

SB 1680

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, February 26, 2009
9:00 AM
State Capitol, Conference Room 211

In consideration of
SB 1680 SD1 RELATING TO TECHNOLOGY.

Chair Mercado Kim, Vice Chair Tsutsui and Members of the Senate Committee on Ways and Means.

The High Technology Development Corporation (HTDC) supports SB 1680 SD1 which proposes to establish the Hawaii Broadband Commissioner under the administrative authority of the Department of Commerce and Consumer Affairs, and defers to the recommendations of the State Broadband Task Force, created by the Legislature in 2007 to evaluate, determine and recommend best practices for implementation of this important initiative.

Thank you for the opportunity to submit testimony in support.

Written Only

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

FEBRUARY 26, 2009

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

Chair Kim and Members of the Committee:

DESCRIPTION:

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

POSITION:

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

COMMENTS:

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

Thank you for the opportunity to testify.



**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 WAYS AND MEANS

Thursday, February 26, 2009

9:00 a.m.

State Capitol, Conference Room 211

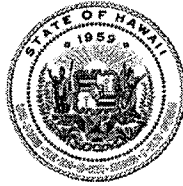
SB 1680 SD 1
RELATING TO TECHNOLOGY.

Chair Kim, Vice Chair Tsutsui, and Members of the Senate Committee on Ways and Means.

DBEDT supports the intent of SB 1680 SD 1; however we defer to the Department of Commerce and Consumer Affairs as to the technical details of this measure.

High speed broadband service has become essential infrastructure for an idea-based innovation economy and a key source of competitive economic advantage. Improved broadband service will 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.

Thank you for the opportunity to provide this testimony.



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TO THE SENATE COMMITTEE ON
WAYS AND MEANS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, February 26, 2009
9:00 a.m.

**COMMENTS ON S.B. No. 1680, S.D. 1
RELATING TO TECHNOLOGY**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR, SHAN S. TSUTSUI, VICE
CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Lawrence M. Reifurth, Director of Commerce and Consumer Affairs
("Department"). The Department appreciates the opportunity to provide comments in
strong support of S.B. No. 1680, S.D. 1.

The bill consolidates regulation of communications services under one regulator,
a new Hawaii Broadband Commissioner ("Commissioner"), in order to expedite the
availability of the latest communications services at the earliest possible time to the
residents of Hawaii. The Commissioner 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 Department strongly supports the bill, we have the following comments and recommended changes:

Federal Funds

As Stand. Com. Rep. No. 353 indicates, the Committees on Economic Development and Technology and Commerce and Consumer Protection “are heartened that the American Recovery and Reinvestment Act of 2009 (“ARRA”) offers several opportunities to help the State identify areas that may be underserved or unserved within its rural communities, and enhance broadband connectivity between Hawaii, the mainland and Asia-Pacific nations.” To help ensure that Hawaii is able to access and use those federal funds, the Department has developed for the Committee’s consideration, proposed language (see attachment) that would authorize the Commissioner to apply for and expend federal moneys, including those from the ARRA. We may propose further amendments to this language in the next several weeks as we learn more about the requirements of the ARRA.

PEGs

The S.D. 1 incorporates several PEG-specific provisions, such as language to exempt the PEG selection process from the Procurement Code (chapter 103D, HRS) into the bill. While the Department has long been and continues to be supportive of the PEGs (we also agree that the selection process should be exempt from the Procurement Code), we believe that S.B. No. 1680, S.D. 1 is not the appropriate vehicle

for those provisions. The PEG-specific provisions will distract from the focus of the bill, which is to promote broadband development in Hawaii and consolidate the regulation of communication services. While the PEG-specific provisions merit further consideration, we respectfully recommend that a more appropriate vehicle be used for that purpose.

