



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON
FINANCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Friday, April 3, 2009
4:30 p.m.

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

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence M. Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony strongly supporting efforts to expedite the availability of the latest communications services at the earliest possible time to Hawaii's residents by consolidating the regulation of communications services under one regulator.

The Legislature demonstrated much foresight when it established the Hawaii Broadband Task Force in 2007. The Task Force has provided a roadmap that will help guide us into a future where the availability and accessibility of high speed, affordable broadband is the norm in Hawaii. This bill recognizes the convergence of technologies that are used to provide voice, data, and video services through wireline, wireless, cable

and satellite infrastructure, and represents the tireless work of the Department, the Legislature, the Task Force, and many others from the telecommunications and cable industries.

H.B. No. 984, H.D. 4, the House companion to this bill, was amended by the Senate Committees on Economic Development and Technology and Commerce and Consumer Protection by replacing the bill's contents with that of S.B. No. 1680, S.D. 2. The bill is currently referred to the Committee on Ways and Means. A few of the differences between the S.D. 1 and H.D. 4 of H.B. No. 984 are as follows:

- (1) The S.D. 1 authorizes the Director of Commerce and Consumer Affairs to transfer unexpended franchise fees to the new special fund. The H.D. 4 does not contain a comparable provision;
- (2) The S.D. 1 authorizes the establishment of up to 10 temporary exempt positions for the new agency, whereas the H.D. 4 transfers up to an additional 10 general funded positions to the new agency;
- (3) The S.D. 1 names the new agency the "Hawaii Broadband Commissioner", whereas the H.D. 4 calls the agency the "Hawaii Communications Commission";
- (4) The S.D. 1 contains language regarding agency staff that was developed in consultation with ATG, BUF, and DHRD. The H.D. 4 does not contain that language; and

- (5) The S.D. 1 contains a provision classifying the State's local exchange intrastate service as "fully competitive." The H.D. 4 does not contain a comparable provision.

I would like to also comment on the PEG-related provisions that are in the bill. The Department recognizes the importance of public access television, respects the role that the incumbent PEGs 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. Notwithstanding the Department's support of the PEGs, the Department's initial position was to consider PEG-related provisions in measures separate from the broadband bill.

However, as no other vehicles are available for the PEG-related provisions, the Department has reconsidered its initial position and now believes it is appropriate to include the PEG-related provisions currently in the broadband bill.

I will be available to respond to any questions that the Committee may have regarding this bill.



LINDA LINGLE
GOVERNOR

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ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4700 Fax: (808) 587-4703
www.spo.hawaii.gov

TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
FINANCE

April 3, 2009

4:30 PM

SB 1680, SD 2, HD 1

RELATING TO TECHNOLOGY.

Chair Oshiro, Vice-Chair Lee 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.

SB 1680 SD 2, HD 1
April 3, 2009
4:30 PM
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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 1 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



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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

No. 1 Capitol District Bldg., 250 South Hotel St., 5th Flr., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Tel.: (808) 586-2355
Fax: (808) 586-2377

Statement of
THEODORE E. LIU
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON FINANCE

Friday, April 3, 2009

4:30 pm

State Capitol, Conference Room 308

SB 1680 SD 2 HD 1
RELATING TO TECHNOLOGY

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance.

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.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON FINANCE**

APRIL 3, 2009

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

Chair Oshiro 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.
- The Commission would also like to bring to the Committee's attention that House Standing Committee Report No. 1221, dated March 27, 2009, the

document generated to detail committee action on the bill, erroneously states in its description of SB1680 S.D. H.D.1., received and passed out by the House Committee on Consumer Protection and Commerce without amendment, that it "transfers four existing positions from the Cable Television Division of the Department of Commerce and Consumer Affairs and ten existing positions from the Public Utilities Commission to the Hawaii Broadband Commissioner". The Commission wants to clarify for the record that the version of SB1680 S.D.2 H.D.1 being heard today makes no transfers of positions from the Public Utilities Commission.

Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
April 3, 2009 at 4:30 pm

by

David Lassner

Vice President for Information Technology/CIO, University of Hawaii

SB 1680 SD2 HD1 – RELATING TO TECHNOLOGY

Chair Oshiro, Vice Chair Lee 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 acknowledges the work of the State Auditor and her office in facilitating our work. We fulfilled our duties under full Sunshine, through public meetings that were fully noticed and with approved 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, 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, collects data including broadband maps in support of Hawaii's progress 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 include 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 broadband activities delegated by the ARRA to state governments.

