



possibly electrical wires. In all cases, private companies have invested millions of dollars in Hawaii to provide these services. By requiring competing companies to "share" infrastructure, these existing investments would be put at risk, and there would be significant disincentives to invest further in Hawaii.

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

Unlimited Authority to Set Regulatory Fees

Section 51 of Senate Bill 1680 S.D. 2 appears to increase the existing regulatory fee from .25 of one percent to .30 of one percent, then in paragraph (c) gives the new Commissioner unlimited authority to establish fees to fund the state's new broadband program. Without fully knowing what the cost of expanding broadband will be in the state, and without fully vetting this whole concept, the carriers could be subject to very high fees, and without legislative oversight. AT&T requests that this third paragraph in Section 51 be fully removed, and that regulatory fees become part of the overall interim discussion on telecommunications and cable regulation.

Broadband Mapping Data Protection

Senate Bill 1680 S.D. 2 gives the Broadband Commissioner the authority to require telecommunications companies to provide proprietary data used for broadband mapping. This is extremely competitively sensitive information and could have significant impacts on telecommunications companies should this data be made public. Other states have protected this data by using non-profit, third parties who are under non-disclosure agreements and are not subject to Freedom of Information Act requests for this data. This legislation should make providing proprietary information optional and should utilize these third parties with the appropriate expertise to ensure participation by telecommunications carriers in mapping projects.

There are many other issues in Senate Bill 1680 S.D. 2 that warrant further discussion, including rules around consumer complaints, annual reports, carrier audits, funding of Lifeline services, rate deregulation, and state Universal Service Fund. A thorough discussion of these issues should occur before the Legislature moves the authority of telecommunication regulation from the Public Utility Commission to the new Hawaii Broadband Commission. Thank you for considering this request.

Respectfully Submitted,

Dan Youmans

SB 1680, SD2

RELATING TO TECHNOLOGY

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

HAWAIIAN TELCOM

March 17, 2009

Chair McKelvey and members of the House Economic Revitalization, Business, and Military Affairs Committee:

I am John Komeiji, testifying on behalf of Hawaiian Telcom on SB 1680, SD2-Relating to Technology. Hawaiian Telcom supports the intent of advancing broadband services within the State of Hawaii; however, we wish to raise concerns regarding the following provisions which, if enacted, will have the unintended consequence of delaying rather than speeding the deployment of advance broadband services:

- **New Fee (page 57, line 14)**- Proposed bill will impose a new unlimited “broadband fee” solely on telecommunications carriers for the benefit of an unregulated service. Instead of enacting new fees, priority should be placed on helping providers to invest in improving and expanding broadband infrastructure. This new fee is unfairly applied and targets local exchange carriers while exempting wireless and VoIP broadband providers, since federal law limits states from regulating these providers.
- **Increased Fee (page 56, line 18)**- SB 1680, SD2 will raise the current semi-annual telecommunications regulatory fee from one-fourth to three-tenths of one per cent of the prior year's gross income. On an annualized basis, telecommunications carriers would pay six-tenths of one percent of their prior year's gross income, which is a 20% increase over the current fee.
- **More Regulation and Potential Federal Preemption**- The Federal Communications Commission (FCC) has initiated efforts to deregulate a number of broadband services. For example, the FCC has declared telecommunications services that are used to access the Internet as information services, and thus not subject to regulation. The bill appears to require state regulation of broadband services by imposing specific and/or additional obligations on telecommunications carriers which, on its face, appear contrary to these FCC efforts. If state regulation of broadband is envisioned, federal preemption may prevent the state from regulating in this area. Moreover, the above FCC actions

have served to remove unnecessary broadband regulations and provide Hawaii's consumers with an opportunity to receive a wide array of new broadband products and services at competitive prices more effectively than would be available with additional regulation.

Hawaiian Telcom is also concerned with the move from a three person decision making body such as the Public Utilities Commission (PUC) to the concentration of power in a single Commissioner as proposed in this bill. While we recognize there are regulatory benefits vesting decision making authority in a single Commissioner such as expedited approvals, hearings, etc., on balance, we believe that a multi-party panel is preferable. Notwithstanding a multi-party entity, the Legislature should insist that the Commission adopt new procedures which will emphasize efficiency and expeditious treatment of issues.

In addition, we oppose the requirement on **page 66**, line 10 which requires cable providers to not only provide but to "install" cable television service at any school or institution of higher education. While we understand the desire of the Legislature to increase installations in each classroom, this additional requirement will greatly impair Hawaiian Telcom's plan and ability to enter Hawaii's video (television) services market. As a new entrant in a market which is controlled by an entrenched incumbent, the challenges we face are considerable. We believe that if the Legislature desires to provide consumers with a real choice in video services, an exemption from these requirements must be provided for any new entrant. Incentives which will allow new entrants a greater opportunity to establish a market foothold and to grow in size will serve to help encourage competition in a market which currently has no competition.

Finally, Hawaiian Telcom supports the language contained in the bill intended to provide regulatory relief to telecommunications carriers in the form of pricing flexibility for retail services. The current language, however, is not clear as to whether this pricing flexibility is immediate or whether there is a six month delay before pricing flexibility may be implemented. If the goal of this provision is to provide consumers with the full benefits of competition, including lower prices and new or different service offerings, the bill must be clarified by deleting the last sentence on **page 45**, lines 1 to 4 to ensure that this pricing flexibility and the associated regulatory relief is intended to be permanent and immediate.

Based on the aforementioned, Hawaiian Telcom shares your interest in improving and advancing broadband and telecommunications services in Hawaii. We respectfully request a careful review of the concerns raised before enacting regulatory provisions which may lead to unintended and counterproductive consequences. Thank you for the opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS
MARCH 17, 2009**

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

Chair McKelvey and Members of the Committee:

DESCRIPTION:

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

POSITION:

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

COMMENTS:

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

Thank you for the opportunity to testify.

From: Community Media Producers Association (CMPA) [cmpa@hawaiiintel.net]
Sent: Monday, March 16, 2009 8:29 AM
To: EBMtestimony
Subject: EBM - SB 1680 SD2 March 17, 2009 7:30 a.m. Conference Room 312 - TESTIMONY
Attachments: CableScan1998_Schuler.pdf

CMPA

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

Aloha Chair McKelvey, Vice-Chair Choy, and members of the Economic Revitalization, Business, & Military Affairs Committee

My name is Jeff Garland and I am the secretary of the Community Media Producers Association (CMPA). CMPA is in support of the intent of SB 1680 SD2 RELATING TO TECHNOLOGY Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting with the following amendments:

PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

"Access organization" means any nonprofit organization **with voting members under part VI of chapter 414D** designated by the commissioner to 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 the following from page 69 lines 19- 21 and page 70 lines 1 & 2 [**PART III. CABLE** section -67 (j)]:

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

If you amend the definition 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 TV 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 concludes membership PEG access organization boards are more democratic, and that non-membership boards tend to become self-serving. CMPA respectfully requests that this committee amend the bill so that the funding it mandates the public pay to support the PEGs facilitates democracy and not self-serving in-groups.

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

"The world is too dangerous to live in - not because of the people who do evil,
but because of the people who sit and let it happen."

Albert Einstein

CABLE SCAN

Community Service Cable Television

The Nonprofit Access Corporation: A Guide to Incorporation

By Kathleen T. Schuler

Identifying who should manage a public or community channel is a complex and frequently controversial decision. Increasingly, cities are exploring the formation of an independent, nonprofit community-based access corporation as an answer to the dilemma.

