

SB

1680

EDT/CPN

2) Driving Broadband Deployment

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

3) Maximize Hawaii's Connectivity to the World

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

4) Stimulate Broadband Adoption and Use

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

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

The Task Force is delighted to see multiple bills introduced to implement our key recommendations this year. With our Report as a base, we now stand ready to listen to your ideas and those of others so that together we can all create the best possible broadband future for Hawaii.



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

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

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 4, 2009
1:15 p.m.

**TESTIMONY ON S.B. No. 1680,
RELATING TO TECHNOLOGY**

TO THE HONORABLE CAROL FUKUNAGA AND THE HONORABLE ROSALYN
BAKER, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Lawrence M. Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to provide testimony in strong support of both S.B. No. 895 and S.B. No. 1680.

In her 2006 inaugural address, Governor Lingle said, "The magnitude and speed of change and innovation in the world today is so great, that if we fail to move forward, by definition, we will be going backwards. When it comes to global economic waves, we want to be riding them ... not sitting on the sand and watching others ride."

More recently, in his inaugural address, President Obama said "For everywhere we look, there is work to be done. The state of our economy calls for action, bold and

swift, and we will act -- not only to create new jobs, but to lay a new foundation for growth.

"We will build the roads and bridges, the electric grids and digital lines that feed our commerce and bind us together. We will restore science to its rightful place, and wield technology's wonders to raise health care's quality and lower its cost.

"We will harness the sun and the winds and the soil to fuel our cars and run our factories. And we will transform our schools and colleges and universities to meet the demands of a new age. All this we can do. All this we will do."

The State Legislature also showed much foresight when you established the Hawaii Broadband Task Force in 2007. The Task Force has provided a roadmap that will help guide us into a future where the availability and accessibility of high speed, affordable broadband is the norm in Hawaii.

These bills will go far in fulfilling the vision of both the Governor, the President, and the Legislature in ensuring that Hawaii and the nation are moving into the 21st century purposefully and intelligently. I believe that these bills will position Hawaii in the forefront of national efforts to regain America's primacy in the development, implementation, and widespread availability and use of technology, particularly as it relates to broadband and the applications served by broadband.

Many across the nation and around the world have come to the conclusion that an indispensable requirement for a strong and diversified economy is an advanced communications structure. This is the backbone of a true information economy. We need to hook up our hospitals and empower telehealth. We need to interconnect our

schools and make on-line classes a reality. We need to have the infrastructure in place so that Bishop Street and Front Street communicate seamlessly with Wall Street.

This 21st Century infrastructure is essential to creating the kind of high-paying jobs we are striving for in the coming years. What we have in place today meets today's needs. What we need to do, though, is to plan for tomorrow's needs. We can't be limited in our thinking by what we have in place today. We need to dream about tomorrow and lay the groundwork for getting there. What we need is a communications structure that will allow us to achieve competitive advancements in education, health care diagnosis and treatment, public safety, research and innovation, civic participation, creative media, e-government, and overall economic development.

In planning for that future, we have worked with the Broadband Task Force to craft a measure that recognizes the convergence of technologies that are used to provide voice, data and video services through wireline, wireless, cable and satellite infrastructure.

These bills consolidate regulation of communications services under one regulator, a new Hawaii Communications Commission ("HCC" or "Commission"), in order to expedite the availability of the latest communications services at the earliest possible time to the residents of Hawaii. The Commission will be funded from existing fees and will be directed to achieve various goals, including creating access on a competitive basis at reduced prices, increasing service penetration and quality, streamlining the permit approval process, and providing access to businesses and

residents by 2012 at prices and speeds that will make us world leaders, attract investment and empower our people.

Although the bills are very similar, there are several important differences that the Department wishes to bring to the Committees' attention.

