

**SB**

**895**

**EDT/CPN**



LINDA LINGLE  
GOVERNOR  
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LT. GOVERNOR

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LAWRENCE M. REIFURTH  
DIRECTOR  
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DEPUTY DIRECTOR

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. 0895 – RELATING TO THE HAWAII COMMUNICATIONS  
COMMISSION.**

**DESCRIPTION:**

This measure creates the Hawaii Communications Commission (“HCC”) to:  
(1) be responsible for the consolidated regulation of telecommunications carriers and  
cable operators; (2) “champion” the State’s broadband, telecommunications and video  
interests; (3) develop State policies relating to broadband communication services and  
facilities; and (4) examine how to expedite the availability of communications services to  
the residents of Hawaii.

**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. 1680 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

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 sooner 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.

LATE



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

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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 895**  
**RELATING TO THE HAWAII COMMUNICATIONS COMMISSION.**

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

DBEDT strongly supports the Administration's bill SB 895; 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.

**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. 895**

**TITLE: Relating to the Hawaii Communications Commission**

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 Administration 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 that it does not disrupt the other functions and operations of the Commission.

**COMMENTS:**

- The Commission recognizes the recent convergence of communications technologies where voice communications no longer includes just wireline (or landline) telephone services, but now also includes wireless telecommunications, voice over internet protocol (or VOIP), and satellite telephones. Data and information can be transmitted not just by wireline telephone companies and cable television companies, but can also be transmitted by wireless telecommunications companies. Video can not only be transmitted by cable television companies, but also by wireline telephone companies and to a certain extent by wireless telecommunications companies.

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 895 RELATING TO THE HAWAII COMMUNICATIONS COMMISSION.**

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.

The High Technology Development Corporation (HTDC) supports SB 895 and defers to the recommendations of the Hawaii Broadband Task Force which was created by the Legislature in 2007 with the primary purpose of 1) removing the barriers to broadband access, including gaining wider access to public rights-of-way; 2) identifying opportunities for increased broadband development and adoption, including very high speed broadband services; and, 3) enabling the creation and development of new advanced communication technologies in Hawaii.

In a report to the Legislature dated December 2008, the Hawaii Broadband Task Force recommended the creation of a one-stop broadband advancement authority. Quoting from the report, *“Enact legislation that consolidates any and all State and County, wired and wireless, voice, data and video regulation, franchising and permitting functions into a one-stop self-funded expert broadband advancement authority in the State Department of Commerce and Consumer Affairs that provides primary leadership for achieving Hawaii’s broadband vision*

*through both short-term and long-term strategies. Headed by a Broadband Commissioner and guided by a statewide advisory group including County representation, this office would:*

- *Consolidate all broadband-related activities currently in the PUC (telephony) and DCCA (cable TV) along with applicable County functions to serve as a one-stop shop that expedites processing for all regulatory, franchising and permitting functions normally available to state and local governments,*

- *Create a level playing field for broadband providers by rationalizing fees and requirements to the extent permissible under federal law,*

- *Promote maximum sharing and equitable access to all elements of broadband infrastructure through permitting, regulation, building codes and other means permissible under federal law,*

- *Implement efficient, consistent and equitable policies on behalf of the state and all counties while remitting revenue for all leases and easements to the appropriate entities,*

- *Offer incentives that promote competitive broadband access at affordable costs, • Provide advocacy at all levels of government on behalf of broadband service providers to help overcome unnecessary barriers to progress,*

- *Implement an ongoing program of data collection and mapping to enable Hawai'i's policy-makers to monitor progress in achieving the committee's broadband vision, and*

- *Proactively develop new partnerships with the federal government to implement modern approaches to advancing broadband infrastructure and services throughout Hawai'i, including in rural and underserved areas."*

The creation of the proposed Hawaii Communications Commission as described herein would move the State towards many of its goals involving improved education, healthcare, global competitiveness and economic development, and a better quality of life for its citizens.

