates for services to these customers, and use the revenues from these rates to subsidize any losses it incurs from its more competitive services. Thus, some level of regulation is required to ensure that prices are not too high. There are also concerns with pricing that is too low. First, if the ILEC prices its services too low, it will drive away its competition. The ILEC is in a unique position to be able

charge prices for more competitive services below its costs, and to subsidize any losses it incurs from its competitive services with rates charged to customers of non-competitive services. Because CLECs face competition for all of their services, they do not have this same opportunity, and must cover all of their costs through the prices for their services if they are to survive. If the ILEC is able to price its services below its costs, it can drive away competition.

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

Section 38 of this bill would completely deregulate retail rates. TWTC believes that this simply goes too far too fast. It also goes beyond what was originally contemplated in the commission's Rules, even where full competition has been demonstrated. If this committee decides that it must provide for some deregulation of retail rates, certain protections must remain in effect, including price floors and continued commission jurisdiction over rates. TWTC thus proposes that the language of the bill be amended to classify retail services as "partially competitive" under the Rules. This classification would eliminate two requirements that HT has objected to: the requirement that it provide cost studies for all of its services and the requirement that it obtain prior approval for bundled offerings. With this change, HT would essentially have regulatory parity with CLECs with respect to retail rates. However, such rates would continue to be subject to tariff filings, price floors, and commission oversight. Further, HT would still have the ability under the Rules to request greater pricing flexibility where it can demonstrate that a particular market is "fully competitive". Suggested language is as follows:

§ -38 Regulation of telecommunications carrier rates; ratemaking procedures. (a) Notwithstanding section § -34 or any other law to the contrary, the commission shall classify the State's local exchange intrastate telecommunications services as partially competitive under the commission's classifications of services related to costs, rates, and pricing. In addition, unless otherwise ordered by the commission, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to 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. All rates, fares, charges, rules and practices for telecommunications services and bundled service offerings shall be filed with the commission in accordance with the commission's rules.

(b) Pricing for telecommunications services may not be set below the total service long run incremental cost of providing the service, as defined in Hawaii Administrative Rules ("HAR") Chapter 6-80, and must not result in the cross-

subsidization of any fully competitive service from any noncompetitive service as proscribed in HAR Chapter 6-80.

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

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

3. **Hawaii Communications Commission** – TWTC believes that a Hawaii Communications Commission (HCC), proposed in HB 984, is preferable to a single commissioner, as proposed in SB 1680. However, it appears that HB 984 proposes the HCC as well as a commissioner, and a deputy commissioner. Also, it does not appear that the composition of the HCC is addressed. We recommend that this committee consider the organization of the HCC and whether it is necessary to also have a commissioner and a deputy commissioner.

For these reasons, we respectfully request that you consider deferring action on this bill.

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs

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