

SB

1680

EDT/CPN



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LAWRENCE M. REIFURTH
DIRECTOR
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TO THE SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND
TECHNOLOGY AND COMMERCE AND CONSUMER PROTECTION

THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009

WEDNESDAY, FEBRUARY 4, 2009
1:15 P.M.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS TO THE HONORABLE SENATOR FUKUNAGA, CHAIR, SENATOR BAKER,
CHAIR, AND MEMBERS OF THE COMMITTEES

SENATE BILL NO. 1680 – RELATING TO TECHNOLOGY.

DESCRIPTION:

This measure creates the Hawaii communications commissioner to:
(1) investigate, promote, and ensure the growth and development of broadband
infrastructure within the State; (2) “champion” the State’s broadband,
telecommunications and video interests; and (3) investigate the possibility of
implementing incentive regulation for telecommunications carriers to increase
investment in broadband infrastructure.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) strongly supports
both S.B. No. 895 and S.B. No. 1680.

COMMENTS:

Testimony for this measure and Senate Bill No. 895 are identical (but for the
senate bill number). DCCA Director Lawrence Reifurth’s testimony addresses
differences related to those issues affecting the overall structure or general operations
of the HCC and DCCA’s Cable Television Division Administrator Clyde Sonobe’s
testimony addresses differences relating to cable television regulation. My testimony

focuses on how the bills differ with respect to functions related to telecommunications regulation.

The Consumer Advocate supports the adoption of either bill, and offers a few comments on the measures generally and highlights a few of the differences between the measures as they relate to telecommunications regulation.

Increasingly, the United States lags behind the rest of the industrialized nations in next-generation broadband deployment and subscription. As recognized by the National Association of State Utility Consumer Advocates, deficiencies in broadband deployment and subscription in the U.S. can be broadly summarized as:

Lack of access. Rural, low population density areas in the United States have little or no access to broadband service, even “first generation data” service, and market conditions do not justify private investment in the infrastructure necessary to bring next generation broadband to households and businesses in unserved and underserved areas.

Low penetration rates even where access is available. Even where next generation broadband is available, subscription to such service is relatively low, usually due to a combination of factors, e.g., lack of a home computer, lack of education regarding accessing and using broadband service, high recurring and non-recurring costs of broadband service, unreliable network facilities. Low-income, minority and elderly consumers are particularly affected by these issues.

Limited broadband competition. Past federal and state policy decisions have effectively created a duopoly for broadband service, i.e., broadband is provided either by the incumbent telephone company or by the regional cable provider, stymieing innovation and reducing market constraints on pricing or service quality.

Having a commission specifically tasked to champion broadband issues and develop policies relating to broadband communication services and facilities will address the deficiencies outlined above and expand access to broadband services throughout the State.

The measures require the commissioner to promptly examine rate regulation alternatives including price cap regulation. The most recent studies indicate that Hawaii is one of just six jurisdictions utilizing rate of return regulation. Alternative forms of regulation, such as price cap regulation, allow the various carriers to better meet customer needs in terms of market-based rates and in a streamlined fashion. Under traditional rate of return regulation, telecommunications companies are subject to more

S.B. No. 1680

Senate Committees on Economic Development and Technology
and Commerce and Consumer Protection

Wednesday, February 4, 2009, 1:15 P.M.

Page 3

rigid and time-consuming guidelines, which inhibit the ability for these companies to act efficiently and expeditiously.

A portion of this measure should provide for greater regulatory flexibility for all local exchange carriers operating in Hawaii, which should eventually help stimulate competition. The greater regulatory flexibility for all carriers, however, does not occur immediately. Specifically, the measure proposes to keep the existing regulatory structure in place to allow for certain current events and conditions to be resolved.

The measures adopt a similar approach in that they both extract the telecommunications regulation from chapter 269, Hawaii Revised Statutes, to consolidate such regulation with cable providers under a new commissioner. A few differences in the telecommunications sections are observed when comparing Senate Bill No. 895 and Senate Bill No. 1680.

Senate Bill No. 895 (See section -9) includes a requirement that the commissioner investigate the extent to which telecommunications services provided to residential and business customers are available from multiple providers in Hawaii and whether to reclassify telecommunications services provided to residential and business customers as "fully competitive" communications services. Such a review, if not completed sooner by the Hawaii Public Utilities Commission, may provide greater understanding of the current telecommunications market. If certain services are found to be fully competitive, such a finding should mean that all carriers would be able to offer market-based tariffs to customers through a less regulated process, which might allow customers to enjoy these service offerings rather than later.