However, the idea of turning over channels, equipment, studios, and programming responsibilities to an independent community group raises serious concerns, and sometimes the hackles, of city councils and cable operators alike.

In response to numerous requests for information about access corporations, CableScan offers this overview of access corporations and, in the accompanying article, a checklist to the incorporation of a nonprofit community agency.

So Why An Access Corporation?

Cities are exploring the benefits of establishing a nonprofit access corporation to work with the community channel, benefits which include:

#1 — A Buffer

If established as independent from local government, an access corporation provides the city with a buffer against liability for programming on the channel and First Amendment violations. The nonprofit, not the city, establishes policies and procedures for the channel and makes the programming and scheduling decisions.

#2 — Focus is Access

A nonprofit access corporation has only one focus: the access channel. Cities, cable systems and schools, it is argued, are in other businesses, and, therefore, a relatively low financial, political, and administrative priority may be given to the access channels.

#3 — Less Bureaucracy

Compared with local government and schools, a nonprofit is relatively free of bureaucracy, which can result in enhanced effectiveness and cost efficiencies.

#4 — Legal Benefits

Incorporation as a California nonprofit and federal tax-exempt status bring a number of benefits. Staff and Board of Directors are provided a degree of protection from liability. Most income is exempt from Federal and state taxes. A nonprofit has greater flexibility in fundraising than does local government or the cable company, and is eligible for bulk mail privileges.

#5 — Shallow Pockets

In the case of a lawsuit the access corporation has relatively "shallow pockets" compared to the city, school, or cable company.

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Institutionalizing I-Nets

By Evelyn Pine

Institutional networks were proposed in a number of California cities as a result of cable franchises drawn up in the early eighties. Seen as cable's initial foray outside of the entertainment business, an institutional network (or I-net) is a local cable network, separate from the subscriber loop.

According to City of Torrance Cable Officer, Warren Carter, "There's nothing mystical or magical about an I-net. It's a wire which provides point to point information delivery. Institutional networks are not high tech. They are very, very basic."

According to the wisdom of the early eighties, I-Nets would be used to transmit voice and data as well as video for governments, schools, hospitals and businesses. If interactive video was the glamour service of the franchising gold rush, I-nets were perceived as cable's workhorse.

Five years later, however, most I-nets remain unconstructed or in disuse. Those that are operating are underutilized, with most I-net applications in California for city governments. The development of nongovernmental uses has been slow; the development of commercial applications nonexistent.

Nonetheless, the Foundation's recent survey showed a rekindled interest in I-nets. Hawthorne, which received a previously unused I-net in a transfer accord with Paragon Communications, is working with the City of Lawndale to test the I-net's effectiveness for data transfer and videoconferencing. The County of Stanislaus plans to use several

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Dr. Martin Rickler, Coordinator of Special Projects for the Santa Barbara County Alcohol Program, is the recipient of the Robert W. Wetzel Award, the highest honor given by the State Advisory Board on Alcohol Related Problems. Specially cited was his series, "Discussions on Alcohol" produced in cooperation with a county-wide consortium of agencies and shown on Cox Cable Santa Barbara and Comcast Cable.

(photos by Tom Campbell of Santa Barbara)

How to Incorporate: A Checklist

Establishing an access corporation is basically a two-step process.

Filing with the state:

- Identify one or more persons who will serve as incorporators, signing the founding documents and acting on behalf of the organization until it has received its tax-exempt status. The incorporators may or may not be the initial Board of Directors.
- Select a name. You can check with the Secretary of State to see if the name is available and reserve it early. However, once you've reserved a name, you must file the Articles of Incorporation within 90 days.
- Prepare the Articles of Incorporation.
- Prepare the By-laws.
- Prepare the California Application for Exemption (FTB 3300).
- Submit the Application for Exemption package along with a \$10 filing fee to the Franchise Tax Board.
- File the Exemption package plus the original and two copies of the Articles of Incorporation with the Secretary of State who will certify the articles and forward one copy along with the Exemption Package to the Attorney General's Office (\$20 filing fee). If there are no problems, it will take two weeks for the Secretary of State to certify the Articles and another 45 days to receive your Tax Exemption Letter from the Franchise Tax Board.

At this stage you've obtained your state tax exemption and are a California nonprofit corporation. Now you are ready to file your Federal Exemption application under section 501(c)(3) of the I.R.S. Code.

Filing with the IRS:

- Prepare the Federal Exemption Application (Package 1023) and the Application for Employer Identification Number (Form ss-4).
- File the applications with the IRS District Office in San Francisco or Los Angeles. It will take from two to six months for the IRS to send you the determination letter that you are tax-exempt.
- File a copy of the Federal Determination Letter with the State Franchise Tax Board.

Fees for filing in California are approximately \$50, while the IRS now charges \$300 to apply for tax exemption. Incorporation should take about six months. If you have a lawyer draw up the papers, there will be additional legal fees.

To guide you through the process:

Mancuso, Anthony, *The California Non-Profit Corporation Handbook*, Nolo Press, Berkeley.
Grangel, Robert and Boske, Sue Miller, *The Access Manager's Handbook*, Focal Press, Boston.

IRS Publication 557 — *How to Apply for Recognition of Exemption*

IRS Publication 578 — *Tax Information for Private Foundations and Foundation Managers*

Sample Articles of Incorporation and By-laws are available from the Foundation.

Incorporation

continued from page 1

Hazards

Access corporations, however, are vulnerable to funding and political vagaries. When formed, these agencies are not self-sufficient, and usually rely on the city and/or cable company for start-up money and the base level funding in the beginning. Access channels are relatively new concepts for any given community. And, in most cases, an access corporation is the "only game in town". Therefore, there is rarely anyone in the community—from the city council to community groups—with any experience with access agencies.

Most common hazards facing an access corporation include:

- An unstable funding base.
- Insufficient start-up funding.
- The assumption that the nonprofit can readily generate its own budget from traditional funding sources, from memberships, or from revenue-producing activities.
- Lukewarm support from the city council and city manager.
- Poor or unclear relationship with the cable operator.
- Unclear scope of responsibilities.
- Pressure to begin operations before developing a plan, budget, policies and procedures, and/or internal systems for the organization.
- Dependency on totally volunteer labor.
- A Board of Directors that is uncommitted, unsure of mandate, and/or ineffectual.

Establishing the Organization

The first steps in creating a nonprofit access agency is to incorporate under California's nonprofit code and to receive tax-exempt status from the IRS (see sidebar). Once the by-laws are in place—and you're awaiting word from the IRS—the next steps are to organize the corporation and develop a plan and budget.

1. Select the Board of Directors if an interim group or a partial Board incorporated the agency.
2. Organize the Board: elect officers, establish committees, create job descriptions for officers and committees, provide training, develop a Board calendar.
3. Hire Executive Director, if possible.
4. Develop at least a one-year operational plan.
5. Prepare a one-year budget based on that plan.
6. Establish facilities and secure equipment, if necessary.
7. Create the policies and procedures for the channel the corporation is to manage.
8. Develop the major programs and supporting materials, to include training programs, public relations and outreach materials, producer liability forms, release forms, equipment checkout procedures, etc.
9. Cablecast the first program, award first grant, conduct first training class, etc.

It is important to have the core plans, policies and organization in place before beginning operations!