Comments on the Issues that Have Arisen

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 specific 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 broadband 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 Broadband Data Collection

Several testifiers have expressed concern over language that would allow the Commissioner to require providers to furnish data about their services and infrastructure, which would be protected from disclosure under UIPA other than in summary form. In general, providers would prefer an approach in which all data collection is voluntary and in which they furnish the data to a non-profit organization of their choice. Several federal laws, including Senator Inouye's Broadband Data Improvement Act and the ARRA, have highlighted the importance of state-level broadband data. Your Broadband Task Force attempted to collect such data as part of our work and included the results we were able to produce in our Final Report. As a result of our efforts, we realized the importance of making this important task someone's job rather than leaving it to chance, and included this task in the portfolio of the Commissioner. We can appreciate the concerns from providers that this requirement not become excessively costly or put their proprietary data at risk. But we believe the Commissioner will be in the best position, in consultation with the providers and consumers, to execute Hawaii's mission under federal law and determine what data is appropriate to advance Hawaii's vision of world-class broadband for all at affordable prices. Case law indicates that the provisions suggested will protect proprietary provider data from unwarranted disclosure.

- 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 and proposed no such thing. The proposed legislation simply consolidates and merges the various authorities that currently flow down from the federal government and 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 and better-positioned for a 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. 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. 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 therefore urge that the Hawaii Broadband Commission 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. We were well-aware that an independent Task Force was at work on these issues. The Broadband Task Force proposal was to simply take the existing PEG responsibilities from DCCA and move them over as-is to the Hawaii Communications Commissioner, with the assumption that any changes the Legislature adopted could be independently rolled into the final statute.

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 whether or how you choose to resolve these longstanding PEG issues this session.

- Regulation of the Incumbent Carrier

Finally, there has been substantial testimony regarding whether the incumbent carrier should be provided with certain kinds of relief from the current regulatory requirements. We note that these issues have also been the subject of separate legislation. The Task Force did urge movement toward a more level playing field for all providers. However, the Task Force did not do the analysis necessary to make 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.



AMERICANS FOR DEMOCRATIC ACTION

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April 2, 2009

TO: Chair Marcus Oshiro, Vice Chair Marilyn Lee
Members of the House Finance Committee

FROM: Barbara Polk, Legislative Committee Chair
Americans for Democratic Action, Hawaii Chapter

SUBJECT: Opposition to SB 1680

Chair Oshiro, Vice Chair Lee and members of the committee. Thank you for the opportunity to testify on this important bill.

Americans for Democratic Action/Hawaii is opposed to passing SB 1680 at this time. Although we agree that there is much in the bill that is positive, we are concerned that the bill, as written, establishes a broadband commissioner who would have almost enough independent power to constitute a fourth branch of government. Is the legislature certain that it wants to cede this much power to one individual?

Our attention was drawn to this bill because it appears to relax the requirements for public, educational, and governmental access cable television and leave to the commissioner the power to determine whether and to what extent that access will be preserved. If you pass this bill, we urge that you amend it to ensure the continuation of PEG access.

We are also concerned that the bill repeals the Universal Service Program (funded through a surcharge on phone bills) that provides reduced rates to low-income, elderly, residents of underserved or rural areas, and others, turning the funds already collected over to the commissioner and allowing him/her to decide whether to continue, change or end current service to these groups. Again, if a bill is passed, we urge you to amend it to ensure continuation of services to the groups mentioned.

Beyond that, we urge you to review the bill carefully and determine whether you really want to establish a position with these additional powers and whether such powers are in the public interest:

power to determine how all telecommunications resources will be distributed, including telephone, television, internet, cable, and radio.

power to determine the use of federal stimulus money for Broad Band (note: NOT to recommend such use to the legislature or governor). (Section 75.d.)

exempt from the procurement code in use of these monies (Section 75.f).

certain exemptions from the federal Freedom of Information Act and Hawaii Uniform Information Practices

the authority to establish economic zones anywhere in the state to create facilities to stimulate job growth (Section 76)

“ . . . may develop non-agricultural park lands that, at the option of the board, may be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and construction of buildings thereon...” [§166E-10]

decisions challengeable only by going to court.

exempt from using the Attorney General's office for his/her defense against any such suit, but could use public money to engage his/her own attorney.

In summary, this bill raises serious questions about how the public interest is to be protected in the letting of contracts, in procurement, in development of facilities and protection of natural resources.

We are not expert on these matters and some of our understanding may be in error. However, we urge you to defer this bill until you each have the opportunity to study it carefully and make amendments necessary to serve the public interest.