My testimony will focus on differences related to those issues affecting the overall structure or general operations of the HCC, while Cable Television Administrator Clyde Sonobe's testimony addresses differences relating to cable television regulation and Division of Consumer Advocacy Executive Director Cat Awakuni's testimony addresses differences relating to telecommunications regulation.

First, S.B. No. 895 attaches the HCC to the Department for administrative purposes only (page 11, line 21). In comparison, S.B. No. 1680 establishes a Hawaii Communications Commissioner ("Commissioner") as a division within the Department.¹ This distinction is significant in that under S.B. No. 895, the HCC would be an independent decision-making body separate from the Department and analogous to the Hawaii Public Utilities Commission (PUC), which, although attached to, is independent of, the Department of Budget and Finance. Since the Department's Division of Consumer Advocacy ("Consumer Advocate") represents consumers in telecommunications matters, having both the Commissioner and the Consumer Advocate within the same Department would create a conflict of interest.

¹ In the introductory section, page 3, subpara (b), it states that the purpose of this Act is to establish the commissioner under the administrative authority of DCCA. But when it comes to the statutory section, there is no equivalent language stating this limitation. See page 9, §-2 on Hawaii Communications Commissioner.

Second, S.B. No. 895 includes provisions for the transfer to the HCC special fund of moneys collected by the PUC from telecommunications carriers and deposited in the PUC special fund and unencumbered balances in the CATV subaccount in the compliance resolution fund and provides for an appropriation for the next 2 years (Section 52, page 153, starting at line 7,). S.B. No. 1680 does not specifically provide for the transfer of moneys from existing funds. Adequate funding is crucial for the work of the HCC.

Third, S.B. No. 1680 calls for both the Department and PUC to each transfer four positions to HCC (p. 155, Section 55), whereas S.B. No. 895 provides that the Department shall transfer four (4) positions to HCC and no positions are transferred from the PUC (page 155, line 20). The Administration does not support transferring any positions from the PUC because of the PUC's increased workload with energy-related matters. S.B. No. 895 provides that up to ten (10) general funded positions shall be transferred to HCC to be funded from the HCC special fund (page 156, line 3). These positions, along with the four (4) positions S.B. No. 895 transfers from the Cable Television Division, will provide the HCC with up to fourteen (14) positions – an amount we believe to be sufficient and necessary for HCC to accomplish its goals of promoting and ensuring the growth of broadband infrastructure as well as continuing the regulation of telecommunications carriers and cable operators in the State.

Fourth, S.B. No. 1680 establishes a work group to develop procedures to streamline regulatory, franchising and permitting functions (page 157, section 56) whereas S.B. No. 895 does not call for the establishment of a work group.

Finally, S.B. No. 1680, Section 58 calls for the Legislative Reference Bureau to review all relevant laws in Hawaii Revised Statutes relating to broadband technology, telecommunications, and related areas, and make recommendations before the 2010 session, on how these laws may be amended to conform to this Act or the implementation of this Act. Although we believe that S.B. No. 895 addresses all relevant laws in the Hawaii Revised Statutes, we have no objection to this provision.

Thank you for the opportunity to testify on S.B. No. 895 and S.B. 1680. I will be happy to answer any questions that the members of the Committee may have.

LINDA LINGLE
GOVERNOR



LAWRENCE M. REIFURTH
DIRECTOR

JAMES R. AIONA, JR.
LT. GOVERNOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

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

TO THE SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 4, 2009
1:15 p.m.

TESTIMONY ON S.B. 1680 – RELATING TO TECHNOLOGY

TO THE HONORABLE CAROL FUKUNAGA AND THE HONORABLE ROSALYN
BAKER, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Clyde S. Sonobe, Administrator of the Cable Television Division (CATV), Department of Commerce and Consumer Affairs (DCCA). This testimony is identical to my testimony on Senate Bill No. 895.

CATV strongly supports both S.B. No. 895 and S.B. No. 1680. Under both bills, the regulation of cable operators and telecommunication providers will be transferred to the Hawaii Communications Commission (HCC).