Key Decision Points

As the planning progresses for a nonprofit access corporation, there are at least six key decision points:

1. Role of the Access Corporation

Major problems develop if all parties fail to agree on the short and long term role of the corporation. Unrealistic expectations and unclear mandates rival lack of funding as the root causes of most early problems with access corporations. Since the community rarely participates in the initial negotiations and planning, they tend to test ill-defined limits.

In California access corporations undertake a wide range of activities; there is no standard for the "typical access corporation". Current agencies:

- provide policy direction for the channel
- serve as the coordinating body for multiple user groups
- manage a local production grant program
- provide programming
- promote the channel
- offer training to the community
- manage the channel with the responsibility for all of the above

Sometimes the corporation is limited initially to giving grants or fundraising, for example, with plans that it will assume full responsibilities for the channel within a given period of time.

Since the channel(s) may be dedicated to one or more purposes, the jurisdiction of the corporation must be defined.

- Is it responsible for the public, educational and/or any other dedicated channels?
- Are other agencies—the community college, fire department, the library, for example—to produce programming, too?
- Does it have a coordinating or other role vis-a-vis municipal or other non-public programming?

2. Funding Model

The source of startup money and the long-term funding model for the organization must be identified. The model should include any expected support from the operator for equipment, facilities and/or maintenance; the city's contribution from franchise fees, general fund or other; and any other proposed sources of funding.

If there is no commitment for funding by the city or the operator, plans for an access corporation should be closely re-assessed, for other sources of revenue are either limited or take a period of time to cultivate. Expectations that a corporation can quickly generate large amounts of revenue from fees, membership support, underwriting and grants from traditional funding sources like foundations have not been borne out by experience to date.

In addition to an identifiable source of startup funding and a stable funding base for the first years of operation, a corporation should develop a long range funding strategy early on.

3. Relationship with the City and Cable Company

The mandate given the corporation, sources of funding and needed political support all impact the corporation's relationships with the city, the cable company, and the community at

continued on facing page

large. For the city, the greater the independence of the access group, the more protection from liability and First Amendment challenges it provides the city. However, the city is reluctant to relinquish control unless the nonprofit can be held accountable for the channel and for any public resources the city provides the organization.

While protected from program content liability on access channels by the NCCA, the cable system also wants assurances that its resources are responsibly used and that the local programming will be attractive to its subscribers.

With the community the issues become how can the corporation be responsive, educate the public about the channel, generate programming, and develop community support when the community has little or no understanding of access or the corporation.

Balancing the needs for independence with accountability to all three groups is a delicate act.

The relationship between the corporation and the city, the cable company and the community is usually defined through the composition and election of the Board of Directors (see below), funding criteria, and reporting requirements.

Any reporting requirements or criteria for funding should contain pre-determined, non-intrusive performance standards or benchmarks i.e., hours of programming, training a given number of people, maintaining an active Board of Directors, reaching fundraising goals,

meeting financial management standards, etc.). Such standards must not in any way touch upon program content.

4. Incorporating the Nonprofit

Who should prepare the founding documents and incorporate the organization? Over the last 5 years it has been common for city staff — and sometimes cable system personnel — to prepare the Articles of Incorporation and By-laws and to staff the Board of Directors. Concern about First Amendment violations have lead some cities to turn these responsibilities over to a founding Board of Directors or recruit community representatives to serve as the incorporators and to bring on the first Board of Directors.

5. The Board of Directors

The Board of Directors is legally responsible for the policies and operations of the access corporation, and must provide leadership and expertise, ensure effective operations of the agency, keep the organization responsive to the community, act as liaisons with the community, city and cable system and with other institutions, and protect the corporation's financial well-being.

City and/or cable representation on the Board is usually an issue. Their serving on the Board can enhance communications, promote political and financial support and answer concerns about the corporation's "accountability".

There are a number of potential problems, however. City and cable company representatives may exert too much control, especially if they also fund the agency. A city representative

serving on a Board which directly or indirectly sets programming policy poses First Amendment questions. The more "city" seats, the greater the question becomes. There is also the potential for conflicts of interest when voting on issues that impact the city or cable system.

To avert the problems but to maintain communications, Boards have established non-voting, ex-officio seats for the cable operator and the city or put them in advisory roles.

6. Selection of the Board of Directors

Currently, the California nonprofit corporation code differentiates between two types of 501(c)(3)s: membership and nonmembership. The law stipulates more stringent voting and meeting requirements for membership organizations.

If "members" are given the rights to vote for the election of Board members, amendments to the by-laws, distribution of assets or the dissolution of the organization, the organization is legally a membership group. If these rights are held by the Board of Directors only, then no matter what supporters or contributors are called, the organization is legally a non-membership group.

Membership groups are regarded as the most democratic form for access corporations, keeping the corporation close to its constituency. Members that elect the Board and vote on key policy issues create the greatest "arm distance" protection for the city. Memberships can also be a source of revenue and of political support.

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Order Form

Return this tear-off to:
Foundation for Community Service Cable Television
 5010 Geary Blvd, Suite 3 • San Francisco, CA 94118 (415) 387-0200

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	Members Only — 10% discount	\$ _____
	Total Amount Enclosed	\$ _____

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 Affiliation _____
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 City/State/Zip _____

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 Information on the Foundation's Services

Incorporation

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However, membership groups are more cumbersome to manage, and recruitment, voting and meeting requirements build in additional costs. It is more difficult to ensure that the Board will have a balance of members or have necessary expertise. Quorum requirements must be low enough to make sure action can be taken but high enough to keep a small interest group from dominating the organization.

Most access corporations in California now do not have a formal membership. Boards are elected in a number of ways:

- City council serves as the Board
- City council appoints the Board
- Institutions within the community select representatives or fill identified "slots"
- The Board of Directors is self-perpetuating

The court decisions in Palo Alto and Santa Cruz raise serious First Amendment questions when the city council serves on or appoints a significant number of members.

Non-membership groups are generally more efficient and less costly to operate. Board membership can be "fine-tuned" to bring on needed expertise or to represent specific groups. There is usually more continuity with non-membership groups. Conversely, such groups run the danger of becoming self-serving and losing contact with their constituencies. In the absence of memberships, other means of community involvement and buy-in must be developed.

Representative Angus L.K. McKelvey, Chair
Representative Isaac Choy, Vice-Chair
Economic Revitalization, Business, & Military Affairs Committee

House of Representatives of the State of Hawai'i

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

Tuesday, March 17, 2009
Support SB No. 1680, SD2, Relating to Technology

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

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

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

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

Federal law's inclusion of PEG access in the powers of local franchising authorities was intended to recognize that access to media and exercise of other First Amendment rights simply are not supported by free market conditions or the structure of the commercial television market. To counteract the problems of concentrated ownership of media, the federal law was amended to allow local franchising authorities to require PEG access. In 1987, the Legislature made PEG access

mandatory in Hawai'i.

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

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

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

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

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

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

Thank you for the opportunity to present this testimony.