COMMITTEE ON FINANCE
House of Representatives
April 3, 2009



Re: **S.B. 1680, S.D. 2, H.D. 1**

Chairman Oshiro and Members of the House Committee on Finance: My name is Leslie Wilcox, the President and CEO of PBS Hawai'i television station.

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

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

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

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

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

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

it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies..."

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

Thank you for your consideration.

PBS Hawai'i
PROPOSED AMENDMENTS TO SB 1680, HD 1

Definition

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

Procurement

§ -67 (j) The expenditure of cable franchise fee revenues by a PEG access organization or a public television broadcasting service shall not be subject to the requirements set forth in chapter 103D....

Annual Fee

§ -73 **Annual Fees.**

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

Linda Chu Takayama
384-9030

SB 1680, SD2 HD1

RELATING TO TECHNOLOGY

**KEN HIRAKI
VICE PRESIDENT
GOVERNMENT AND COMMUNITY AFFAIRS**

HAWAIIAN TELCOM

**House Finance Committee Hearing – Agenda 3
April 3, 2009**

Chair Oshiro and members of the House Finance Committee:

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

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, line 22 to page 45 lines 1-4 (“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 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.

200 Akamami Street
Mildani, Hawaii 96759-3999
Tel: 808-625-2100
Fax: 808-625-5858



Honorable Marcus R. Oshiro, Chair
Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

**Re: SB1680, SD2, HD1 – Relating to Technology – Oppose
House Committee on Finance, Friday, April 3, 2009 - 4:30 p.m., Conference
Room 308**

Chair Oshiro, Vice Chair Lee 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."¹⁷

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

¹⁷ Cf. 47 U.S.C. 230(b)(2).



April 3, 2009

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

Re: **SB 1680 SD 2 HD1, Relating to Technology - Oppose**
FIN Agenda #3 – Hawaii State Capitol, Conference Room 308 - 4:30 p.m.

Aloha Chair Oshiro, Vice Chair Lee 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 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.

§ -38 Regulation of telecommunications carrier rates; ratemaking procedures. TWTC strongly objects to § -38 of this bill, which would deregulate telecom rates, subject to limited exceptions, and 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 to charge prices for more competitive services below its costs, and to subsidize any losses it incurs from its competitive services with rates charged to customers of non-competitive services. Because CLECs face competition for all of their services, they do not have this same opportunity, 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 Public Utilities Commission's (PUC) existing rules relating to Competition in Telecommunications Services (the "Rules"), even where full competition has been demonstrated.

If this committee wishes to address telecommunications rates in this bill, TWTC believes that subsections (a) through (c) of the version of § -38 in HB 984, HD4, SD 1, the companion to this bill, is the preferable approach.¹ A copy of that section is attached. HB 984 requires the commissioner to examine rate regulation alternatives, and allows the commissioner to order pricing flexibility for services that the commissioner determines to be effectively competitive. This approach is generally consistent with the Rules, and provides for implementation of pricing flexibility based on factual findings of the extent of competition in various market segments. TWTC believes that this is the correct approach. 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

¹ Subsections (d) through (g) reflect procedures in effect prior to adoption of the Rules, and TWTC understands that these procedures are generally no longer applicable to most telecommunications carriers and rates.

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 approach contemplated under subsections (a) through (c) of §-38 of HB 984 would allow the commissioner 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.

3. **Hawaii Communications Commission** – TWTC believes that a Hawaii Communications Commission (HCC), is preferable to a single commissioner.

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

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs

tw telecom
(AZ, CA, CO, HI, ID, NM, OR, UT, WA)
Office: 760-832-6275
Email: Lyndall.Nipps@twtelecom.com

Marcus R. Oshiro, Chair
Committee on Finance

House of Representatives of the State of Hawaii

Jay April
Member of HCR358 Legislative Task Force
President and CEO, Akaku: Maui Community Television

Friday April 3, 2009 4:30 PM Room 308

OPPOSITION TO SB1680 UNLESS PEG PROTECTION LANGUAGE IS INCLUDED

SB1680 and HB 984 provide the State of Hawaii in general and the House of Representatives in particular a choice as to whether it will safeguard our electronic democracy consistent with Federal Communications Law or whether it will ignore the fact that the airwaves and public rights of way belong to the people. If it does the latter, it will continue the erosion of our democracy by abdicating the means and manner of mass communication to entirely commercial interests who have no marketplace incentive to serve the public good.

The promise and purpose of broadcasting regulation from its inception was to "generate programming that elevates American Democracy and cultivates localized civil engagements with local public deliberation as the highest form of democratic engagement."