Thank you for the opportunity to submit testimony in support.

LATE

Senator Carol Fukunaga, Chair  
Committee on Economic Development and Technology

Senator Rosalyn H. Baker, Chair  
Committee on Commerce and Consumer Protection

Senate of the State of Hawai'i

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

Wednesday, February 4, 2009  
Oppose SB No. 895, Relating to Hawaii Communications Com. without Amendments

I represent Akaku: Maui Community Television, the access organization serving the cable subscribers of Maui County. Akaku and the people of Maui strongly opposes Senate Bill No. 895, Relating to the Hawaii Communications Commission without amendments.

The bill provides for a clear and rationalized form of regulation and oversight of PEG access organizations. However, the "cut and paste" transporting of the current Chapter 440G, Haw. Rev. Stat. does not address the underlying long-term 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.

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.

APPENDIX on Proposed Amendments on SB No. 895

§ -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, production-training for 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, up to ten percent of the total bandwidth capacity for public, educational, or governmental use as directed by the commissioner by rule applicable to all franchises uniformly. \*\*\*

(i) The cable operator shall designate ten percent of total channel or bandwidth capacity for lease by third parties at reasonable rates or for common carrier use in addition to PEG access use as

determined by the commissioner by rule applicable to all franchises uniformly.

§ -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 designate 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.

**fukunaga4 - Michelle**

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**From:** Sean McLaughlin [sean@accesshumboldt.net]  
**Sent:** Wednesday, February 04, 2009 12:08 PM  
**Cc:** EDTTestimony; Sen. Carol Fukunaga; Sen. Roz Baker; Sen. David Ige; Sen. Sam Slom; Sen. Clayton Hee; Sen. Will Espero; Sen. Josh Green; Sen. Les Ihara, Jr.; Sen. Norman Sakamoto; Sen. Fred Hemmings; Sabas, Jennifer (Inouye)  
**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Testimony SB 895: HAWAII COMMUNICATIONS COMMISSION

Testimony of Hawaii Consumers  
 Regarding SB 895 to Establish the Hawaii Communications Commission February 4, 2009, 1:15pm  
 Conference Room 016, State Capitol

Committee Chairs Fukunaga and Baker and EDT/CPN Committee Members -

Thank you for considering these comments on behalf of Hawaii Consumers.

The proposed legislation SB 895 has the potential to address deficiencies and liabilities of the current State regulatory regimes for communications in Hawaii. At the same time, an ethical and forward looking reform could position Hawaii to regain leadership with regard to development of broadband media access.

Our immediate challenge is the incompetence and corruption of DCCA's cable TV regulation, particularly over the past decade under the current appointed Cable TV Administrator. Unfortunately, the Governor's Broadband Task Force is tainted by the controlling participation of self-interested State bureaucracies and the lack of independent vision and local community voices.

But the underlying goals of SB 895 are worthy, so it may be worth salvaging this legislation to establish a Hawaii Communications Commission. Perhaps if ethical leadership steps forward to correct the process deficiencies, there is still hope...

If you do choose to advance this narrowly crafted and incomplete initiative, Hawaii Consumers' recommends that you include the public interest across diverse local communities on each island - and guarantee a deciding role for local jurisdictions and community voices.

Senator Daniel Inouye's initiative fifteen (15) years ago may prove instructive. He drafted legislation, the "National Public Telecommunications Infrastructure Act of 1994," to secure public, education and government interests in the development of broadband (though the term was not in common use at the time) infrastructure.

We fully endorse US Senator Inouye's Findings in S.2195 (1994) and recommend them to you for consideration of the public policy issues for broadband access you are seeking to address for the State of Hawai'i.

Feel free to contact Sean McLaughlin, tel: 808-283-3174 (Maui) or 808-447-9610 (O'ahu) or via e-mail at sean808@earthlink.net if you would like more information.