Angus L.K. McKelvey, Chair
Economic Revitalization, Business and Military Affairs (EBM)

House of Representatives of the State of Hawaii

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

Tuesday, March 17, 2009 Room 312

Support of SB 1680, Relating to Technology with “PEG Protection Amendments”

On behalf of the people of Maui, we strongly support Senate Bill No. 1680 Relating to Technology with Amendments provided that the recommendations of the HCR358 Task Force Report and the PEG Access protection language included in 440G be fully incorporated into this proposed legislation or alternatively, the language included in HB984 HD2 be reinserted in the public interest. (see Appendix A attached)

Your committee in HB984 HD2 recognized that preservation and protection of Public, Educational and Government Access extends to broadband and is an essential component of bringing Hawaii into the forefront of the digital age. Our ability to communicate effectively with each other will only succeed if the fullest range of local community communications needs such as access to bandwidth, tools, skills and ideas on a fast, open internet are met for ALL residents at reasonable cost. Media literacy, digital education and access to spectrum are the underpinnings of broadband development. PEG access centers already in place, will provide cost effective resources and tools to accomplish these goals and bring digital literacy to all of our people.

Community Television operations in Hawaii are recognized as some of the best in the nation. This success is due to the fact that in 1987, the Hawaii Legislature followed the lead of the Federal Government by adopting and putting into effect a “best practice” integrated PEG model whereby independent non profits created for this specific purpose provided low cost media training to the public, enable broadcast of local, state and native government affairs, support private and public educational programming and allowed freedom of expression from diverse and varied sources. Akaku has been empowering local democratic voices without censorship, corporate control or commercial consideration for more than fifteen years and are perfectly positioned to have an immediate positive impact on Hawaii’s broadband future. This is why it makes perfect sense that the PEG language currently in 440G travel to the legislation that will replace it.

This is particularly important because Akaku has been an early adopter of real world broadband applications. Not only were we the first media organization in Hawaii to stream video in the late nineties, we were also innovators in 2007 with the first live, simultaneous multicasts via radio, television and web broadcasts of events of public importance to the entire state. We continue to stream our channels and our "Hawaiian themed" radio station broadcasts via the internet to the state and world at large. We were among the first in the nation to integrate live TV broadcasts with "skype" technology from Lanai and Molokai and as far away as Washington D.C and we provide our Maui Nui residents with one of the more successful and innovative new media and video training programs in the state.

Despite these successes there are a few in the Administration and others who, for reasons that are unclear, wish to separate the current PEG framework from broadband entirely. This shortsighted point of view is without merit and contrary to emergent national broadband policy. It is designed to persuade decision makers to abdicate more than thirty-five years of progressive community communications policy in the public interest. Failure to include PEG protection language in SB1680 will have a devastating effect on the public's ability to enjoy an open internet, severely damage the prospect of a healthy electronic forum for democracy, deepen the digital divide and potentially cut off an existing, highly functional engine for broadband adoption by Hawaii residents.

The issue of cable franchise fees and, by extension, future broadband fees being assessed for PEG 2.0 and other public interest use in exchange for the use of public rights of way is a fundamental tenet of U.S. Communications Law. This is the reason why we have public access channels on cable today. These local, non-commercial, non-corporate communications systems exist because the government intervened in the marketplace to charge monopoly cable companies "rent" for the use of our airwaves and our public property. With decades of increased concentration of ownership and corporate control over virtually all media, the same paradigm needs to apply to broadband access if we are to enjoy an electronic democracy. This is why SB 1680 needs to be amended with specific language to guarantee that the regulatory framework that currently exists with PEG access applies to community broadband as well.

In its recent report to the 2009 Legislature, the HCR358 Task Force submitted administrative rules that if incorporated into SB1680 as amendments will resolve in one fell swoop, any perceived procurement controversy, current regulatory "standard less discretion" issues; provide performance and accountability for PEGs, resolve issues before DCCA, SPO and the courts as well as set metrics for PEG Access designation.

Obviously in the broadband future, we will see new digital protocols for delivery of many services. For this reason and more it is imperative for the legislature to safeguard our ability to communicate effectively in these new environments by

providing specific language for healthy PEG migration to broadband in order to foster an enlightened regulatory framework.

Without protective language, these community communications assets are in jeopardy. Currently there are petitions before the FCC from the Cities of Dearborn and Lansing, Michigan and others challenging discriminatory treatment for PEG access by cable giants, Comcast and AT&T. The FCC and Congress are also looking at harm being done to the concepts of localism and community media by regressive state and local governments who are rolling back public interest obligations of cable and telephone companies under massive industry pressure and influence.

We agree with the new FCC and the Obama administration that there is a place for non-commercial, fully local, community broadband media access as a natural extension of the PEG concept. We applaud amendments to this effect inserted into this legislation in order to protect and stabilize PEG access in Hawaii while at the same time assuring full accountability to the government and to the people in each franchise jurisdiction.

Provided that neighbor island, community and public interest media are included in the equation, this broadband initiative can go a long way toward bringing all Hawaii residents into a digitally inclusive future.



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TO THE HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION, BUSINESS, AND
MILITARY AFFAIRS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 17, 2009
7:30 a.m.

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

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, ISAAC W. CHOY, VICE
CHAIR, AND MEMBERS OF THE COMMITTEE:

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

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

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

H.B. 984, H.D. 4, consolidates regulation of communications services under one regulator, a new Hawaii Communications Commission ("HCC" or "Commission"), in order to expedite the availability of the latest communications services at the earliest possible time to Hawaii's residents. As the Department has already explained the importance of the bill when the Committee heard the House companion, our testimony will focus on our concerns with H.B. 984, H.D. 4.

Addressing the concerns of the cable and telephone competitors.

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

Use of American Recovery and Reinvestment Act moneys.

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

Commission staff.

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

INET-related moneys, currently in OTW account.

To ensure that the Commission has access to those INET-related moneys currently held in trust in an OTW account for the expansion of the State's INET infrastructure for broadband purposes, the Department requests that the Committee incorporate the language in **Attachment 4**.

Technical clarifications.

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

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

Attachment 1

To address the concern of industry members that the intent of the bill is NOT to force them to open or share their existing infrastructure, which, except in the case of the incumbent local exchange carrier, is currently prohibited by federal law, but to allow the Commission to facilitate or construct State-owned infrastructure or, to require, as a condition of permitting for example, to install fiber-to-the-home in a Greenfield-style development and provide a common access point open to all providers on an equal basis without limiting the Commission's authority in the event that federal law on the subject changes:

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

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

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

section ___-8(b) (General powers and duties, on page 13, line 17). The provision should read:

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

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

Add a new section ___-54 to read:

"§ -54 Local exchange intrastate services; fully competitive. (a) Notwithstanding any law to the contrary, the Hawaii communications commission shall classify the state's local exchange intrastate services, under the commission's classifications of services related to costs, rates, and pricing, as fully competitive. In addition, with respect to all services except intrastate switched and special access with respect to wholesale customers, the telecommunications carrier shall not be required to obtain approval or provide any cost support or other information

to establish or otherwise modify in any manner its rates, fares and charges or to bundle any service offerings into a single or combined price package; provided that with respect to basic residential service a telecommunications carrier may not charge any rate for a service above the rate for the service included in the telecommunications carrier's filed tariff.

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

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

Additionally, and as part of that same agreement, the new section ___-38 (starting on page 46, line 3) should be deleted and replaced with the following:

§ -38 Regulation of telecommunications carrier rates; ratemaking procedures. (a) All rates, fares,

charges, classifications, schedules, rules, and practices made, charged, or observed by any telecommunications carrier or by two or more telecommunications carriers jointly shall be just and reasonable and shall be filed with the commission. The rates, fares, classifications, charges, and rules of every telecommunications carrier shall be published by the telecommunications carrier in such manner as the commission may require, and copies shall be furnished to any person on request.

