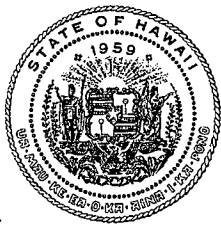


**SB 523**



ADDITIONAL TESTIMONY



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DIRECTOR  
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Statement of  
**THEODORE E. LIU**  
Director

Department of Business, Economic Development, and Tourism  
before the  
**COMMITTEE ON WAYS AND MEANS**  
Thursday, February 26, 2009  
9:00 a.m.  
State Capitol, Conference Room 211

in consideration of  
**SB 523 SD1**  
**RELATING TO HIGH TECHNOLOGY.**

Chair Kim, Vice Chair Tsutsui, and Members of the Committee.

It has come to our attention that there is lack of clarity in DBEDT's position regarding SB 523 SD1, which would amend HRS Section 206M-15 to remove the cap on the State matching grant for Small Business Innovation (SBIR) Phase I and Small Business Technology Transfer (STTR) phase I awards. We believe that this is a valuable program to help grow Hawaii's high technology industry sectors and support the provision that removes the cap; however, we failed to address in our testimony the concern raised by the High Technology Development Corporation (HTDC) about the proposed amendment which would change the word "may" to "shall" in subsection (b).

DBEDT fully endorses the position of HTDC that the language should remain “may.” Otherwise, if available funds are not sufficient to provide grants to all eligible companies, HTDC would be in violation of the statute.

Thank you for the opportunity to provide these clarifying comments in support of SB 523 SD1.



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February 25, 2009

Honorable Donna Mercado Kim, Chair  
Honorable Shan S. Tsutsui, Vice Chair  
Senate Committee on Ways and Means

**Re: SB 1680 SD 1, Relating to Technology – Oppose in Part**  
**WAM Hearing, Thursday, February 26, 2009, 9:00 am – Room 211**

Aloha Chair Kim, Vice Chair Tsutsui, and Committee members:

On behalf of tw telecom (“TWTC”) 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 stated purpose of this bill is to implement key recommendations of the Hawaii Broadband Task Force by establishing the Hawaii Broadband Commission (HBC) in the Department of Commerce and Consumer Affairs (DCCA), to transfer functions relating to telecommunications from the Public Utilities Commission to the HBC and functions relating to cable services from DCCA to the HBC, and to establish a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature. However, TWTC believes that certain portions of this bill are unnecessary and will be a detriment to the communication industry.

We do not object to the concept of establishing an HBC, however, we do have very serious concerns about the significant regulatory changes proposed in this bill. Among these include:

1. **Sharing of infrastructure** – This is a complex issue that should be examined in much greater detail prior to making any decision on whether it will further the goals of this initiative. Mandating that individual carriers share infrastructure at rates that may not be compensable to that carrier’s investment will freeze any initiative to expand broadband capacity. Any mandatory sharing of infrastructure should be limited to infrastructure that is funded by the state and not by individual carriers.
2. **Telecommunications rate deregulation** – While TWTC does not object to a new HBC examining rate regulation, TWTC strongly objects to portions of the bill that provide that the rates of all telecommunications carriers (Section 3, § - 38) or the rates of the incumbent local exchange carrier (“ILEC”), Hawaiian Telcom (Section 24, §269-16(h)) will no longer be subject to rate regulation.

We also do not agree with statements that have been made in connection with this and other bills suggesting that the market for telecommunications is fully competitive, and that the existing regulatory scheme is unfair to Hawaiian Telcom. While we acknowledge that competition has developed since the federal Telecommunications Act and state telecommunications laws and rules were developed, if one were to look at Hawaii’s market data, one would undoubtedly find that Hawaiian Telcom continues to dominate both the residential and business sectors in all relevant categories: number of customers,

number of lines, revenue building connected to its own network, miles of fiber, etc. Further, such statements ignore the fact that there are a number of different market segments in Hawaii – residential, business, wholesale, retail, wireless, and wireline – which are not all subject to the same level of competition.

Determining the extent of competition is dependent on factual findings, and doesn't necessarily follow from the availability of VOIP and wireless services, or the loss of retail lines. For example, in "forbearance" proceedings before the FCC, the FCC must determine the level of competition faced by an ILEC for purposes of relieving an ILEC from federal tariffing and other requirements. In a recent forbearance request by Qwest with respect to markets in Denver, Minneapolis – St. Paul, Phoenix, and Seattle, the FCC conducted a detailed factual inquiry of the levels of competition in different segments of each market and denied the petition. The FCC expressly rejected the position that a reduction in the number of retail lines demonstrates competition and recognized that wireless was not a perfect substitute for wireline service. (See *In re Petition of Qwest Corporation*, WC Docket No. 07-97, Memorandum Opinion and Order adopted July 25, 2008). Finally, in at least one local market – Omaha, Nebraska – the premature deregulation of the rates of the ILEC resulted in a competitive local exchange carrier leaving the market, thus decreasing in competition. TWTC therefore respectfully requests that all provisions of this bill that seek to deregulate rates be deleted.

**3. Timing & Loss of Expertise** – While TWTC does not object to the formation of an HBC, we question whether the timing is correct for transfer of telecommunication regulation to a new agency especially in a time of increasing economic uncertainty. The creation of a new HBC is really not as necessary to spur the growth of the broadband industry at this time. A new commissioner will not have the insight or experience the PUC has with regulation and with restructuring or sale of a major telecommunication utility. A new commissioner may not have the historical background and may be as prepared as the PUC. Further, there are many other initiatives that the state ought to pursue in an effort to spur and to promote broadband investment and growth. Finally, if a new agency is created, TWTC believes that a three member commission would be preferable to a single commissioner.

For these reasons, we respectfully request that you hold this bill.

Sincerely,

/s/

Lyndall Nipps  
Vice President, Regulatory Affairs

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