Findings in S.2195 (1994)  
 "National Public Telecommunications Infrastructure Act of 1994"

----- Forwarded Message

**From:** Sean McLaughlin <[sean@accesshumboldt.net](mailto:sean@accesshumboldt.net)>

**Date:** Wed, 4 Feb 2009 12:08:27 -1000

**Cc:** EDTTestimony <[EDTTestimony@capitol.hawaii.gov](mailto:EDTTestimony@capitol.hawaii.gov)>, Carol Fukunaga <[senfukunaga@capitol.hawaii.gov](mailto:senfukunaga@capitol.hawaii.gov)>, Rosalyn Baker <[senbaker@capitol.hawaii.gov](mailto:senbaker@capitol.hawaii.gov)>, David Ige <[sendige@capitol.hawaii.gov](mailto:sendige@capitol.hawaii.gov)>, Sam Slom <[senslom@capitol.hawaii.gov](mailto:senslom@capitol.hawaii.gov)>, Clayton Hee <[senhee@capitol.hawaii.gov](mailto:senhee@capitol.hawaii.gov)>, Will Espero <[senespero@capitol.hawaii.gov](mailto:senespero@capitol.hawaii.gov)>, "Sen. Josh Green" <[sengreen@capitol.hawaii.gov](mailto:sengreen@capitol.hawaii.gov)>, Les Ihara <[senihara@capitol.hawaii.gov](mailto:senihara@capitol.hawaii.gov)>, Norman Sakamoto <[sensakamoto@capitol.hawaii.gov](mailto:sensakamoto@capitol.hawaii.gov)>, "Sen. Fred Hemmings" <[senhemmings@capitol.hawaii.gov](mailto:senhemmings@capitol.hawaii.gov)>, Jennifer Sabas <[Jennifer\\_Sabas@inouye.senate.gov](mailto:Jennifer_Sabas@inouye.senate.gov)>

**Subject:** \*\*\*\*\*SPAM\*\*\*\*\* Testimony SB 895: HAWAII COMMUNICATIONS COMMISSION

Testimony of Hawaii Consumers  
Regarding SB 895 to Establish the Hawaii Communications Commission  
February 4, 2009, 1:15pm  
Conference Room 016, State Capitol

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Feel free to contact Sean McLaughlin, tel: 808-283-3174 (Maui) or 808-447-9610 (O'ahu) or via e-mail at [sean808@earthlink.net](mailto:sean808@earthlink.net) if you would like more information.

Findings in S.2195 (1994)

"National Public Telecommunications Infrastructure Act of 1994"

(1) The United States Government has consistently encouraged the development and dissemination of public telecommunications services in broadcast and nonbroadcast technologies through, among other things, the Public Broadcasting Act of 1967, the Public Telecommunications Financing Act of 1978, and the Public Telecommunications Act of 1992, wherein Congress found

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

(2) The Government has a compelling interest in ensuring that all citizens of the United States have access to noncommercial governmental, educational, informational, cultural, civic, and charitable services through all appropriate telecommunications networks.

(3) New telecommunications technologies will enhance the ability of schools, libraries, local governments, public broadcast institutions, and nonprofit organizations to deliver and receive noncommercial governmental, educational, informational, cultural, civic, and charitable services throughout the United States.

(4) It is in the public interest that these entities be granted access to capacity on telecommunications networks for the purpose of disseminating

and

receiving noncommercial governmental, educational, informational, cultural, civic, and charitable services throughout the United States.

(5) It is necessary and appropriate that these entities have access, without charge, to the capacity on telecommunications networks to enable the public to have affordable access to the governmental, educational, informational, cultural, civic, and charitable services provided by such entities.

(6) Telecommunications services, including cable television programming, basic telephone service, and telecommunications services not yet available, are likely to become an increasingly pervasive presence in the lives of all Americans.