Another observed difference between the two bills relates to the regulator's ability to recognize that the telecommunications industry and markets continue to evolve and change. As a result, it is necessary to recognize that exemptions of or waivers from some of the proposed requirements may be necessary. In the exemption section of Senate Bill No. 1680 (See section -34(a)(1)) the commissioner is tasked, among other criteria, with evaluating the "responsiveness of the exemption to changes in the structure and technology of the State's telecommunications industry" (emphasis added). Senate Bill No. 895 (See section -34(a)(1)) instead asks the commissioner to determine the "appropriateness of the exemption in view of changes in the structure and technology of the State's telecommunications industry" (emphasis added). In my opinion, the commissioner considering the "appropriateness of the exemption" appears to be more reasonable for determining whether exemption to regulation is within the public interest. I defer to the judgment of the Committees, on this measure, however, and merely note some differences.

Finally, Senate Bill No. 1680 (See section -51(a)) provides for a telecommunications fee of three-tenths of one percent. While the Legislature, of

course, has the authority to change this fee, I would recommend the use of the existing fee, one-fourth of one percent, which is included in Senate Bill No. 895 (See section -23(a)). Since the telecommunications carriers are allowed to recover, via surcharge, the amount above one-eighth of one percent of gross income, there is the potential for greater amounts being passed on to consumers.

The competition in telecommunications industry and the markets themselves have developed far beyond the paradigms that existed when the original language in the existing statutes and rules were adopted. If the proposed statutory language is adopted, it should better recognize the current market conditions, allow customers to experience even more robust competitive offerings from existing and future carriers, and also allow all certified telecommunications carriers to operate under more flexible and streamlined regulatory regimes. As such, it is hoped that the telecommunications carriers in Hawaii's market will strive to maximize their investments to better serve all of Hawaii's customers by introducing more advanced services that meet Hawaii's needs at competitive prices.

Thank you for this opportunity to testify.



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

LATE

LINDA LINGLE
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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT and TECHNOLOGY
SENATE COMMITTEE ON COMMERCE and CONSUMER PROTECTION

Wednesday, February 4, 2009
1:15 p.m.
State Capitol, Conference Room 016

SB 1680
RELATING TO TECHNOLOGY.

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

DBEDT supports SB 1680; however we defer to the Department of Commerce
and Consumer Affairs as to the technical details of this measure.

High speed broadband service has become essential infrastructure for an idea-
based innovation economy and a key source of competitive economic advantage.
Improved broadband service will also help Hawaii's traditional economy and improve
services from the public sector. Hawaii has an opportunity to deploy world class
broadband service and re-establish itself as a key node in the worldwide
telecommunication network. The Federal Government is also adopting a National
Broadband Policy The proposed Economic Stimulus Package currently targets broadband
infrastructure for investment.

DBEDT would like to recognize the excellent work of the Hawaii Broadband
Task Force in guiding our state's efforts on Broadband Policy. As the Broadband Task

Force report and as we have learned with the state's energy policy, we have to make difficult decisions to make if we are to achieve the transformational change necessary for Hawaii to be competitive in a global economy.

Furthermore, as our recent experience with the state energy policy has taught us, it is critical that we launch the [Communications Commission] with a clear and compelling vision and with clear and compelling targets and to set a timeline by which we achieve those targets.

The clear and compelling policy vision and targets set by the legislature establishes the basis for the [Commission] develop the change strategies to achieve them. It creates credibility and confidence in the markets and on the part of private sector partners who we expect will provide the technologies and the investment capital.

Thank you for the opportunity to provide this testimony.

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**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEES ON ECONOMIC DEVELOPMENT & TECHNOLOGY
AND
COMMERCE & CONSUMER PROTECTION
FEBRUARY 4, 2009**

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

Chairs Fukunaga and Baker, and Members of the Committees:

DESCRIPTION:

This bill creates the Hawaii Communications Commission ("HCC") by consolidating the regulation of telecommunications carriers and cable operators in the State under the HCC 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 supports the intent of this bill, however, opposes it in favor of Administration bill SB 895, relating to the Hawaii Communications Commission consolidating the regulation of all forms of modern communications in an effort to facilitate the development of broadband infrastructure in the State.

COMMENTS:

- The Commission, in its regulation and oversight of the telecommunications carriers operating in this state, utilizes the services of staff working in all the disciplines at its disposal. SB 1680 would be disruptive to the Commission because it requires transfer of its staff to this new commission. The Commission's overall operations utilize not any one individual staff devoting his or her entire, or even a substantial portion of, work time on telecommunications issues which are very broad and are evolving rapidly on the national, state, and local levels.
- Automatically transferring people in their current positions would adversely affect the Commission's other important and critical responsibilities, including the continued development and implementation of the State's energy policies.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
**SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND COMMERCE AND CONSUMER PROTECTION**
Wednesday February 4, 2009
1:15 PM
State Capitol, Conference Room 016

In consideration of
SB 1680 RELATING TO TECHNOLOGY.