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

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

- (1) Basic telephone service and for services that are not effectively competitive are regulated and

remain just, reasonable, and nondiscriminatory;
and

(2) Universal service is preserved and advanced.

(d) Unless and until the commission waives this requirement, no rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission or the public utilities commission, shall be established, abandoned, modified, or departed from by any telecommunications carrier, except after thirty days' notice to the commission as prescribed in section -14(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section -14(b). Unless and until the commission waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section -14(c), at which the consumers or patrons of the telecommunications carrier may present testimony to the

commission concerning the increase. The commission, upon notice to the telecommunications carrier, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;
- (2) After a hearing, by order:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable;
 - (B) Prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions;
 - (C) Regulate the manner in which the property of every telecommunications carrier is operated with reference to the safety and accommodation of the public;
 - (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system;

- (E) Regulate the return upon its telecommunications carrier property;
 - (F) Regulate the incurring of indebtedness relating to its telecommunications carrier business; and
 - (G) Regulate its financial transactions; and
- (3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the telecommunications carrier actually used or useful for telecommunications carrier purposes.

(e) The commission may in its discretion, after public hearing and upon showing by a telecommunications carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall require by order the telecommunications carrier to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the telecommunications carrier's rate base found to be reasonable by the commission, received by

reason of continued operation that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

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

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

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

In an attempt to address concerns raised by some of the industry members regarding the vesting of authority with a single commissioner, the Department proposes to enhance the involvement of the Communications Advisory Committee that is created in section ___-23 on page 32 to read:

§ -23 **Communications advisory committee.** (a)

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

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

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

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

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

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

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

Attachment 2

Insert a new definition in section ___-1 to read:

"American Recovery and Reinvestment Act of 2009" means the federal law, P.L. 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes."

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

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

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

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

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

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

(e) The commission shall certify that a project has been identified for expenditure of funds received pursuant to the American Recovery and Reinvestment Act of 2009 and is entitled to priority over other eligible projects on the basis of the overall public benefit associated with the project and financial needs as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009.

Attachment 2

(f) Contracts or purchases hereunder using moneys from the American Recovery and Reinvestment Act of 2009 shall be exempt from chapter 103D."

Add a new section to the bill to read:

SECTION __. There is appropriated out of the federal funds subaccount of the Hawaii communications commission special fund the sum of \$_____ or so much thereof as may be necessary for fiscal years 2008-2009 and 2009-2010 to purchase broadband facilities, services or equipment, or to fund broadband-related infrastructure projects pursuant to this Act.

The sum appropriated shall be expended by the Hawaii communications commission for the purposes of this Act.

Suggested changes to read:

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

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

. . .

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

2. **Subsections (a) and (b) of section 57 of the bill on pages 152-153:**

"(a) The department of commerce and consumer affairs shall transfer all four positions from the cable television division to the service of the Hawaii communications commission[~~. The positions selected for transfer shall reasonably relate to the functions of the Hawaii communications commission.~~]; provided that:

- (1) Employees who occupy civil service positions and whose functions are transferred by this Act shall

not suffer any loss of salary, seniority, prior service credits, any vacation and sick leave credits previously earned, or other rights, benefits, and privileges under the State's personnel laws. Employees who have permanent civil service status shall retain their civil service status and shall be transferred to similar or corresponding positions in the Hawaii communications commission, subject to the State's personnel laws and this Act;

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

(3) Employees, whose functions are transferred by this Act, shall be transferred with their functions and shall continue to perform their

regular duties subject to the State's personnel laws and this Act.

(b) ~~[Up]~~ There shall be up to [an additional] ten [general funded] new temporary exempt positions [shall be transferred to] established in the Hawaii communications commission to assist the commissioner in carrying out the provisions of this Act. These positions shall be funded from the Hawaii communications commission special fund and may be filled without regard to chapter 76."

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

Attachment 4

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

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

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

(1) Section ___-9(c) starting on line 14 on page 15 should be amended to read:

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

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

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"(b) All moneys appropriated to, received, and collected by the commission that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the Hawaii communications commission special fund including but not limited to all moneys received and collected by the commission pursuant to sections -24, -25, -51, -73, and 92-21."

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

". . .

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be

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deposited into the compliance resolution fund. This provision shall not apply to any fee imposed by the Hawaii communications commission pursuant to chapter , including the regulatory fees in sections -24, -25, -51, and -73, the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commission's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, the condominium management education fund, section 514A-131, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the

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department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

. . . ."

To clarify that charter schools are included in the definition of schools, the definition of "school" section ___-1 on page 9, line 15 should read:

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

The Commission should have the discretion in opening investigations brought by a complaint. Consequently, section ___-10(c) starting on page 18, line 12 should read:

"(c) Any investigation may be made by the commission on the commissioner's own motion, and ~~shall~~ may be made when requested by the telecommunications carrier, cable operator, or PEG access organization to be investigated, or by any person

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

Correct an incorrect citation. Also, for consistency, if the Commission is authorized to fine telecommunications carriers, cable operators, AND PEG access organizations, the Commission should also be able to order PEGs to cease operations if violations continue. Section ___-24(a), on page 33, line 9 should read:

"(a) Any telecommunications carrier, cable operator, or PEG access organization violating, neglecting, or failing in any particular way to conform to or comply with this chapter or any lawful order of the commission, including but not limited to the grounds specified in section [~~—71~~] ___-68 for cable operators and PEG access organizations, shall be subject to a civil penalty not to exceed \$25,000 for each day the violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the telecommunications carrier, ~~[or]~~ cable operator, or PEG access organization to cease carrying on its business while the violation, neglect, or failure continues.

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

"(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the commission shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county and to any [~~telephone~~] local exchange carrier or other utility and cable company in the county in which the proposed service area is located. The commission shall also give public notice of the application and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing;"

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

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

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

LINDA LINGLE
GOVERNOR

AARON S. FUJIOKA
ADMINISTRATOR



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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
ECONOMIC REVITALIZATION, BUSINESS, & MILITARY AFFAIRS

March 17, 2009

7:30 AM

SB 1680, SD 2

RELATING TO TECHNOLOGY.

Chair McKelvey, Vice-Chair Choy and committee members, thank you for the opportunity to testify on SB 1680, SD 2. The State Procurement Office (SPO) testimony is limited to SECTION 3, PART III, page 67 and page 75.

Page 67, lines 3 to 5, 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 public with”

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.

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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 11 to 14, the SPO recommend deleting subsection (f).

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

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

Thank you



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Economic Revitalization, Business, and Military Affairs
March 17, 2009 at 7:30 am

by

David Lassner

Vice President for Information Technology/CIO, University of Hawaii

SB 1680, SD2 – RELATING TO TECHNOLOGY

Chair McKelvey, Vice Chair Choy 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 our minutes published on the web. One interim report was provided to the Legislature before the 2008 Session and made public at that time. And as we neared completion last fall, numerous intermediate drafts of our final report were publicly available on the web.

Summary of Report and Proposed Legislation

While there wasn't enough time or money to do everything we had hoped, the Task Force unanimously put forward four key recommendations, summarized as follows.

1) **Broadband is Vital to Hawaii**

Broadband is critical infrastructure for Hawaii's 21st century advancement in education, health, public safety, research & innovation, economic diversification and public services. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. The task force recommends that Hawaii establish an aggressive and forward-looking vision that positions the State for global competitiveness.