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 Division of Consumer Advocacy Executive Director Cat Awakuni's testimony addresses differences relating to telecommunications regulation. My testimony focuses on how the bills differ with respect to functions related to cable television regulation.

In both bills, the provisions in Hawaii Revised Statutes (HRS) chapter 440G, relating to cable services, are incorporated into a new chapter and chapter 440G is repealed.

A major difference in the bills concerning cable television relates to the general authority over public, educational or governmental ("PEG") access organizations. S.B.

Testimony on S.B. No. 1680
February 4, 2009
Page 2

No. 895 provides the HCC with the authority to designate and select PEG access organizations and to enter into and enforce contracts with them whereas S.B. No. 1680 does not. This authority should be provided to the HCC in order to avoid confusion and litigation in the future.

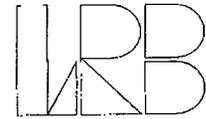
Under both measures, the cable operator will still be required to designate a minimum of three television channels or video streams for PEG use. At the present time, programming is transmitted by cable operator Oceanic Time Warner via channels to its subscribers. In the future, changes in technology and different cable franchise operators may result in video programming being transmitted to subscribers via protocols that are different than channels as defined today. Irrespective of how programming is delivered to viewers, what is important is the amount of programming authorized by the HCC Commissioner. As is currently the case with the Director of Commerce and Consumer Affairs, the HCC Commissioner will have the authority to require additional channels or streams of programming for PEG use if requested and appropriate justification is provided.

Thank you for the opportunity to testify on S.B. No. 895 and S.B. No. 1680. I will be happy to answer any questions that the members of the Committees may have.

Ken H. Takayama
Director

Charlotte A. Carter-Yamauchi
First Assistant

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
415 S. Beretania Street, Room 446
Honolulu, Hawaii 96813

Written Testimony Only

SB1680
RELATING TO TECHNOLOGY

Testimony by the Legislative Reference Bureau
Ken H. Takayama, Director

Presented to the Senate Committees on Economic Development
and Technology and Commerce and Consumer Protection

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

Chairs Fukunaga and Baker and Members of the Committees:

I am Ken Takayama, Director of the Legislative Reference Bureau. Thank you very much for the opportunity to testify on S.B. No. 1680. The Bureau takes no position either for or against this measure, but offers the following comments.

1. Section 58 of this bill directs the Bureau to review state and county laws relating to broadband technology, telecommunications, infrastructure, and permitting requirements, among others, with respect to how they conform to this measure or facilitate its implementation.
2. The review called for could be a big job, as the provision is drafted broadly -- and we won't know how extensive the review will be until the bill actually passes. However, if the Legislature wants us to do this study, we will do so to the best of our ability.

Thank you for this opportunity to testify. I am open to any questions you may have.



February 3, 2009

Honorable Carol Fukunaga
Senate Committee Economic Development and Technology
Hawaii State Capitol, Room 216
Honolulu HI 96813

Honorable Rosalyn Baker
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 231
Honolulu HI 96813

Re: SB 1680, Relating to Technology - 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 tw telecom which has operated in Hawaii since 1994 and manages approximately 25,000 access lines in the State of Hawaii, thank you for the opportunity to submit testimony today. I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom.

The purpose of this bill 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 broadband regulation, franchising, and permitting and report to the legislature.

While we do not object to the concept of establishing a Communication Commission, we respectfully request that time be allowed to consider significant regulatory changes proposed in the bill. This would allow impacted stakeholders the opportunity to review and to provide input on proposed changes offered in SB 1680, Relating to Technology, and by SB 895, Relating to the Hawaii Communications Commission. Among other things, we would like to assure that any regulatory changes remain consistent with the interconnection and other policies reflected in sections 251 and 252 of the federal Telecommunications Act.