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

As with SB 895 Relating to the Hawaii Communications Commission, the High Technology Development Corporation (HTDC) supports SB 1680 which proposes to establish the Hawaii Communications 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.

Thank you for the opportunity to submit testimony in support.

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LATE



February 4, 2009

Honorable Carol Fukunaga
Senate Committee Economic Development and Technology

Honorable Rosalyn Baker
Senate Committee on Commerce and Consumer Protection

**Re: SB 1680 Relating to Technology and SB 895 – Relating to Hawaii
Communications Commission - Support Intent with Comment
EDN/CPN Hearing, Wednesday, February 4, 2009, 1:15 pm – Room 016**

Aloha Chair Fukunaga, Chair Baker and Committee members:

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to nearly 350,000 households, schools and businesses and currently employs over 900 highly-trained individuals, we appreciate the opportunity to submit testimony today. I am Nate Smith, president of Oceanic Time Warner Cable.

The purpose of these bills is to implement key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Communications Commissioner (HCC) in the Department of Commerce and Consumer Affairs (DCCA), to transfer functions relating to telecommunications from the Public Utilities Commission to the HCC and functions relating to cable services from DCCA to the HCC, and to establish a work group to develop procedures to streamline state and county telecommunication and cable regulation, franchising, and permitting and report to the legislature. Oceanic currently delivers a diverse selection of entertainment and information services by way of an advanced fiber optic/coax network to more than 400,000 households, schools and businesses on Oahu, Maui, Kauai, Molokai, Lanai and the Big Island. Currently, Oceanic has well over 220,000 high-speed Internet customers, and is continually improving its broadband services. Yesterday, for example, Oceanic announced that it will be upgrading its infrastructure beginning this year, which will permit Oceanic to introduce a new suite of internet services that are up to twice as fast as our current Road Runner offerings.

As a member of the Broadband Task Force, Oceanic supports the idea of having a Communications Commission to promote broadband availability and the adoption of broadband services by Hawaii consumers. This is to be achieved by streamlining and

simplifying the regulation to reduce cost and time to provide new and innovative services. However, some of the provisions in the bill do not support the intent discussed by the Task Force. Specifically, the bill in some cases does not streamline or simplify the process for cable, it actually increases regulation by:

- Reducing the maximum franchise term from 20 years to 15 years; and
- Adding the ability for the Consumer Advocate to be involved with all cable regulation adds additional steps to the process.

These additional steps add time and cost to the process. Further, cable is not a regulated rate-based service and should not be regulated by the same policies as telephone service.

These bills makes it a requirement for all infrastructures installed in public right-of-way to be accessed by any authorized provider at a fair-cost-based price, but it does not explain how to compensate for the risk and expense that entity underwrites for building the infrastructure. This becomes a disincentive for companies to invest in new infrastructure. This is not good for the State or its residents. The State should be pursuing policies that promote investment.

While the State is promoting more robust broadband technology for Hawaii, ultimately the Federal Communication Commission (FCC) has the authority to regulate Broadband Internet Access high speed data service (HSD). And, though the state is federally preempted from regulating HSD, it can do other things to stimulate the demand for HSD. For example, in order to meet the goal of “establishing broadband communications to all households, businesses, and organizations throughout the State by 2012 at speeds and prices comparable to the average speeds and prices available in the top three performing countries in the world,” permitting should be simplified and the timeframes shortened. These bills does not contain provisions to shorten the times to approve or to respond to a permit request by government or by private entities. Currently, there is no limit. This stymies the process. Additionally, it would be helpful to see fewer requirements for obtaining permits for simple work. For example, currently replacing wiring in buildings with new coaxial cable may require obtaining permits.

Since FCC preempts states from regulating HSD, the provision to have HSD as a consideration for franchise renewal is problematic. Oceanic’s franchise is to provide video - or traditional cable – and does not include HSD. This is an area that is preempted in light of the FCC’s ruling that HSD is an information service and affirmed by the Supreme Court in *Brand X*.

Finally, while the goal of these bills is to not create any new taxes or fees for the service providers or for consumers, for the State to fund new infrastructure, it will need additional funds. Where will these funds come from?

As one of the leading countries in broadband service, the investment in South Korea to build and to promote its system was not cheap. The Korean government estimates the

cost of developing the technology, building the infrastructure and marketing the system to be \$30 billion between 2000 and 2005.