2) **Driving Broadband Deployment**

The task force found that the U.S. as a whole is dramatically lagging the leaders in the developed world in our broadband capabilities and pricing, and is falling farther behind each year. While Hawaii is doing well on some measures relative to some other parts of the U.S., the State also falls to the bottom in many national broadband studies. The task force recommends that the State consolidate all relevant regulatory and permitting responsibilities in a new, one-stop, broadband advancement authority that promotes

Hawaii's policy objectives, streamlines permitting and access to public infrastructure, promotes sharing to reduce costs, and provides advocacy at all levels of government.

3) Maximize Hawaii's Connectivity to the World

Hawaii's "lifeline" for broadband to the rest of the world is expensive submarine fiber. While Hawaii was once the crossroads for trans-Pacific telecommunications, all of the new fiber systems built across the Pacific since 2001 have bypassed Hawaii. The task force recommends that Hawaii aggressively promote the landing of new trans-Pacific submarine fiber in Hawaii, including a shared access cable station that reduces barriers to fiber landing in Hawaii.

4) Stimulate Broadband Adoption and Use

The task force believes supplying advanced broadband at affordable prices is just one side of the equation. The task force recommends that Government lead by example in demonstrating the value of broadband to our citizenry, deploying broadband services to the public, and ensuring that we do not leave behind the economically disadvantaged members of our communities who may be inhibited from full participation in the 21st century.

There is much more data and detail in our full report, which was provided to each Legislator and the Governor just before the end of last year.

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

Comments on the Legislation

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

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

- Shared Infrastructure

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

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

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

- Power of the Hawaii Communications Commissioner

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

- Concern of Attempts to Pre-empt Federal Regulation

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

- Concern that the Bill Does Not Streamline Permitting

A number of private providers expressed concern in their testimony that the proposed legislation does not actually streamline permitting. The Task Force spent quite a bit of time listening to our private providers describe their frustrations at the costs of the current processes in time and money. Unfortunately, the time and budget available to the Task Force were simply insufficient for us to redesign the permitting processes that hinder timely and cost-effective progress. We began to meet with County officials, since much of the work must involve both State and County agencies. Nobody had every tried to do this before, and the Task Force observes that, at present, there is no public official at any

level in any office with the mission, responsibility or authority to even attempt to streamline the broad range of permitting involved in the deployment of broadband infrastructure. We therefore urge that the Hawaii Communications Commissioner be established and empowered with this responsibility so that this important work can begin as soon as possible.

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

- PEG Access

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

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

- Regulation of the Incumbent Carrier

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

Closing

As the task force completed its work at the end of last year, we greeted with great enthusiasm the words of then President-Elect Obama on December 6, 2008: "It is unacceptable that the United States ranks 15th in the world in broadband adoption. Here, in the country that invented the Internet, every child should have the chance to get online, and they'll get that chance when I'm President - because that's how we'll strengthen America's competitiveness in the world."

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

**Written Statement of
YUKA NAGASHIMA
Executive Director & CEO**
High Technology Development Corporation
before the
**HOUSE COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS, &
MILITARY AFFAIRS**
Tuesday, March 17, 2009
7:30 AM
State Capitol, Conference Room 312

In consideration of
SB 1680 SD2 RELATING TO TECHNOLOGY.

Chair McKelvey, Vice Chair Choy and Members of the House Committee on Economic Revitalization, Business, & Military Affairs.

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

We cannot summarize more clearly why for Hawaii there is a critical need to support SB 1680 SD2 than what has already been published by the Internet Innovation Alliance in their recent publication The Broadband Fact Book: *“.... you almost certainly agree that maintaining a robust, expanding Internet that delivers more and better services to more people should be one of our national priorities. Indeed, the goal of universal broadband in America unites community activists, elected officials, business executives, labor leaders and average citizens. Belief in universal broadband is bipartisan, persistent and urgent. The urgency is warranted. Broadband – high speed Internet access – is the transformative technology of our generation. Access to and effective usage of broadband connections enhances individuals’, industries’ and nation’s ability to grow, compete, and succeed. Broadband helps businesses become more productive, governments become more accessible, students become better prepared and citizens become more engaged. It is an opportunity platform that is transforming how we work, live, play and learn.”*

Further, the following taken from the Hawaii Broadband Task Force Final Report to the Legislature, December 2008, summarizes the long term, sustainable economic impact of broadband for Hawaii: “Broadband is critical infrastructure for Hawai‘i’s 21st century advancement in education, health, public safety, research & innovation, economic diversification and public services. Senator Daniel K. Inouye summarized the imperative in a September 16, 2008 Congressional Hearing on “Why Broadband Matters.” *“Broadband matters because*

broadband communications have become the great economic engine of our time. Broadband deployment drives opportunities for business, education, and healthcare. It provides widespread access to information that can change the way we communicate with one another and improve the quality of our lives. This is why our discussion today is not about pipes and providers. It is about people; our citizens stand to gain the most from universal broadband adoption. By some estimates, universal broadband adoption would add \$500 billion to the U.S. economy and create more than a million new jobs. ... Add to this hundreds of millions of dollars in savings through e-government and telemedicine initiatives and untold riches we can reap by tapping the genius of web-based entrepreneurs in every corner of this country. The case for better broadband is clear."

Thank you for the opportunity to submit testimony in support.



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March 17, 2009

The Honorable Rep. Angus McKelvey
Chair, Committee on Economic Revitalization, Business & Economic Development
Hawaii House of Representatives
State of Hawaii

RE: Request to Limit Scope of Broadband Commission in Senate Bill 1680, S.D. 2

Dear Rep. McKelvey and Members of the Committee:

Senate Bill 1680, S.D. 2 changes the fundamental decision-making structure in Hawaii to allow for a new broadband program, but more critically, would put all authority for regulating telecommunications and cable services in the hands of one person. Lost will be the diversity of views that the current Public Utility Commission provides. Transferring these regulatory responsibilities to a new government agency is also very complex. We believe such an important change deserves far more discussion among all stakeholders.

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

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

Along with limiting the scope of the Hawaii Broadband Commission, there are several other issues in this legislation that raise concerns:

“Share Infrastructure” Problematic

Senate Bill 1680 S.D. 2 calls for creating "shared infrastructure" as a way to expand broadband services throughout the state. While this may be a viable solution in other countries, it does not fit the United States' telecommunications model, which is more free-market based, with competition successfully providing infrastructure investment and technology innovation. As a result, a variety of technologies in the U.S. are now being used to provide broadband services, including cable, DSL, Wireless, Satellite, and someday

APPENDIX on Proposed Amendments on SB 1680

§ -1 Definitions. ***

"Public, educational, or governmental access organization" or "PEG access organization" or "access

organization" means any nonprofit organization designated by the commissioner to oversee the development, operation, supervision, management, production, or broadcasting of programs for

any channels obtained under section -67, and provide PEG access services or any officers, agents,

and employees of an organization with respect to matters within the course and scope of their

employment by the access organization.

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

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

by this chapter.

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

(d) The commission shall have the authority to designate and select PEG access organizations,

the authority to contract with the PEG access organizations and enforce the terms and conditions

of the contracts, and general supervision over PEG access in the State. general supervision over

public, educational, or governmental access facilities and public, educational, or governmental access

organizations.

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

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

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

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

-67.

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

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

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

to:

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

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

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

submission of proposals.