Attached for your information and consideration is a National Association of Regulatory Utility Commissioners (NARUC) resolution that was passed last summer. NARUC sets national policy for the country's state public utility commissioners and this particular resolution is timely since it reflects the importance of these policies.

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

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs

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

Attachment: 1

Executive Summary Interconnection Resolution

It is indisputable that interconnection between the incumbent local exchange carriers (ILECs) and other telecommunications carriers is necessary to a competitive telecommunications environment. NARUC has long supported the non-discriminatory interconnection of networks for the exchange of voice traffic as fundamental to the emergence of a "network of networks." The purpose of this Resolution is to prevent federal pre-emption of State commissions' authority to mediate, arbitrate, and approve interconnection requests for the exchange of voice traffic, consistent with the federal Telecommunications Act of 1996, as managed packet technology replaces circuit-switched technology for the transmission of voice calls.

Managed packet technology promises to accelerate the deployment of advanced networks and transform the traditional public switched telephone network into an all-packet network. Telecommunications carriers' managed packet networks do *not* use the public Internet, where packets move on a "best efforts" basis. Rather, managed packet networks are designed to identify and route voice packets using specific protocols and routing instructions to meet the real-time needs of voice services. In this way, managed packet networks avoid the quality and security issues that limit the usefulness of the public Internet to provide reliable voice services.

Initially, the deployment of managed packet voice networks occurred in the form of isolated islands which individual carriers had designed to ensure within-network quality-of-service for their voice service products. Managed packet networks are now being deployed by both ILECs and new entrants, with voice traffic volumes transported in managed packet form growing rapidly. Today, these networks must convert voice traffic to a circuit-switched format at the edge of the ILEC's network in order to complete the exchange of such voice traffic, even where both the ILEC and its competitor have deployed managed packet technology in their transport network. The nation is approaching the tipping-point, however, where it will be more efficient to exchange voice traffic in managed packet form between both carriers' networks.

Just as technologically neutral federal and state interconnection policies promoted the transformation from analog to digital transmission, these same policies should govern the transition from circuit-switched transmission to managed packet format. Preserving reliable and high-quality voice services as the nation's networks evolve to a packet-architecture must remain a public policy goal. Quality voice service is uniquely important to our lives, security, social structure and our economy. As such, assuring the efficient interconnection of managed packet networks is no less important to achieving quality voice service in the future than the interconnection of circuit-switched networks has been in the past.

The proposed Resolution makes clear that NARUC supports technologically neutral interconnection policies, under Section 251 of the federal Telecommunications Act, that do not distinguish between the legacy circuit-switched network architecture of the past over the managed packet network architecture being deployed today. Moreover, the Resolution reinforces NARUC's commitment that the important role of State commissions, set forth in Section 252, to act as the arbiter of interconnection disputes must be preserved. This Resolution will remove any uncertainty with the Federal Communications Commission that NARUC stands behind the continued application of Sections 251 and 252 to the interconnection of networks for the exchange of voice traffic irrespective of the transport technology being used.

SB 1680
Relating To Technology

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

Wednesday, February 4, 2009

Senator Carol Fukunaga, Chair
Senator Rosalyn H. Baker, Vice Chair
Senate Committee On Economic Development And Technology

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair
Senate Committee On Commerce And Consumer Protection

Proposed Amendments to SB 1680 Relating To Technology.

My name is Robert T. Tanimura and I am testifying on behalf of Verizon on SB 1680, "A Bill For An Act Relating To Technology." Verizon offers the following comments on SB 1680:

- Verizon supports the establishment of state policy to promote broadband access, however, some of the goals proposed in SB 1680 should be modified to better achieve that objective. First, comparing broadband speeds and prices in Hawaii to the top three performing countries in the world is problematic if nothing else because of different national policies, which are well beyond the control of Hawaii government. A more meaningful benchmark would be the top quartile of states within the U.S. or something similar since all states are operating under the same national broadband policy. For this reason, a comparison of results by state would be a more meaningful measurement of the effectiveness of state policy. In addition, the metrics should include a measurement of broadband penetration since the percentage of people that actually subscribe to broadband is as important as speed and price. I would note that in this regard, Hawaii is doing relatively well. Based on the FCC's latest Broadband Report and Census Bureau figures,¹ Hawaii is ranked 5th among the 50 states and the District of Columbia in terms of the number of residential broadband lines per household.
- Second, Verizon recommends that all references to the "sharing" of infrastructure be deleted from the bill. The sharing of telecommunications and broadband infrastructure is a complex and costly proposition, as the FCC found out with its now mostly rescinded policies for unbundled network elements (UNEs) and line sharing. While sharing might

¹ FCC, *High-Speed Services for Internet Access: Status as of December 31, 2007*, January 2009, Table 13; U.S. Census Bureau, American FactFinder, 2007 American Community Survey, Selected Social Characteristics in the United States.

seem to be a logical way to lower average network costs, this is not necessarily true because sharing comes at a high cost, in terms of creating a disincentive to invest, in the complex management inherent in shared use of a common resource, and potential inefficiencies. These trade-offs must be taken into consideration by state policy. Including sharing as an explicit goal as this bill does would needlessly hamstring state broadband policy. For example, it would preclude innovative solutions such as using competitive bidding rather than infrastructure sharing. Under a bidding scenario, state grants would be provided for projects in unserved areas based on a ranking of various criteria such as cost, price, and number of customers served. In essence, this approach promotes competitive deployment of advanced networks via the bidding process, not through the sharing of the resultant infrastructure. Through this process, more areas can be served on a competitive basis but without a costly or cumbersome sharing requirement. Indeed, a sharing requirement would be a significant deterrent for a carrier to bid for grants. Another example of a potential program that would be precluded by a sharing requirement is a proposal outlined in California's Broadband Task Force Report to encourage the deployment of wireless broadband in unserved areas by providing access to state rights-of-way at cost for wireless infrastructure.² A sharing requirement in the statute would preclude this solution and numerous others from even being considered. Hawaii needs to consider the entire panoply of potential broadband solutions and not box itself into only certain types of solutions, especially unproven ones such as infrastructure sharing. For these reasons, infrastructure sharing should not be a state goal.

- Finally, Verizon applauds the intent of the provisions to "promptly examine rate regulation for telecommunications carriers" and "[i]nvestigate the possibility of implementing incentive regulation for telecommunications carriers to increase investment in broadband infrastructure within the state." This acknowledges that the vast majority of new broadband infrastructure will continue to come from private investment. In order to ensure that carriers have an incentive to pursue innovation and invest in broadband, they must have the ability to earn a return on that investment. A good example of this is wireless communications, which is not rate regulated or subject to regulatory infrastructure mandates. Because it operates in an environment that is conducive to private investment, Verizon Wireless is spending \$9.4 billion on new wireless spectrum and billions more to build the next generation broadband network with download speeds of 75 megabits versus less than 5 today. Similarly, wireline carriers like Hawaiian Telcom, which is one of the most tightly regulated local exchange carriers in the nation, must have the financial strength and incentive to spend capital and invest in network upgrades. The examination of telecom rate regulation and incentive regulation will help to address this issue. While I cannot tell the state government how it should organize and structure its operations, I do wonder whether creating a new commission at this time would distract resources from the regulatory reviews that are urgently needed. I am also concerned about the concentration of power in a single individual. A multi-person panel such as the current Public Utilities Commission allows for a greater diversity of backgrounds and ideas and provides for an

² Final Report of the California Broadband Task Force – January 2008, *The State of Connectivity, Building Innovation Through Broadband*, p. 58.

appropriate balance in decision making. For that reason, it is extremely rare in this country that an agency responsible for telecommunications policy is headed by a single person.

Thank you for the opportunity to testify.