After years of derelict regulation on the part of federal and state governments with respect to meeting the fully local communications needs of citizens, many, including the DCCA Cable Division and some members of this hallowed House, have forgotten this simple promise. These bills before you illustrate one of many ways in which industry and I am loathe to say, The Hawaii Broadband Task Force has disregarded and ignored this important core value and has placed the prospect of an engaged and healthy democratic society through the use of democratic, non commercial media in great peril.

To fully realize the educational and democratic significance of PEG programming, PEG channels must be protected by statute as they currently are in 440G. They are a community lifeline service for the people of our islands and their diminishment by virtue of an edict from House leadership or otherwise is unconscionable. Thousands of Hawaii residents in the past four years have testified in favor of PEG access and for this body to use these broadband bills as a stealth mechanism to remove statutory protection for a community communications asset that has served as a national model in Oahu and on Maui for more than twenty years is the kind of thing one might expect in totalitarian

regimes like North Korea or China or the former Soviet Union, but not in a free democracy.

I ask you to listen to the voice of the people you are pledged to serve. Do not take their voice away. Protect it as you would your own voice. Listen to them. Extend that protection into the bright, brave broadband world in which we are all heading with net neutrality and open free access for all people, rich and poor, young and old, in the neighbor islands, among our host culture, at reasonable cost wherever they are, regardless of whether you agree with what they have to say or not.

In the 1850's we brought railroads to America. In the twenties and thirties we brought telephones and electricity and radio, and in the late 1940's, television with public interest requirements that enriched our society with great communicators like Edward R. Murrow. In the 1950's, we built freeways. In the 1960's, Public Television, in the 1970's Public Access Channels on cable and in this 21st Century, we will bring meaningful broadband access to our people only if we pay attention to this tradition of doing public good. Passing a bill that has no public interest internet provisions and stripping language from these bills that take away PEG access in the middle of the night, late in this legislative session would not by any stretch of the imagination be following this proud legacy.

Not only should PEG access channels be protected by statute in these bills, they need to be as accessible as commercial channels and must not cost more, require different electronic equipment, or be more difficult to view. And while we are at it, the same paradigm must apply to broadband access as technology advances.

At this moment there are proceedings before the FCC regarding companies like AT&T and Comcast that have been illegally discriminating against PEG channels by creating substantial hurdles for viewers who wish to watch them. On Maui we have been trying for most of this year to stream our channels on the internet which carry county council and legislative hearings like this one to our citizens who don't have cable. All we want is to use the fiber optic cable that already exists to send our signal to Time Warner Cable out onto the internet. After several calls and emails to DCCA and a dozen phone calls to Time Warner corporate, we have had zero cooperation and zero response. And although the technical ability exists to provide this service to your constituents at no cost to us, the cable company or the government, it appears that the cable company and DCCA cable division speak with one voice - We don't care.

What the DCCA or the contemplated HCC needs to do is promulgate rules and regulations that state clearly that PEG channels must be placed on an equal footing with commercial channels in cable systems and in broadband applications. Instead what we see in these bills is not language to protect and preserve this community asset but punitive language as if we, the PEGs in

fulfilling our mission to empower the community's voice, have done something wrong.

Even if the legislature were to provide protection for PEG in these bills, it will not go far enough if media giants like AT&T, Hawaiian Tel, Verizon and Time Warner continue to lobby certain members of this House to diminish, de-fund or destroy PEG stations using a siren song of fast broadband proliferation with deregulation as a carrot and a stick.

A close reading of broadband bills SB1680 and HB984 reveals a trojan horse designed to confuse policy makers, short change the public and line the pockets of big telcos, cable companies and a few politicians. It goes without question that the media landscape in the United States since 1980 has resulted in unacceptable concentration of media ownership and a paucity of viewpoints available to audiences. This tragedy of the commons threatens a healthy democracy. It is high time that you, as Hawaii's leaders, restore the public interest to our local media. Supporting PEG access operations is a good place to start.

In many communities like Maui Nui for instance Akaku and PEG Access is the only non commercial space left where real public discourse can occur. If you do not support us, we will ask the FCC and Congress to act quickly to establish a minimum national standard upon which PEG channels and Broadband Access can be made available by law, to all citizens, with equal access, including technical and signal parity with dominant commercial interests.

At a time when local newspapers are failing and local voices are being shut down by special interests influenced by telco and cable dollars - and in venues like Maui where public access is successful - by reactionary and land development dollars, the same first amendment principles that apply to public expression here in this physical world need to apply to the "electronic parkland" known as PEG access and to "digital green spaces" in broadband as well.