Rate Review

The S.D. 1 version of the bill exempts telecommunications carriers from all rate review of retail services. While the Department strongly supports the principle of a level playing field between competitors, the Department also believes that the S.D. 1 exclusion located in section _ -38 (page 43, line 15) is overly broad, given that the incumbent local exchange carrier ("ILEC") may also be the carrier of last resort for some customers. If given the discretion to adjust its rates up or down, it is possible that the ILEC could choose to increase rates for certain difficult to serve areas, including rural or remote portions of the Neighbor Islands. Instead of complete pricing freedom, it may be more appropriate to grant the ILEC the limited flexibility to only decrease its rates. The Department suggests returning to the language that was contained in section _ -38 (starting on page 44, line 8) of the original version of the bill.

Transfer of Positions

The bill originally required the Department and the Public Utilities Commission ("PUC") to each transfer four positions to the new entity. The Department testified that the Administration did not support transferring any positions from the PUC because of the PUC's increased workload with energy-related matters. The Department testified

that the Administration would support the transfer of four positions from the Department along with 10 other general funded positions from executive agencies.

Although S.B. No. 1680, S.D. 1, removed the transfer of positions from the PUC and added a transfer of an additional 10 positions, the bill now proposes to take all the additional 10 positions from the Department, which means the Department would have to transfer a total of 14 positions (page 163, line 5), which was never the intent, and which cannot be afforded. As such, we recommend that the Committee amend the bill so that the additional 10 positions are transferred from other executive agencies (see page 156, line 3 of S.B. No. 895).

Exemptions

The telecommunications industry and markets continue to evolve and change. As a result, it is necessary to recognize that exemptions from requirements may be necessary. In the bill, the Commissioner is tasked with evaluating the “responsiveness” (page 36, line 4) of the exemption to changes in the structure and technology of the State’s telecommunications industry. Rather than evaluating the “responsiveness” of an exemption, it is more appropriate for the Commissioner to determine the “appropriateness” of the exemption. As such, the Department requests that “responsiveness” in this context be replaced with “appropriateness”.

Thank you for the opportunity to submit comments on this bill.

Insert a new definition in section -1 of the new chapter created in SB1680, SD1:

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

Add a new section to the new chapter created in SB1680, SD1:

"§ -24 Use of American Recovery and Reinvestment Act of 2009 and other federal moneys. (a) The commission may apply for, and expend, federal moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

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

(c) The commissioner may establish a separate account within the Hawai'i communications commission special fund

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

(d) Any moneys applied for or received by the department under the American Recovery and Reinvestment Act of 2009 for uses related to the purpose of this Act shall be transferred to the Hawai'i communications commission upon its establishment.

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

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

Add a new section to SB1680, SD1:

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

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

**Testimony on S.B. 1680, SD1
Relating to Technology
Senate Ways And Means Committee
Keali'i Lopez, President and CEO of 'Ōlelo Community Television
Thursday, February 26, 2009**

Chair Mercado Kim, Vice-Chair Tsutsui and members of the Senate Ways and Means Committees. Aloha. Thank you for an opportunity to provide written comments on S.B. 1680 S.D.1. 'Ōlelo supports the goal of the Bill, which is to provide advanced broadband services to all sectors of our community. We recognize that greater and faster connectivity has the potential to increase civic participation, and that is an integral part of 'Ōlelo's mission as O'ahu's public, educational and governmental (PEG) access organization. Such Broadband deployment would allow 'Ōlelo to enhance and expand our ability to deliver broadband services for Public, Educational and Governmental access purposes. A good example would be the Broadband stream of Senate legislative proceedings which were launched on Monday, February 2, 2009. Broadband capability was a significant component of 'Ōlelo's input to the DCCA regarding Oceanic Time Warner Cable's franchise renewal for O'ahu. The availability of Broadband would allow 'Ōlelo to leverage present and future technology to increase 'Ōlelo's ability to meet current and future needs of the community. We look forward to the DCCA's effective negotiation of these public benefits.