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

(e) After public hearing, the commissioner shall designate an applicant as an access organization in

accordance with the public interest. In determining the designation of an access organization, the

commissioner shall take into consideration, among other things, the content of the application or

proposal, the public need for the services, the ability of the applicant to provide PEG access services, the suitability of the applicant, the financial responsibility of the applicant, the technical

and operational ability of the applicant to perform efficiently the services for which designation is

requested, any objections arising from the public hearing, the local needs of each community within

each county, the communications advisory committee and any other matters as the commissioner

deems appropriate in the circumstances.

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

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

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

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

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

regulation of access organizations.

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

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

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

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

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

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

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

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

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

compensate the access provider.

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

the PEG access organization and the commissioner, provided:

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

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

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

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

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

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

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

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

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

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

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: LINDA RUTH PUFFOLO, ADMINISTRATIVE DIRECTOR, AKAKU: MAUI COMMUNITY TELEVISION

Tuesday, March 17, 2009- 7:30am, Room 312

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

I am a resident of Hawaii. I support broadband technologies and also support community access television-the missing link in HB984. I'd also like to tell you that public access television in Hawaii is only limited by the lack of vision of small minded people who aren't familiar with the essential dialogue these entities create especially in the rural communities where "Oahu Centric" media does not have either the financial resources or knowledge to represent. I urge you folks to become really familiar with all that we do BEFORE you are qualified to vote on this issue.

Let me tell you a little about Akaku: Maui Community Television.

Introduction to Akaku: Maui Community Television

Akaku: Maui Community Television was founded in 1992 as a 501c(3) organization with the mission of "Empowering the Community's Voice through Access to Media". It was created by the citizens of Maui County and the State of Hawaii Department of Commerce and Consumer Affairs to provide public access television services and training in media to residents from the islands of Maui, Moloka'i, and Lana'i, as well as airing programs about our sister island of Kaho'olawe.

Akaku's vision is to provide education, resources, and access to communications technology to:

- Promote free speech and expression
- Create and disseminate local quality programming
- Preserve Maui County's unique culture, and
- Serve as a community information network

Akaku manages three Community Access Television Channels and offers an array of comprehensive, integrative local media services and training to both individuals and community groups. The channels reach 57,000 subscribers on three islands in Maui County (Lana'i, Moloka'i and Maui). In addition, Akaku provides website channel streaming, a low-power radio station (also streaming on our website), a YouTube site, an interactive Blog, Producer

Gatherings to improve technical skills and Media Salons to discuss issues in media literacy. These varied components of informational media have the potential of reaching both Maui County residents and a world-wide audience.

A highlight of the Akaku educational program was realized last December when Akaku Certified Producer, Destin Daniel Cretton, returned as the Media Salon presenter with a screening and discussion of his HBO film, "Drakmar: A Vassals Journey", to give back to the community by telling the story of his success in the film industry. Since that night, Destin won first place at the prestigious Sundance Film Festival for his short film, "Short Term 12", gaining significant recognition in the world of film professionals and exhibiting three sold out showings.

Akaku has a history of training individuals to produce content for their organizations that air on Akaku's channels. The program is proven and the curriculum is firm. One pilot project was developed last year with the Maui Economic Development Board that involved staff members and youth participants from the community-based "Focus Maui Nui" program. The project produced one live interactive program with the youth and adults participating in hands-on camera work, interview techniques and storyboarding concepts. The result was that one staff participant became a certified producer, one staff member received preproduction training including script writing and eighteen youth participants were able to enjoy the experience of creating a live production. Also, a media library yielded several short pieces cut from the live show, two PSAs and forty hours of "B" roll (footage that establishes physical environment) archived for future projects of the organization. The success of this program is the cornerstone of our recent successful grant proposals and is relevant to the needs of struggling rural communities in lieu of the economic climate.

Nonprofit organizations are created with the objective to support or engage in activities that connect resources with the communities they serve. Nonprofits have significant difficulty in creating media that effectively markets their core message, issues and funding appeals. With the cost of outsourcing the development of one PSA at around \$5,000-\$7,000, it is unlikely nonprofits will be able to utilize these powerful tools regularly.

Historically, the lack of economic resources has limited the ability of these organizations in having a consistent influence in the news media. Our world now consists of 200,000 new videos being loaded onto YouTube daily and interactive websites are replacing print media. Video media has breakthrough power in its visual appeal in telling a story with dramatic images. They can be uploaded easily to these social networking and organization websites offering the audience core messages and new information in just a click. Nonprofits that are equipped may

use electronic communication methods to leverage their ability to compete for audience time counter to powerful corporate voices.

Competing for limited resources, increasing business expense and the necessity to serve several isolated rural communities, Maui County nonprofit organizations face revenue shortfalls that impact their ability to develop video media. There is not a formal process for Maui County nonprofits to regularly collaborate and often there is a duplication of services, lost opportunities to share costs and a disconnection between organizations in referring consumers in need to each other in the effort to find the most beneficial service.

In the one year cycle of this project, successful implementation of our new **Project MELE** will result in 22 media-literate nonprofit groups creating multimedia messages for effective outreach and marketing that is relevant to the current viewing habits of consumers, end-users, and potential funders. All trained participants are granted free ongoing access to the tools of community media and begin to build their own media libraries. This ensures a consistent and readied nonprofit "voice". Communities will receive information and have a "voice in the process" like never before.

Project MELE is a collaborative opportunity. With information gathered and shared throughout the span of the program, a Nonprofit Service Access Flow Chart will be created. This tool will allow Maui's nonprofits to improve their ability to assess community needs, make accurate referrals, and communicate the services they provide. This will make a powerful impact on our local community and will give those in need a better chance of learning about the services and support available to them.

Maui County residents will be the recipients of quality local television, radio and video media that are relevant to them in lieu of the "Oahu-centric" programming created by corporate media entities. With the advent of broadband and visual media technologies, rural The first step in the process is offering this program to the Nonprofit Directors Association by extending an open invitation to this established group of Maui County Nonprofits. The application process will require potential participants to clearly define their organization's needs and goals in creating multimedia outreach and awareness tools. The participants will be accepted into the program on a first-come, first-served basis.

The following is a list of activities for this project:

- **TRAINING PROGRAM:** Beginning in May 2009, Akaku's staff will facilitate a series of trainings beginning with a brainstorming session, allowing participants to share their ideas and desired goals for creating multimedia outreach and awareness products for their respective organizations. Following the brainstorm, a series of 5 hands-on trainings will be offered to a total of 44 staff members from 22 different non-profit organizations. Training participants will receive a total of 100 hours of instruction in the following

areas: *Introduction to Television, Introduction to Field Camera, Introduction to Final Cut Pro, Intermediate Final Cut Pro, and Introduction to Studio Production* (see Attachment G). Practical Knowledge in these subject areas is needed to enhance participants' abilities.

- **TRAINING FOLLOW-UP AND SUPPORT:** Each successful training results in "Akaku Certification" for its participants. The benefits include free, ongoing access to professional quality video cameras, microphones, editing software, computers, hard drive space, and a full-service production studio facility with live on-air capabilities. The Akaku staff will be available for unlimited follow-up guidance and support throughout the entire production process, from inception to delivery. All video and audio products created by these end-users will air regularly on all three of Akaku's community access channels, as well as our web-based "Video on Demand" service which allows viewers to select videos to watch on the web.
- **MEDIA CREATION AND DISTRIBUTION:** Project MELE participants will create 2 PSAs or VNRs per organization, and will be provided with 20 DVD complimentary copies of these for use as an outreach tool. Each additional DVD will cost \$3.50. Nonprofit organizations will be provided with HTML codes for each video, allowing them to easily host their new multimedia outreach products on their own websites. Once all trainings have taken place and multimedia projects are ready for display, Akaku will host a public screening and nonprofit awareness event where each participant will have the opportunity to screen their videos and share them. At the conclusion of Project MELE's first year, the Service Access Flow Chart will be rendered into a graphically enhanced visual tool and 20 of these will be distributed to participating nonprofits free-of-charge. Each additional Chart will cost \$4.00.