Thank You

Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice-Chair
Finance Committee

House of Representatives of the State of Hawai'i

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

Friday, April 3, 2009
Opposition to 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 support the intent of Senate Bill No. 1680, SD2, HD1, Relating to Technology, which would give the public and access organizations a clear and meaningful process by which the administration designates and regulates cable access.

However, Akaku and the people of Maui reject any attempts to strip this language out after having passed out of the Senate and both of the substantive House committees, Economic Development, Business and Military and the Consumer Protection and Commerce committees. The provisions will clarify the access organization designation process and will terminate the long standing controversies regarding the inappropriate politicization of PEG access in Hawai'i. The only financial impact these provisions will have on the state is the lessening of costs associated with the litigation over these issues.

One acceptable amendment would be on Page 69, Lines 9 – 13, as follows (and consistent with Senate language):

Section -67 ***

(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.~~ Designation of access organizations shall be exempt from the requirements of 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.”

Thank you for this opportunity to testify this afternoon.

FIN SB1680 SD2 HD1 Friday April 3, 2009 4:30 pm Conference Room 308

CMPA

Community Media Producers Association

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

Aloha Chair Oshiro, Vice chair Lee, and members of the House Finance 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" ¹ (ARTICLES OF INCORPORATION). If you look at 'Olelo's 990 IRS tax returns you can see they refer to the millions of dollars of public funds they receive annually as "Government contributions (grants)". By Legislation and DCCA's decision, We The People shall pay a franchise fee (aka a tax) which is a fee assessed to cable operators in exchange for the use of our public right of ways, so in essence we pay for the cable operators' use of our public property. If we don't pay the fee, the state monopoly cable operator, Oceanic Time Warner Cable, will disconnect our cable. Do not exempt the PEG organizations from the state procurement code. We The People deserve the very best nondiscriminatory free speech provider our money can buy! Especially now that we are dead last in the country regarding most broadband related issues.

CMPA is in support of the intent of SB 1680 SD2 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 **PART III. CABLE** section -67 (j) in its entirety:

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

If you amend the definition of "Access organization" to include voting members, it would remove the appearance of taxation without representation by giving voluntary as well as involuntary contributors a real stake in the organizations. This should provide a place at the table for all to share and implement their ideas. It is not appropriate to exempt the PEGs from procurement without providing for the openness and accountability DCCA believes are crucial,

CMPA was the first registered Public Access Television related nonprofit corporation in the state, and is the only nonprofit media access corporation in the state advocating for at least one specially designated "Public Access Channel" (as defined in HAR 16-131-32), individual Public producers' rights, and membership and transparency in PEG organizations. As such CMPA is in opposition to exempting public, education and government (PEG) access organizations' contracts from the procurement code unless PEGs are required to adhere to state law providing for true openness and accountability to citizens. We do, however, support the overall intent of the measure which is to lower the impediments to broadband users, providers, and the marketplace of ideas.

To date there has been no compelling argument provided for why PEG organization contracts should be exempt, quite the contrary. The AG, Chief Procurement Officer, and most recently the Procurement Policy Board, have all opined that competing for the contracts would provide for innovation and excellence, which are necessary tools to catch up from being 10 years behind the cutting edge. On 12/23/2005 DCCA signed a Procurement Violation.

Those familiar with procurement law are aware that reports and studies have recognized that exemptions increase the possibility of litigation that would be unlikely if there were strict adherence to the procurement code. Since the State Procurement Office (SPO) granted DCCA an exemption in 2005, hundreds of thousands of dollars have gone to 'Olelo & Akaku's attorneys rather than towards their real purpose in their articles of incorporation.

CMPA and SPO believe competition fosters innovation and excellence. "DCCA believes openness and accountability are crucial", as stated in DCCA's yet unimplemented 2004 PEG Plan, but perhaps DCCA doesn't really want PEGs to be open, accountable, innovative or successful and that is the reason they haven't implemented the plan after almost 5 years and now want Hawai'i PEG organization contracts exempt from the procurement code.

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

Please stop Keeping the Public Out of Public Access Hawaiian Style.

Mahalo for doing what's pono.

Sincerely,

Jeff Garland

Secretary, Community Media Producers Association

Passive acceptance of the teacher's wisdom is easy to most boys and girls.
It involves no effort of independent thought, and seems rational
because the teacher knows more than his pupils;
it is moreover the way to win the favour of the teacher unless he is a very exceptional man.
Yet the habit of passive acceptance is a disastrous one in later life.
It causes man to seek and to accept a leader,
and to accept as a leader whoever is established in that position.