In Japan, they established a super-fast, nationwide fiber system via a combination of tax breaks, debt guarantees and subsidies.

In closing, if the emphasis of these bills is to reform and to streamline the current system, we should not work against these goals by adding new barriers or increasing regulatory obstacles. We ask the state to support ways to stimulate investment by streamlining and eliminating extraneous requirements that add to the cost of doing business in Hawaii.

For these reasons, there are many practical issues raised by these bills that require additional thought and consideration. We respectfully request members of the committee to consider deferring action on these bills.

Sincerely,

Nate Smith
President

February 6, 2009

Watanabe Ing
LLP
 A LIMITED LIABILITY LAW PARTNERSHIP

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VIA HAND-DELIVERY

TO: The Honorable Carol Fukunaga, Chair
 Economic Development & Technology
 State Capitol, Room 216

RE: SB 895 (Hawaii Communications
 Commission) and SB 1680 (Technology)

The Honorable Rosalyn Baker, Chair
 Commerce and Consumer Protection
 State Capitol, Rom 231

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By *Allison Nakama*
 Allison Nakama
 for Jeannine Souki

Enclosure

S.B. NO. 895

1 (3) Develop and implement initiatives and programs to
 2 construct or otherwise make available additional
 3 infrastructure for the provision of broadband
 4 services, and the sharing of such infrastructure by
 5 competing providers of broadband services to the
 6 public.

7 This Act also consolidates the regulation of
 8 telecommunications carriers and cable operators in the State
 9 under the commission. In doing so, the Act creates a "one stop
 10 shop" to assist businesses providing broadband,
 11 telecommunications, and video programming services, and
 12 expediting the process for them to make their services rapidly
 13 available to the public. Consolidating and streamlining the
 14 State's regulatory processes for the telecommunications sector
 15 in the State will help to facilitate the construction of
 16 telecommunications and broadband infrastructure and the
 17 introduction, penetration, and capability of advanced broadband
 18 communications services.

19 The public utilities commission currently regulates
 20 telecommunications carriers pursuant to chapter 269 and the
 21 director of commerce and consumer affairs currently regulates

Summary of Comments on SB895.pdf

Author: Bob Colwell; Subject: Utility Issue; Date: 2/23/2009 9:35:00 AM

The increased sharing of infrastructure used to deploy broadband will result in an increase, and not a decrease, in cost because of the complex management inherent in shared use of broadband resources.

The commission should consider alternatives to reduce broadband infrastructure costs, and the bid should not predetermine and direct that the commission must develop and implement a requirement "for the sharing of such infrastructure by competing providers of broadband services."

Non-comparative infrastructure sharing is a prerequisite to infrastructure investment. While the task force considered a government/private sector partnership, if the government does not have funds to contribute, all of the responsibility will be placed on private providers. As noted above, the "sharing" of infrastructure by the private sector will lead to an increase (not a decrease) in costs.

For the foregoing reasons, the last clause of the "broadband" ... and the sharing of such infrastructure by competing providers of broadband services to the public" should be deleted, and all references within the bid for "sharing" or "increased sharing" of infrastructure should be deleted.

S.B. NO. 895

1 determinations. Finally, this Act proposes conforming amendments
2 to other chapters of the Hawaii Revised Statutes.

3 **PART II**

4 **SECTION 2.** The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 **CHAPTER**

8 **HAWAII COMMUNICATIONS COMMISSION**

9 **PART I. HAWAII COMMUNICATIONS COMMISSION, GENERALLY**

10 **§ -1 Definitions.** AS used in this chapter, unless the
11 context otherwise requires:

12 "Applicant" means a person who initiates an application or
13 proposal.

14 "Application" means an unsolicited filing.

15 "Basic cable service" means any service tier which includes
16 the retransmission of local television broadcast signals.

17 "Broadband" means an "always on" service that combines
18 computer processing, information provision, and computer
19 interactivity with data transport, enabling end users to access
20 the internet and use a variety of applications, at minimum
21 speeds set by the commission.

Author: bak Sullivan Sticky Note Date: 2/6/2009 8:09:20 AM
The regulations of HRS to amend data in paragraph 2 of section 2 of the FCC's ruling that HDB is an information service. Accordingly, the clause "... at minimum speeds set by the commission" should be deleted.

