

HB984, HD3

Department strongly supports this bill

Couple of comments with regard to the specific provisions of the HD3:

1. The definition of “broadband” is too narrow on page 5, line 18. Recommend that it read: “Broadband’ means an ‘always on’ data-networking service that combines computer processing, information provision, and computer interactivity with data transport, enabling end users to access the internet that uses and use a variety of applications, at minimum speeds set by the commission.” **(This was referenced in the CPC committee report , but specific language was not included in my written testimony.)**
2. Appears to be a typographical error on page 10, line 21 through page 11, line 2. Recommend that that the phrase “the Hawai’i communications commission” be inserted between the word “established” and the word “within” on line 21, so that it reads: “There is established the Hawai’i communications commission within the department of commerce and consumer affairs for administrative purposes to implement this chapter.” **(Subject not mentioned in my written testimony.)**
3. PEG channel issues included in section -67(f) and (g) on page 72 of the bill. Department established PEG in Hawai’i, has been a long-standing supporter of PEG services, and understands the PEG entities can be valuable proponents for broadband services, but believes that PEG issues should be kept separate from the broadband bill and addressed in a separate vehicle. Note that HB564 was re-referred to only this committee last week, and recommend that any PEG issues be removed from this bill and addressed in that bill.
4. Recommend that language be inserted that will allow HCC to apply for, accept and expend federal monies under the American Recovery and Reinvestment Act of 2009 and other federal programs. Proposed language was provided along with the testimony. (Referenced also in the CPC committee report.)
5. Concerned over the timing of transfer of jurisdiction related to telecommunications. This has been an issue since HawTel filed for bankruptcy. Concerned if telecom jurisdiction transfers to HCC before the bankruptcy proceedings are complete. Section 21 of the bill (pages 116-117) addresses this awkwardly. Result from tweaking an amendment made in HD2. Recommend that we proceed as originally proposed...substantive telecom transfers after one year. Address in Section 63. Recommend that section 21 of the bill be deleted and section 63 be amended as provided in the document that I provided to staff earlier. **(Subject not mentioned in my written testimony.)**

SECTION 63. This Act shall take effect on July 1, 2009; provided that any decision or order executed by the public utilities commission prior to the enactment of this Act shall remain in full force and effect until such time as the Hawaii communications commission may amend or repeal the decision or order under the Hawaii communications commission's jurisdiction; provided further that the provisions relating to the regulation of telecommunications carriers and telecommunications common carriers contained in part II (sections -31 to -53) of the new chapter created in section 2 of this Act shall take effect on July 1, 2010; provided further that the public utilities commission shall continue its regulation of telecommunications carriers and telecommunications common carriers under chapter 269, Hawaii Revised Statutes, until June 30, 2010; provided further that the amendments made to section 28-8.3, Hawaii Revised Statutes, in section 4 of this Act shall not be repealed when that section is repealed and reenacted by Section 14 of Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22, Session Laws of Hawaii 2005, as amended by section 1 of Act 306, Session Laws of Hawaii 2006.

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The Honorable Marcus R. Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair  
House Committee on Finance

Tuesday, March 03, 2009 – Agenda #1  
Hawaii State Capitol, Room 308

**Re: HB 984 HD 3 – Relating to Technology**  
**SUPPORT INTENT WITH COMMENTS**

Aloha Chair Oshiro, Vice Chair Lee 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.

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.

This bill 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. This bill 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 this bill 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 this bill 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 this bill that require additional thought and consideration. We respectfully request members of the committee to consider either deferring action on this bill or defecting the effective date on this bill to allow for more discussion.

Sincerely,

Nate Smith  
President