Bertrand Russell (1872 - 1970)



Board of Directors

Marsha Bolton
Chair

Ray Amemiya
Verna Bays
Koran Dreher
Bennette Evangelista
Robert Filus
John Fiaragan
Pat Garvey
Keali'olu Gora
Chris Parsons
Melissa Pavlicek
Diana Peters-Nguyen
Steve Van Rubink
Gerard Sumida
Vivian Yasunaga

Keali'i S. Lopez
President and CEO

October 31, 2008

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

Dear Mr. Sonobe,

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Keali'i S. Lopez', written over a circular stamp.

Keali'i S. Lopez
President and CEO

cc: Larry Reifurth, Director

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



FILE COPY
LAWRENCE M. REIFURTH
DIRECTOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

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

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

November 3, 2008

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

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

Dear Ms. Lopez:

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Clyde S. Sonobe".

Clyde S. Sonobe
Cable Television Administrator

C: Lawrence Reifurth, Director

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

2008 11 14 2 14
✓

Overview

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

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

'Ōlelo Community Television
2009 Capital Budget Narrative
November 12, 2008

NOV 13 14 0 14

Overview

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

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

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

Written Only

SB1680 SD2, HD1
Relating To Technology

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

Friday, April 3, 2009

Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair
House Committee On Finance
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:

Verizon appreciates the opportunity it was given to meet with the Department of Commerce and Consumer Affairs (DCCA) to discuss this legislation. While Verizon still has serious concerns about the efficacy of certain policies such as infrastructure sharing, we were able to reach agreement with the DCCA on compromise language for nearly all of our issues. The only issue we could not resolve has to do with requiring proprietary data to be provided to a state governmental entity in section 75.

- Section 75 Broadband inventory maps.

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. While Verizon commends the DCCA for proposing language in § 75 that would allow a third-party to produce the maps and would protect proprietary data provided, we are concerned with language that could require providers to give proprietary data directly to a state governmental entity. This is problematic because the data provided directly to a governmental entity can be jeopardized, notwithstanding language attempting to exempt them from disclosure. To avoid potential legal problems and expensive delay, Verizon suggests deleting the sentence as follows:

"§ -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 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 furnished, 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.

Thank you for the opportunity to testify.

Larry Geller
Honolulu, HI 96817

SB1680
FIN
Friday, April 3, 2009
4:30 p.m.
Room 308

COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

April 3, 2009

Re: SB1680—Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting

In Opposition

There's no question that Hawaii should work at improving its broadband infrastructure. Hawaii was recently ranked 49th in broadband speeds among the 50 states. That's an unenviable position and affects consumers as well as businesses.

Also pressing is the availability of federal funds to assist the state. We should move to accept and utilize any federal funds that are available for this purpose. Those funds should be spent within Hawaii.

Having said that, this bill goes far beyond improving broadband speeds. It uproots decades of legislation establishing our communications regulatory infrastructure, and places a host of services under the aegis of a single person, a communications commissioner, with powers that the media typically ascribes to a "czar." This czar is to be appointed by the governor. So functions formally protected by an established and knowledgeable bureaucracy will be moved into a policy function where the whims of a single individual can impact our cable, telephone, television, public access TV, and services for the indigent and those with disabilities.

Indeed, while public testimony that believes this bill will protect the public access services has been positive, in fact, the commissioner can levy draconian fines of **\$25,000 a day** against these relatively small operations, or can effectively shut them down. The protection that the bill provides seems illusory.

There are also troubling exemptions from the Uniform Information Practices Act, and amazingly, because it is a state bill, from the federal Freedom of Information Act. The section on broadband mapping may be necessary to snag federal funds, but the function should be provided by our own state government with full sunshine and disclosure. This legislature and concerned individuals and organizations will be unable to obtain the information needed to evaluate proposed actions if the mapping data is held in secret. There is nothing in the bill that would prevent the commissioner from contracting with a private firm to do the mapping and maintain the secret information. This is a real concern, raised by Common Cause and three other national organizations in a report published on

March 23, 2009. We have an effective duopoly in broadband data in Hawaii, and so protection of the data favors the incumbent carriers.