(7) Most Americans are currently served by telecommunications networks that lack sufficiently open architecture, sufficient capacity, and adequate nondiscriminatory access terms necessary to provide open access to a diversity of voice, video, and data communications.

(8) Private telecommunications carriers are likely to control access to telecommunications networks that lack sufficiently open architecture, sufficient capacity, and adequate nondiscriminatory access terms. Without narrowly tailored governmental intervention, the existence of these private 'gatekeepers' is likely to restrict access to these networks.

(9) Private telecommunications carriers respond to marketplace forces, and therefore are most likely to exclude those members of the public and institutions with the fewest financial resources, including but not limited to small town and rural residents, low income people, minorities, individuals with disabilities, the elderly, and noncommercial organizations such as schools, libraries, public broadcasters, and nonprofit community and civic organizations.

(10) To facilitate widespread public discourse on a range of public concerns between and among all Americans, the Government has a compelling interest in providing broad access to telecommunications networks for a diversity of voices, viewpoints, and cultural perspectives, including access for members of the public whose voices are most likely to be excluded by private telecommunications carriers.

(11) Assuring access to a diversity of voices, viewpoints, and cultural perspectives over telecommunications networks benefits all members of the public who use telecommunications networks to disseminate or receive information.

(12) Government support and encouragement of a diversity of voices,

viewpoints, and cultural perspectives over telecommunications networks furthers a compelling governmental interest in improving democratic self-governance, and improving and facilitating local government services and communication between citizens and elected and unelected public officials.

(13) Telecommunications networks make substantial use of public rights-of-way in real property and in spectrum frequencies.

(14) Because of the Government's compelling interest in ensuring broad and diverse access to telecommunications networks for the purposes of disseminating and receiving noncommercial educational and informational services, and in exchange for the use of public rights-of-way accorded telecommunications networks, it is appropriate for Congress (through the assertion of concurrent Federal jurisdiction over rights-of-way held or controlled by State or local governments) to require that owners and operators of telecommunications networks reserve capacity on such networks for public use.

(15) The least restrictive means to ensure that those members of the public whose voices are most likely to be excluded from telecommunications networks can access those networks is to require those networks to reserve a portion of their capacity for that access.

(16) It is in the public interest that reserved network capacity for public use be accompanied by funding to facilitate use of such capacity to provide noncommercial governmental, educational, informational, cultural, civic, and charitable services for the public.

Thanks to US Senator Daniel Inouye for his ethical leadership with regard to broadband media regulation!

# 30 #

----- End of Forwarded Message

LATE

**WATANABE ING LLP**  
*A Limited Liability Law Partnership*

999 Bishop Street, 23<sup>rd</sup> Floor  
Honolulu, Hawaii 96813  
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*Facsimile Cover Sheet*

Date: February 19, 2009

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**PLEASE DELIVER TO:**

COMPANY

FACSIMILE NO.

Sen. Carol Fukunaga  
Attn: Michelle Moorehead

586-6899

FROM: Allison for Jeannine Souki

\*\*\*\*\*

Aloha Michelle,

Per your telephone conversation with Jeannine Souki, please see attached documents regarding SB 1680.

Thank you.

*Allison*

200 Akamaimu Street  
Mililani, Hawaii 96789-3999  
Tel: 808-625-2100  
Fax: 808-625-5888



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

Sender's No. and E-mail:  
 (808) 544-8319  
[jsouki@wik.com](mailto:jsouki@wik.com)

VIA HAND-DELIVERY

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

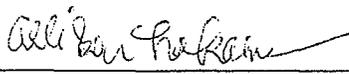
RE: SB 895 (Hawaii Communications  
 Commission) and SB 1680 (Technology)

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

| COPIES | DATE    | DESCRIPTION                            |
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By   
 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-dedicated 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 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: Sticky 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: Statewide 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 18th 2009, 9:10:30 AM  
To avoid confusion of public utility, 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 18th 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: [redacted] 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.

**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