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

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

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

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

I hope that lawmakers will do what's right and ensure that the public continues to have a say in what happens to our "public rights of way" and to also support our nonprofits in these economically challenging times. Thoughtful broadband legislation with amendments that enhance PEG access services will support rural communities across all of Hawaii's diverse communities. Thus, a digital spin on the old adage, "Give a person a fish and you feed him for a day. Teach a man to fish and you feed for a lifetime." All the numbers can be worked out and negotiated. Public Access not being IN the mix in a meaningful way is just wrong.

Thank you and I hope that you are really listening.

Linda Ruth Puppolo

Administrative Services Director

Akaku: Maui Community Television

Linda R Puppolo

cell : 808-870-1503

Please call with ANY questions

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: JOHN R. WERNER

Tuesday, March 17, 2009- 7:30am, Room 312

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

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

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

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

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

Thank you.

JOHN R. WERNER

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of CHISA-LEEDIZON CHURCH

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

CHISA-LEEDIZON CHURCH

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: KIM NAKAGAWA

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

KIM NAKAGAWA

Angus McKeivey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: KIMIKO GIBO

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

KIMIKO GIBO

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: SHINICHI GIBO

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Thank you.

SHINICHI GIBO

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: TINA KEKO'OLANI

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

TINA KEKO'OLANI

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: DAVID DEMARK

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

DAVID DEMARK

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: PAUL HIGASHINO

Tuesday, March 17, 2009- 7:30am, Room 312

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PAUL HIGASHINO

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: CHERYL KING

Tuesday, March 17, 2009- 7:30am, Room 312

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CHERYL KING

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: JACKSON BAUER

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

JACKSON BAUER

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: ELLEN PELISSERO, BOARD MEMBER, AKAKU: MAUI COMMUNITY TELEVISION

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

ELLEN PELISSERO

BOARD MEMBER OF AKAKU: MAUI COMMUNITY TELEVISION

Angus McKelvey, Chairman

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DARREN GIBO

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MARKWERNER

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: CARLY WERNER

Tuesday, March 17, 2009- 7:30am, Room 312

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Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: Nicole McMullen

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

Nicole McMullen

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: Jackie Harp

Tuesday, March 17, 2009- 7:30am, Room 312

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Thank you.

Jackie Harp

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: Carol-Marie Lee

Tuesday, March 17, 2009- 7:30am, Room 312

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

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

Thank you.

Carol-Marie Lee

Angus McKelvey, Chairman

Committee on Economic Revitalization, Business, Military Affairs

Testimony of: Carmela Noneza

Tuesday, March 17, 2009- 7:30am, Room 312

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

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Angus McKelvey, Chairman

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JENNIFER VANDERVEUR

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: BART MAYBEE

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Committee on Economic Revitalization, Business, Military Affairs

Testimony of: GRANT THOMPSON

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Thank you.

GRANT THOMPSON

From: Kelly King [ktk@biodiesel.com]
Sent: Monday, March 16, 2009 2:40 PM
To: EBMtestimony
Subject: Fwd: NO MORE PEG ACCESS IN HAWAII. TESTIMONY NEEDED NOW
Attachments: APPENDIX A.doc; ATT00001.txt

> Aloha,
>
> We need PEG PROTECTION IN BROADBAND and we need it now. If PEG
> language is not inserted into these bills it could be GAME OVER for
> Community Television and public interest internet in Hawaii.
>
> The House Committee on Economic Revitalization, Business and Military
> Affairs (EBM) chaired by Angus McKelvey, will hear Senate Bill 1680
> tomorrow, Tuesday at 7:30 AM in House conference Room 312.
>
> The Senate will hold a joint committee hearing on WEDNESDAY. The
> committee(s) on EDT/CPN, chaired by Carol Fukunaga and Roz Baker has
> scheduled a public hearing on 03-18-09 1:15pm in conference room 016.

We need strong Protection LANGUAGE IN THE BROADBAND BILLS.

>
>
> THE VOICE YOU SAVE MAY BE YOUR OWN.
>
> Thanks
>
> Kelly King
>
>>

APPENDIX on Proposed Amendments on SB 1680

§ -1 Definitions. ***

"Public, educational, or governmental access organization" or "PEG access organization" or "access

organization" means any nonprofit organization designated by the commissioner to oversee the

development, operation, supervision, management, production, or broadcasting of programs for

any channels obtained under section -67, and provide PEG access services or any officers, agents,

and employees of an organization with respect to matters within the course and scope of their

employment by the access organization.

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

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

by this chapter.

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

(d) The commission shall have the authority to designate and select PEG access organizations,

the authority to contract with the PEG access organizations and enforce the terms and conditions

of the contracts, and general supervision over PEG access in the State. general supervision over

public, educational, or governmental access facilities and public, educational, or governmental access

organizations.

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

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

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

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

-67.

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

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

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

to:

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

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

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

submission of proposals.

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

(e) After public hearing, the commissioner shall designate an applicant as an access organization in

accordance with the public interest. In determining the designation of an access organization, the

commissioner shall take into consideration, among other things, the content of the application or

proposal, the public need for the services, the ability of the applicant to provide PEG access services, the suitability of the applicant, the financial responsibility of the applicant, the technical

and operational ability of the applicant to perform efficiently the services for which designation is

requested, any objections arising from the public hearing, the local needs of each community within

each county, the communications advisory committee and any other matters as the commissioner

deems appropriate in the circumstances.

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

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

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

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

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

regulation of access organizations.

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

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

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

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

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

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

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

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

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

compensate the access provider.

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

the PEG access organization and the commissioner, provided:

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

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

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

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

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

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

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

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

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

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

From: Mele Stokesberry [holamaui@earthlink.net]
Sent: Monday, March 16, 2009 2:51 PM
To: EBMtestimony; Rep. Angus McKelvey
Subject: SB 1680: PEG protection language critical in broad band bills

To Chairman Angus McKelvey and committee Vice-Chair and members
House Committee on Economic Revitalization, Business and Military Affairs (EBM)
re: In favor of inserting PEG Protection in Broad Band bill, Senate Bill 1680
Time and place of hearing: Tuesday at 7:30 AM in House conference Room 312.

Dear Chairman McKelvey, committee Vice-Chair and members of the committee:

We must protect our voice in the community and our ability to produce shows, speak out on issues, hear all sides in the community on all issues and have a forum to support our community organizations. We do that now with community television and public interest internet. I am a member of several community organizations that use Akaku television to get out our events and issues: Friends of Haleakala National Park, Maui Ki-Aikido, Maui Peace Action (of which I am president) and Somos Amigos-Nicaragua. PLEASE SUPPORT PUTTING PEG PROTECTION LANGUAGE IN ALL BILLS RELATING TO BROAD BAND ACCESS AND USEAGE.

Thank you,
Mele Stokesberry
P. O. Box 880231
Pukalani, HI 96788