Returning to the question of broadband speeds, SB1680 ignores the demand side. One reason that Hawaii does not have higher speeds is the reluctance of our carriers to provide it as needed. This can be addressed directly by the legislature. On the Mainland, this issue is also related to "net neutrality." Comcast, among other cable companies, is experimenting with instituting metering of usage, in order to apply a surcharge to those who use more broadband data than others. This bill does not address the issue of net neutrality, and so it cannot guarantee the higher speeds it is seeks to encourage.

The issue of net neutrality could also impact the public access television providers' ability to stream their programs into your homes. It could allow broadband providers to determine which customers and which suppliers get to use the new broadband facilities.

The first goal stated in this bill is:

- (1) Access to broadband communications to all households, businesses, and organizations throughout the State by 2012 at speeds and prices comparable to the average speeds and prices available in the top three performing countries in the world;

This goal appears overly ambitious. For one thing, there has historically been less demand in Hawaii for telecommunications services than in much of the country, not to mention "the top three performing countries in the world." In practice, a telecommunications carrier will not invest in the plant necessary to upgrade a network in the absence of demand, nor can legislation easily influence that. A carrier has to pay out every month for the broadband pipes necessary to carry broadband data. In the absence of demand, they will not do that.

An example was the fiber optic connection to the Mililani High Tech Park that was requested (if memory serves) by the High Tech Development Corp around 1988. Hawaiian Tel ran fiber to the park and put in some equipment, yet when questioned why it did not connect anyone to the equipment, the response was that the demand could be easily met with the existing copper telephone lines. In other words, the fiber was unnecessary.

A second consideration is whether the delays that will be necessary in transferring functions over to the new commissioner and maintaining regulation and control over existing services will, in fact, delay rather than speed up the provision of broadband services. The commissioner has too much on his plate.

Yet we must do something.

If we want to improve broadband speeds, wouldn't it be better to concentrate on that objective? This bill is a distraction from the goal. It radically alters a regulatory framework that does not need altering. It places the phone, cable and other services each of us now enjoys at risk of deregulation and the whim of an administration appointee. There is no commission in this bill, only a commissioner. There is little protection for consumers. The public was not invited to the table at the Broadband Task Force and has no voice with the proposed commissioner.

In the end, contrary to the title and objective of the bill, it goes far beyond what is necessary to improve our broadband services and should be reconsidered by the Legislature.

Larry Geller

FINTestimony

From: Jay April [japril@maui.net]
Sent: Thursday, April 02, 2009 12:31 AM
To: FINTestimony
Subject: Testimony SB 1680 Friday April 3, 2009 at 4:30PM Room 308

Marcus R. Oshiro, Chair
Committee on Finance

House of Representatives of the State of Hawaii

Jay April
Member of HCR358 Legislative Task Force
President and CEO, Akaku: Maui Community Television

Friday April 3, 2009 4:30 PM Room 308

TESTIMONY IN OPPOSITION TO SB1680 UNLESS PEG PROTECTION LANGUAGE IS INCLUDED

SB1680 and HB 984 provide the State of Hawaii in general and the House of Representatives in particular a choice as to whether it will safeguard our electronic democracy consistent with Federal Communications Law or whether it will ignore the fact that the airwaves and public rights of way belong to the people. If it does the latter, it will continue the erosion of our democracy by abdicating the means and manner of mass communication to entirely commercial interests who have no marketplace incentive to serve the public good.

The promise and purpose of broadcasting regulation from it's inception was to

" generate programming that elevates American Democracy and cultivates localized civil engagements with local public deliberation as the highest form of democratic engagement."

After years of derelict regulation on the part of federal and state governments with respect to meeting the fully local communications needs of citizens, many , including the DCCA Cable Division and some members of this hallowed House have forgotten this simple promise. These bills before you illustrate one of many ways in which industry and I am loathe to say, The Hawaii Broadband Task Force has disregarded and ignored this important core value and has placed the prospect of an engaged and healthy democratic society through the use of democratic, non commercial media in great peril.

To fully realize the educational and democratic significance of PEG programming, PEG channels must be protected by statute as they currently are in 440G. They are a community lifeline service for the people of our islands and their diminishment by virtue of an edict from House leadership or otherwise is unconscionable. Thousands of Hawaii residents in the past four years have testified in favor of PEG access before this legislature and

in a number of public forums and for this body to use these broadband bills as a stealth mechanism to remove statutory protection for a community communications asset that has served as a national model in Oahu and on Maui for more than twenty years is the kind of thing one might expect in totalitarian regimes like North Korea or China, or the former Soviet Union, but not in a free democracy.