S.B. NO. 895

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

3 **§ -9 Development duties.** (a) The commission shall
 4 ensure that all consumers are provided with nondiscriminatory,
 5 reasonable, and equitable access to high quality network
 6 facilities and services that provide subscribers with sufficient
 7 network capacity to services that provide a combination of
 8 voice, data, image, cable, and video, and that are available at
 9 just, reasonable, and nondiscriminatory rates. Within twelve
 10 months of the effective date of this part, the commission shall
 11 investigate the extent to which telecommunications services
 12 provided to residential and business customers are available
 13 from multiple providers in Hawaii and whether to reclassify
 14 telecommunications services provided to residential and business
 15 customers as 'fully competitive' communications services.

16 (b) No later than July 1, 2011, the commission shall study
 17 and develop a comprehensive policy to further deploy broadband
 18 communications, including Internet access, in the State. The
 19 study shall include consideration of communications by wire and
 20 radio, including satellite and wireless services. The
 21 commission shall develop plans and strategies to increase
 22 broadband affordability, penetration, and competitive

CCA-11 (09)

Author: Erik G. S. Date: 2/6/2009 8:00:25 AM
 The subject of the Hawaii telecommunications regulatory scheme was studied within the last decade and was the result of significant efforts by Hawaiian Telecom's predecessor, the Public Utilities Commission, and other interested parties. That regulatory scheme recognized that asymmetrical power requires asymmetrical regulation. Further, that regulatory scheme already contains a procedure for the Public Utilities Commission to reclassify services as partially or fully competitive where the facts justify such reclassification (i.e. "fully competitive" is already defined as at least 20 percent of a particular service being provided by a non-ILEC provider). Those rules also give the PUC discretion to subject such services to alternative regulation, such as price caps and price ceilings. Hawaiian Telecom has not sought to utilize those procedures, but has instead sought to circumvent the PUC rules through legislation.

The bill should make clear that the determination of the extent of regulation and any changes to the existing rate regulation should be made by the PUC (or the Hawaii Communications Commission) ~~understanding procedures~~, not through an "examination," which seeks to circumvent those procedures. Decisions on these issues should be based on actual findings with opportunity for input by all interested parties, which is properly done by an administrative agency.

S.B. NO. 895

1 (d) The commission shall develop, and routinely update, a
 2 state policy and formulate positions to be taken before federal
 3 agencies regarding all communications matters irrespective of
 4 the commission's statutory jurisdiction. The commission shall
 5 advocate on behalf of the State's broadband, telecommunications
 6 and video programming distribution interests before Congress,
 7 the executive branch, and the Federal Communications Commission,
 8 and locally before the governor, the state legislature, and
 9 county governments. The commission shall also make its best
 10 effort to maintain close working relationships with community
 11 groups, civic associations, industry trade associations,
 12 industry leaders, and other stakeholders to ensure that the
 13 State's interests and concerns are understood.

14 § -15 Communications infrastructure permitting. The
 15 commission shall investigate measures that could streamline and
 16 expedite the permitting and approval processes that are imposed
 17 by governmental entities with respect to the construction of
 18 infrastructure intended for use in the provision of broadband
 19 services to the public. The commission shall also investigate
 20 the possibility of assuming all or a portion of the duties and
 21 authority to issue permits and approvals for the construction of
 22 broadband communications infrastructure. If the assumption of

Auth: bak Subject: Ccby Note Date: 2/12/2009 9:05:45 AM
 In order to more efficiently "expedite" the permitting and approval process, there should be specific time limits developed by the commission for approval of permits.
 Accordingly, this sentence should be revised to state: "The commission shall investigate measures that could streamline and set maximum time limits for the permitting..."

S.B. NO. 895

1 by order direct the consumer advocate to appear in such
 2 proceeding, to carry out the purposes of this section. The
 3 commission may examine into any of the matters referred to in
 4 section -11, notwithstanding that the same may be within the
 5 jurisdiction of any court or other body; provided that this
 6 section shall not be construed as in any manner limiting or
 7 otherwise affecting the jurisdiction of any such court or other
 8 body. The commission may also revoke or amend any provision of
 9 a certificate of public convenience and necessity, franchise,
 10 charter, or articles of association, if any, pursuant to
 11 sections -31 or -66.

12 (b) In addition to any other remedy available, the
 13 commission or its enforcement officer may issue citations to any
 14 person acting in the capacity of or engaging in the business of a
 15 telecommunications carrier or cable operator within the State,
 16 without having a certificate of public convenience and necessity,
 17 franchise, or other authority previously obtained under and in
 18 compliance with this chapter or the rules adopted thereunder.