'Ōlelo has been engaged in delivering Public, Educational and Governmental access services on O'ahu for almost 20 years. We manage six community access channels on the Oceanic Time Warner Cable system. Educational institutions, government agencies, non-for-profit organizations, and public citizens delivered almost 6,000 hours of programming in 2008 on four of the six channels alone. We have seven Community Media Centers throughout O'ahu and are considered a national role model for community access. The services that we provide to the community are seen as very valuable in our ability to provide access to technical training, quality production resources and valuable airtime on Oceanic cable. We know the members of the Senate Ways and Means Committee are aware of this value and we appreciate the support PEG access has received from the Hawaii State Legislature.

Our general concern about the proposed Hawaii Broadband Commission ("HBC") is that it treats the public, educational and governmental (PEG) access organizations in the same manner that it treats the large public utilities and the cable operator. The PEG access organizations are considerably smaller than the public utilities and/or the cable operator. Hoiike's annual gross revenues ranging from as low as \$400,000 to as high as \$4.5 million on O'ahu ('Ōlelo and Hawai'i Educational Network Consortium combined). By contrast, the 2008 gross revenue for the cable operator, Time Warner Entertainment, was over \$220,000,000 for O'ahu alone.

The proposed scheme for a new HBC is similar to the current Public Utilities Commission, and requires a much more cumbersome and costly process to address

administrative and operational issues. To the extent that the PEG access organizations may be required to operate under such a scheme, a large proportion of the PEG access funding will necessarily have to be devoted to administrative costs. However, unlike the larger utilities, the PEG access organizations simply do not have the resources to pay for such costly processes.

As an example, SB1680, SD1 sets forth a proposed new Chapter entitled "Hawaii Broadband Commissioner." That proposed Chapter, at section 23 ("Penalties"), provides that cable operators and PEG access organizations shall be subject to a penalty of up to \$25,000 per day for certain types of violations. For a company as large as Time Warner Entertainment, such a penalty would be challenging; for the small PEG access organizations, however, the same penalty could be devastating.

Because the PEG access organizations are all private, non-profit corporations, any requirement for the PEG access organizations to pay for costly administration would result in a dollar-for-dollar reduction from the funds available to deliver PEG access services.

In addition to the general concerns noted above, there are specific concerns about specific subsections of the proposed new Chapter, as drafted in SB1680 SD1.

Section 67 ("Cable system installation, construction, operation, removal; general provisions"), subsection (f) contains a paragraph giving authority to the Hawaii broadband commissioner to designate PEG access organizations "consistent with administrative rules to be adopted by the commissioner." I understand this provision to reflect the intention to exempt the PEG access service contracts from the competitive provisions of the State Procurement Code, Haw. Rev. Statutes Chapter 103D. However, the procurement exemption is not clear from the current proposed text. It is my understanding that the Hawaii broadband commissioner would not have the authority to establish a Procurement Code exemption through agency regulations. For this reason, I request that the language be revised to clearly state that the designation of PEG access organizations shall be exempt from the competitive selection requirements of Chapter 103D.

Section 67, subsection (f) also contains a paragraph about "PEG assets," of which the meaning of the paragraph is not clear and, as a result, subject to any number of interpretations. As drafted, it may be interpreted to mean that a PEG access organization would be obligated to turn over to a successor contractor all resources that it owns, including resources purchased with grant funds from private sources. Another interpretation might be that the PEG access organization would be provided upon request, at the start of its contract, all of the equipment, cash, financial assets and instruments, land and buildings that it deemed necessary provide all PEG access services within its designated geographical area, without limitation. I know that neither interpretation is the intended meaning of this paragraph. In any event, to the extent that this paragraph attempts to identify the specific terms of a contract between the State and the PEG access provider, such terms are properly contained in the contract, rather than in the statute.

We understand that it is not the intent of this bill to adversely affect PEG access but rather ensure effective deployment of broadband technology and services. We appreciate that the intent of including PEG access in the bill is based on the value of the services to the community as well as PEG access being tied specifically to Cable Franchising. We look forward to the reassurance that the proposed legislation will not significantly change the way in which the PEG access contracts are managed and services are provided.

Mahalo.