I ask you to listen to the voice of the people you are pledged to serve. Do not take their voice away. Protect it as you would your own voice. Listen to them. Extend that protection into the bright, brave broadband world in which we are all heading with net neutrality and open free access for all people, rich and poor, young and old, in the neighbor islands, among our host culture, at reasonable cost, wherever they are, regardless of whether you agree with what they have to say or not.

In the 1850's we brought railroads to America. In the twenties and thirties we brought telephones and electricity and radio, and in the late 1940's, television with public interest requirements that enriched our society with great communicators like Edward R. Murrow.

In the 1950's, we built freeways. In the 1960's, Public Television, in the 1970's Public Access Channels on cable and in this 21st Century, we will bring meaningful broadband access to our people only if we pay attention to this tradition of doing public good. Passing a bill that has no public interest internet provisions and stripping language from these bills that take away PEG access in the middle of the night, late in this legislative session would not by any stretch of the imagination be following this proud legacy.

Not only should PEG access channels be protected by statute in these bills, they need to be as accessible as commercial channels and must not cost more, require different electronic equipment, or be more difficult to view. And while we are at it, the same paradigm must apply to broadband access as technology advances.

At this moment there are proceedings before the FCC regarding companies like AT&T and Comcast that have been illegally discriminating against PEG channels by creating substantial hurdles for viewers who wish to watch them. On Maui we have been trying for most of this year to stream our channels on the internet which carry county council and legislative hearings like this one to our citizens who don't have cable. All we want is to use the fiber optic cable that already exists to send our signal to Time Warner Cable out onto the internet. After several calls and emails to DCCA and a dozen phone calls to Time Warner corporate, we have had zero cooperation and zero response. And although the technical ability exists to provide this service to your constituents at little or no cost to us, the cable company or the government, it appears that the cable company and DCCA cable division speak with one voice - We don't care.

What the DCCA or the contemplated HCC needs to do is promulgate rules and regulations that state clearly that PEG channels must be placed on an equal footing with commercial channels in cable systems and in broadband applications. Instead, what we see in these bills is not language to protect and preserve this community asset but punitive language as if we, the PEGs in fulfilling our mission to empower the community's voice, have done something wrong.

Even if the legislature were to provide protection for PEG in these bills, it will not go far enough if media giants like AT&T, Hawaiian Tel, Verizon and Time Warner continue to lobby certain members of this House to diminish, de-fund or destroy PEG stations by using a siren song of fast broadband proliferation with deregulation as a carrot and a stick.

A close reading of broadband bills SB1680 and HB984 reveals a trojan horse designed to confuse policy makers, short change the public and line the pockets of big telcos, cable companies and a few politicians. It goes without question that the media landscape in the United States since 1980 has resulted in unacceptable concentration of media ownership and a paucity of viewpoints available to audiences. This tragedy of the commons threatens a healthy democracy.

It is high time that you, as Hawaii's leaders, restore the public interest to our local media. Supporting PEG access operations is a good place to start.

In many communities like Maui Nui for instance Akaku and PEG Access is the only non commercial space left where real public discourse can occur. If you do not support us, we will ask the FCC and Congress to act quickly to establish a minimum national standard upon which PEG channels and Broadband Access can be made available by law, to all citizens

,with equal access, including technical and signal parity with dominant commercial interests.

At a time when local newspapers are failing and local voices are being shut down by special interests influenced by telco and cable dollars - and in venues like Maui where public access is successful - by reactionary and land development dollars, the same first amendment principles that apply to public expression here in this physical world need to apply to the "electronic parkland" known as PEG access and to "digital green spaces" in broadband as well.

Thank You

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, April 02, 2009 9:12 AM
To: FINTestimony
Cc: yvonnei@htdc.org
Subject: Testimony for SB1680 on 4/3/2009 4:30:00 PM

Testimony for FIN 4/3/2009 4:30:00 PM SB1680

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Yvonne Isobe
Organization: High Technology Development Corporation
Address: 2800 Woodlawn Dr Suite 100 Honolulu HI 96822
Phone: 539-3839
E-mail: yvonnei@htdc.org
Submitted on: 4/2/2009

Comments:

SB 1680

WE RECEIVED OVER
1000 OF THE
ATTACHED FORM
TESTIMONY.

COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Shawn M. Loughran
thebassdragon@yahoo.com

Friday, April 03, 2009

Testimony in OPPOSITION of SB1680 unless PEG PROTECTION Language is included.

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

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

I hope that lawmakers will do what's right and ensure that the public has a say in "public rights of way". Thoughtful broadband legislation with amendments that enhance PEG access services will support ALL of Hawaii's diverse communities.

Thank you.