19 (1) The citation may contain an order of abatement and an
 20 assessment of civil penalties as provided in section
 21 -26. All penalties collected under this subsection
 22 shall be deposited in the Hawaii communications

Actual bill Subject: Cable bills Date: 2/2/2009 8:59:56 AM
 Cable television is currently regulated by the Cable Television Division of the DCCA through the Cable Television Administrator, and the Consumer Advocate is not involved.
 Cable is not regulated rate-based service and should not be subject to the same regulatory policies as public utilities or telecommunications carriers. The addition of the
 Consumer Advocate to the cable regulatory process adds an additional regulatory layer, and increases, rather than decreases, time and expense associated with providing cable
 services.

Given the foregoing, all provisions throughout the bill authorizing the Consumer Advocate to be involved in matters relating to a "cable operator" should be deleted.

S.B. NO. 895

- 1 (2) The financial, technical, and other qualifications of
- 2 the applicant;
- 3 (3) The principals and ultimate beneficial owners of the
- 4 applicant;
- 5 (4) The public interest to be served by the requested
- 6 issuance of a cable franchise; and
- 7 (5) Any other matters deemed appropriate and necessary by
- 8 the commission including, but not limited to, the
- 9 proposed plans and schedule of expenditures for or in
- 10 support of the use of public, educational, and
- 11 governmental access facilities, and the competitive
- 12 availability and affordability of broadband and other
- 13 advanced services to consumers.

14 (c) A proposal for issuance of a cable franchise shall be
 15 accepted for filing in accordance with section -64 only when
 16 made in response to the written request of the commission for
 17 the submission of proposals.

18 § -64 Cable franchise application or proposal procedure;
 19 public hearing; notice. An application or proposal for a cable
 20 franchise shall be processed as follows:

- 21 (1) After the application or proposal and required fee are
- 22 received by the commission and within a time frame

Alpha 111 Subject: Clichy Note Date: 2/2/2009 5:40:54 PM
 The regulation of high speed data is preempted in light of the FCC's ruling that HSD is an information service. Accordingly, the clause "... and affordability of broadband..." should be deleted.

S.B. NO. 895

- 1 (3) For any sale, lease, assignment, or other transfer of
- 2 its cable franchise without consent of the commission;
- 3 (4) Except when commercially impracticable, for
- 4 unreasonable delay in construction or operation or for
- 5 unreasonable withholding of the extension of cable
- 6 service to any person in a service area;
- 7 (5) For violation of the terms of its cable franchise;
- 8 (6) For failure to comply with this chapter or any rules or
- 9 orders prescribed by the commission;
- 10 (7) For violation of its filed schedule of terms and
- 11 conditions of service; and
- 12 (8) For engaging in any unfair or deceptive act or practice
- 13 as prohibited by section 480-2.
- 14 § -69 Renewal of cable franchise. Any cable franchise
- 15 issued pursuant to this chapter may be renewed by the commission
- 16 upon approval of a cable operator's application or proposal
- 17 therefor. The form of the application or proposal shall be
- 18 prescribed by the commission. The periods of renewal shall be
- 19 not less than five nor more than fifteen years each. The
- 20 commission shall require of the applicant full disclosure,
- 21 including the proposed plans and schedule of expenditures for or

Author: bak Subject: Electricity Date: 2/2/2009 9:10:13 AM
 The current statute (NRS Sec. 460G-15) provides for a maximum renewal period of twenty years. Given the investment in infrastructure by an existing franchisee, the maximum renewal period of twenty years should be retained.

S.B. NO. 895

1 in support of the use of PEG access facilities and equipment and
2 broadband facilities.

3 § -70 Transfer of cable franchise. (a) No cable
4 franchise, including the rights, privileges, and obligations
5 thereof, may be assigned, sold, leased, encumbered, or otherwise
6 transferred, voluntarily or involuntarily, directly or
7 indirectly, including by transfer of control of any cable
8 system, whether by change in ownership or otherwise, except upon
9 written application to and approval by the commission. The form
10 of the application shall be prescribed by the commission.

11 (b) Sections -64 and -65 shall apply to the transfer
12 of cable franchises.

13 § -71 Rate, filed with the commission; approval. (a)
14 The commission shall require each cable operator to file a
15 schedule of its rates of service on a form and with the notice
16 that the commission may prescribe.

17 (b) To the extent permitted by federal law, the commission
18 shall regulate rates to ensure that they are fair both to the
19 public and to the cable operator.

20 § -72 Reports. Each cable operator shall file with the
21 commission reports of its financial, technical, and operational
22 condition and its ownership. The reports shall be made in a

CCA-11(09)

Author: bak Subject: Sdkly Note Date: 2/6/2009 9:10:16 AM
The regulation of high speed data is presumed in light of the FCC's ruling that HSD is an information service. Accordingly, the clause "...and broadband facilities" should be deleted.