SB 1680

RELATING TO TECHNOLOGY

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

HAWAIIAN TELCOM

February 4, 2009

Chair Fukunaga, Chair Baker, and members of the joint Senate Economic Development and Technology and Commerce and Consumer Protection Committees:

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

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

consumers with an opportunity to receive a wide array of new broadband products and services at competitive prices more effectively than would be available with additional regulation.

Hawaiian Telcom supports the language contained in the bill intended to provide regulatory relief to telecommunications carriers in the form of pricing flexibility for tariffed services. However, the language is not clear as to whether this pricing flexibility is immediate or whether additional procedures must be followed before pricing changes can be implemented. If the goal of this provision is to provide consumers with the full benefits of competition, including lower prices and new or different service offerings, the bill must be clarified to ensure that this pricing flexibility and the associated relief to level the playing field is intended to be permanent and immediate.

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

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
Support of SB No. 1680, Relating to Technology with Amendments

I represent Akaku: Maui Community Television, the access organization serving the cable subscribers of Maui County. Akaku and the people of Maui strongly support Senate Bill No. 1680, Relating to Technology, with amendments, which would give the public and access organizations a clear and meaningful process by which the administration designates and regulates cable access.

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's PEG provisions are inherently incompatible.

Federal law's inclusion of PEG access in the powers of local franchising authorities was intended to recognize that access to media and exercise of other First Amendment rights simply are

not supported by free market conditions or the structure of the commercial television market. To counteract the problems of concentrated ownership of media, the federal law was amended to allow local franchising authorities to require PEG access. In 1987, the Legislature made PEG access mandatory in Hawai'i.

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

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

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

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

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

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

Appendix with Proposed Amendments for SB 1680

§ -1 Definitions. ***

"Access organization", "Public, education, or government access organization" or "PEG 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 or any , and any officers, agents, and employees of an organization with respect to matters within the course and scope of their employment by the access organization.

~~"Public, educational, or governmental access organization" or "PEG access organization" means any person or entity that provides public, educational, or governmental access services.~~

§ -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. ***

(j) 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.

(f) 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.

(g) 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.

From: mailinglist@capitol.hawaii.gov
To: [EDT Testimony](#)
Cc: wild@aloha.net
Subject: Testimony for SB1680 on 2/4/2009 1:15:00 PM
Date: Monday, February 02, 2009 5:15:29 PM

Testimony for EDT-CPN 2/4/2009 1:15:00 PM SB1680

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Hannah Bernard
Organization: Hawai'i Wildlife Fund
Address: P.O. Box 790637 Paia, HI
Phone: (808) 575-2046
E-mail: wild@aloha.net
Submitted on: 2/2/2009

Comments:
We support SB 1680 with an amendment to allow PEG access.

George M. Waialeale
910 Kapahulu Avenue #703
Honolulu, Hawaii 96816
Phone: (808) 737-4466 Cellular: (808) 383-0436
Email: geedubbyou@aol.com

February 4, 2009

To: Senator Carol Fukunaga, Chairperson
Senator Rosalyn Baker, Vice Chairperson

Committee on Economic Development and Technology

Senator Rosalyn Baker, Chairperson
Senator David Ige, Vice Chairperson

Committee on Commerce and Consumer Protection

From: George Waialeale

Subject: SENATE BILL 1680

I agree with the idea of Senate Bill 1680 to improve the functions of telecommunications as we go forward. I am very concerned about the placing of the direction in the hands of one person whom I will refer to as THE TELECOMMUNICATIONS CZAR.

The Public Utilities Commission has had a back log of dockets and this is with three commissioners. I would like to see a commission with at least three commissioners or more dealing the complex telecommunications issues of the future.

Putting all our eggs in one basket is very dangerous.

This bill is the first step, I believe if we can make changes in this bill to provide a good balance for all of the residents of the state of Hawaii. We will provide advance telecommunications for all of Hawaii.