Author: bak Subject: Sdkly Note Date: 2/6/2009 9:10:27 AM
Occasionally, a franchisee may conduct a LMA transaction and seek to transfer a franchise to an entity established by the existing franchisee, which would not result in any transfer of control. Accordingly, the following clarification language is requested at the end of this paragraph: "Notwithstanding anything to the contrary, no such application or approval shall be required for any transfer or assignment of a franchise to any entity controlled by or under the same working control as a franchisee."

S.B. NO. 895

August 10th 2009, 9:10:30 AM
 To avoid confusion of interest, the reference should be revised to state: "...shall be separate and distinct from the responsibilities of the public utilities commission, the telecommunications commission, and those assistants employed by those commissions."

August 10th 2009, 5:53:46 PM
 Cable television is currently regulated by the Cable Television Division of the CCA through the Cable Television Administrator, and the Consumer Advocate is not involved. Cable is not a regulated utility-based service and should not be subject to the same regulatory process as public utilities or telecommunications carriers. The addition of the Consumer Advocate to the cable regulatory process increases, rather than decreases, the time and expense associated with providing cable services. Provisions of the bill authorizing the Consumer Advocate to be involved in matters relating to a "cable operator" should be deleted.

1 shall be the consumer advocate in hearings before the public
 2 utilities commission(=) and the Hawaii communications
 3 commission. The consumer advocate shall represent, protect, and
 4 advance the interests of all consumers, including small
 5 businesses, of utility services. The consumer advocate shall
 6 not receive any salary in addition to the salary received as
 7 director of commerce and consumer affairs.

8 The responsibility for advocating the interests of the
 9 consumer of utility services shall be separate and distinct from
 10 the responsibilities of the public utilities commission and
 11 those assistants employed by the commission. As consumer
 12 advocate, the director of commerce and consumer affairs shall
 13 have full rights to participate as a party in interest in all
 14 proceedings before the public utilities commission."

15 SECTION 23. Section 269-54, Hawaii Revised Statutes, is
 16 amended by amending subsections (d) and (e) to read as follows:

17 "(d) Whenever it appears to the consumer advocate that:
 18 (1) any public utility, telecommunications carrier, or cable
 19 operator has violated or failed to comply with any provision of
 20 this part or of any state or federal law; (2) any public
 21 utility, telecommunications carrier, or cable operator has
 22 failed to comply with any rule, regulation, or other requirement

S. B. NO. 895

1 public utilities commission pursuant to the provisions of the
 2 Hawaii Revised Statutes, which are reenacted or made applicable
 3 to the Hawaii communications commission by this Act, shall
 4 remain in full force and effect. Effective upon approval of
 5 this Act, every reference to the department of commerce and
 6 consumer affairs, director of commerce and consumer affairs,
 7 public utilities commission, or chairperson of the public
 8 utilities commission therein shall be construed as a reference
 9 to the Hawaii communications commission or Hawaii communications
 10 commissioner, as appropriate.

11 SECTION 56. **Transfer of records, equipment, appropriations,**
 12 **authorizations, and other property.** All appropriations,
 13 records, equipment, machines, files, supplies, contracts, books,
 14 papers, documents, maps, and other personal property heretofore
 15 made, used, acquired, or held by the department of commerce and
 16 consumer affairs and the public utilities commission relating to
 17 the functions transferred to the Hawaii communications
 18 commission shall be transferred with the functions to which they
 19 relate.

20 SECTION 57. **Transfer of personnel.** (a) The department of
 21 commerce and consumer affairs shall transfer four positions to
 22 the Hawaii communications commission. The positions selected

Author: see Subject: Electricity Note Date: 2/6/2009 8:10:15 AM
 While the bill requires the transfer of four positions from the DOCA (presumably the Cable Division) to the commission, it does not require a similar transfer of personnel from the PUC. Accordingly, the expertise that the PUC currently has on telecommunications matters will not be institutionally transferred to the commission, resulting in less oversight in telecommunications matters. This section should be amended to require a transfer of personnel from the PUC who have expertise in telecommunications matters.

Senator Carol Fukunaga, Chair
Committee on Economic Development and Technology

Senator Rosalyn Baker, Chair
Committee on Commerce and Consumer Protection

Senate of the State of Hawaii

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

Wednesday, February 4, 2009

Support of SB 1680, Relating to Technology with Amendments

The Hawaii State Legislature is to be congratulated for taking a bold step into the Broadband future by drafting legislation to modernize the telephone, cable and internet regulatory framework in Hawaii. On behalf of Akaku and the people of Maui, we strongly support Senate Bill No.1680 Relating to Technology with Amendments.

This plan has potential to do wonders for Hawaii business as well as leapfrog Hawaii into the forefront of the digital age, but it can only succeed if the fullest range of local community communications needs such as access to tools, skills and ideas on a fast, open internet are met for ALL of Hawaii's residents at reasonable cost. Media literacy, digital education and open access to spectrum are the underpinnings of that success and the good news is that cost effective resources and tools are already in place at PEG access centers.

Community Television operations, notably in Oahu and on Maui worked hard for years to become recognized as some of the best PEG Access stations in the nation. This success is due to the fact that the Hawaii Legislature adopted and put into effect a "best practice" integrated PEG model whereby independent non profits created for this specific purpose in each county were provided channel space for unbiased gavel to gavel meeting coverage, nondiscriminatory access and low cost media training to local, state and native governments, private and public educational entities and allowed freedom of expression from diverse and varied sources. Community Media in Hawaii has been empowering the local voices of each island community without censorship, corporate control or commercial consideration for more than fifteen years and they are perfectly positioned to have a positive impact on Hawaii's broadband future.

This is not just talk. Akaku on Maui has been an early adopter of real world broadband applications. Not only were we the first media organization in Hawaii

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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 music themed" radio station broadcasts via the internet to the state and world at large. We were also among the first in the nation to integrate live TV broadcasts using "skype" technology from Lanai and Molokai and as far away as Washington D.C and Boston (featuring Representative Mele Carroll.) Akaku can also make claim to one of the more aggressive and innovative new media and video training educational programs in the state.

But in this new digital world, no PEG Access organization or Community Technology Center can afford rest on its laurels. That is why I am happy to say that In its recent report to the 2009 Legislature, the HCR 358 Task Force submitted comprehensive administrative rules that if incorporated into SB1680 will resolve in one fell swoop, current regulatory "standardless discretion" guarantee performance and accountability for PEGs as well as set metrics for PEG Access designation.

Not clearly articulated in the broadband bills is the issue of broadband regulatory fees being assessed for PEG and PEG 2.0 in exchange for the use of public rights of way which 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 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 community broadband access as well if we are to enjoy an electronic democracy. By extension, SB 1680 needs to be amended with specific language to guarantee that the same paradigm that currently exists with PEG access applies to community broadband access as well.

Obviously in the broadband future, most everything will move to fiber. We will see IP based protocol for delivery of all services and we want to see a healthy PEG migration to IPTV in an enlightened regulatory framework.

This will not happen by itself. Just last week we saw petitions before the FCC Challenging AT&T's U-verse service as harmful to PEGs. The service delivered by IPTV takes forever to load, is difficult to find, is of exceedingly poor quality and suffers from a technique known in the industry as, "channel slamming" making it difficult to find and impossible to brand. But we are encouraged by FCC Commissioner Jonathan Adelstein's words on his recent visit to Maui:

"Commissioner Copps and I have spoken about and acted upon the need for more localism in broadcasting and also the need for protection of community broadcasting. I

think it is absolutely essential that we take steps to protect that in the future. Some of the recent actions by the FCC in changing the franchise process have undercut public, educational and governmental channels that are providing a local avenue expression and for accountability for government officials. I am very concerned about the direction it is taking. I believe it is time for us to review from top to bottom some of the steps that have been taken to look at how we can protect community access and protect localism in broadcasting and enhance it in this digital age.”

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 have worked hard on language to this effect which we would like to see inserted in SB 1680 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.

The language is included in an APPENDIX WITH PROPOSED AMENDMENTS FOR SB 1680 on page 3 of Mr. Lance Collins’ testimony.

The winds of change are blowing in Washington D.C. This will bring in more financial resources to Community Media to help close the digital divide (like percentages from internet and cable modem fees.) Provided that neighbor island, community and public interest media are included in the equation, this initiative can go a long way toward bringing all Hawaii residents into a digitally inclusive future.

From: Sen. Carol Fukunaga
Sent: Sunday, February 08, 2009 5:23 PM
To: Na Maka o ka 'Aina
Cc: fukunaga4 - Michelle
Subject: Re: support for SB1680 and SB895

hi Joan,
thanks for your note. I'm sorry I did not see this email until today, 2/8/09 (after our initial hearing on the two measures). We'll be sure to post your email as part of our testimony on both bills as we proceed forward.

mahalo,
Carol Fukunaga

Aloha Senator Fukunaga,

I support PEG Access and Community Broadband Media protection in Broadband bills SB1680 and SB895.

Mahalo.

~Joan Lander
PO Box 29
Na'alehu, Hawai'i 96772-0029