



NEIL ABERCROMBIE  
GOVERNOR

EXECUTIVE CHAMBERS  
HONOLULU

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

**Representative Robert Herkes, Chair  
Representative Ryan Yamane, Vice Chair**

**February 15, 2012  
2:00 pm Room 325**

**Testimony in SUPPORT on HB 2524 HD 1  
Relating to the Regulation of Telecommunications and  
Cable Television Services**

Chair Herkes, Vice-Chair Yamane, and members of the Consumer Protection and Commerce Committee:

The Office of the Governor is in strong support of House Bill 2524, House Draft 1, Relating to the Regulation of Telecommunications and Cable Television Services. This measure creates a communications division with the Department of Commerce and Consumer Affairs (DCCA) to regulate the telecommunications and cable television industries.

In its December 2008 report, the Hawaii Broadband Task Force (HBTF) recommended "... *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.*"

It may be useful to note that HBTF included members of the private sector in addition to government and legislative officials, and that the report was presented to the Legislature over three years ago.

Thank you for this opportunity to testify.

TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
FEBRUARY 15, 2012

**MEASURE:** H.B. No. 2524 H.D. 1

**TITLE:** Relating to the Regulation of Telecommunications and Cable Television Services

Chair Herkes and Members of the Committee:

**DESCRIPTION:**

This measure proposes to consolidate broadband development functions and the regulation of both telecommunications and cable services in the State, which would be carried out under a single body called the Communications Division to be established under the Department of Commerce and Consumer Affairs ("DCCA"). All current regulatory functions regarding telecommunications carriers and cable services would be transferred to the Communications Division from the Public Utilities Commission ("PUC") and the Cable Television Division of DCCA, respectively, and conforming amendments throughout the Hawaii Revised Statutes would be made where appropriate. In addition, this measure would fund the Communications Division's operations through a new communications special fund to be filled by 1) claiming a portion of the PUC special fund paid by telecommunications carriers during FY 2012-2013, 2) utilizing the balance on June 30, 2012, in the cable television division subaccount in the compliance resolution fund, and 3) collecting proceeds from regulatory actions (i.e. fees, penalties, etc.).

The current House Draft 1 version of this measure ("House Draft 1") includes several amendments to the original version of H.B. No. 2524.

**POSITION:**

The PUC supports this measure and has several comments for the Committee's consideration.

**COMMENTS:**

The PUC supports the goal of enhancing the State's broadband capabilities by combining the related functions of broadband, telecommunications, and cable service regulation under a single agency. The proposed Communications Division will also

benefit businesses and consumers by serving as a "one stop shop" regarding the related areas of modern communications services. This measure sets out a comprehensive transitional process for the consolidation of regulatory operations amongst multiple agencies.

The Commission also appreciates and supports the provision in Section 53, which provides an appropriation for the transfer of records and related transitional costs. These funds are critical for placing the Communications Division on firm ground so that it can begin carrying out the objectives of this measure as soon as possible after passage.

In addition, House Draft 1 includes an existing provision and amendments to the original version of the bill that are of concern to the PUC, specifically:

1. Removal of consumer protection provisions relating to the telecommunications and cable services regulatory process.

House Draft 1 removes many ratepayer protection provisions from the original version. All provisions relating to the participation of the Consumer Advocate in the telecommunications and cable services regulatory process have been omitted. Though it may not need to be the Consumer Advocate, it would be in the public interest to have an independent entity to advocate on the consumers' behalf regarding telecommunications and cable service regulation.

In addition, H.B. No. 2524 provided legislative and regulatory oversight for the activities of telecommunications carriers with respect to the issuance of stock and the ability of those carriers to engage in mergers, acquisitions, and consolidations within the telecommunications field. House Draft 1 deleted those provisions. The PUC asks that those provisions dealing with stock issuances, mergers, acquisitions, and consolidations be reinserted into this measure. However, if the Committee decides otherwise, the PUC asks for a provision that would require telecommunications carriers to give the Communications Division at least 30-days prior notice of any stock issuance, merger, acquisition, or consolidation. This alternative provision would provide the Division with adequate notice to commence an investigatory proceeding if necessary to protect the interest of ratepayers and the general public.

2. Subsection 6(d) concerning regulation of electric utility pole access.

The PUC has concerns regarding subsection (d) of the section outlining the general powers and duties of the Communications Division Commissioner on page 13, line 20 to page 14, line 2, specifically:

(d) Subject to consultation with the public utilities commission, the commissioner shall have authority over electric utilities to the extent necessary to mandate and regulate access by telecommunications carriers and cable operators to the poles of electric utilities.

Having conferred with DCCA, and having reached mutual agreement with DCCA on this issue, we request that the Committee delete the mentioned § -6(d) in its entirety from the bill.

3. Limitation against Communications Division hearings officers being delegated powers of the Communications Commissioner to carry out responsibilities.

Section -10 does not allow Communications Division hearings officers to be delegated the "power[s], dut[ies], or function[s]" of the Communications Commissioner when performing their work. Other Communications Division employees, such as attorneys, office assistants, accountants, and "other personnel," may be delegated such powers, duties, and functions. Hearings officers are appointed to perform certain functions on behalf of the Communications Commissioner in regulatory hearings. The Communications Commissioner should be allowed to delegate the necessary authority to a hearings officer in order to perform the essential functions of receiving information and making formal recommendations.

4. Limitation regarding rate adjustments for retail telecommunications basic exchange services under § -38.

Your Committee on Consumer Protection & Commerce in passing H.B. No. 1868 H.D. 1, relating to telecommunications, incorporated the PUC's suggestion for a clarifying amendment defining the term "basic exchange service." The PUC would like to offer the same definition of "basic exchange service" and related accompanying definitions to include it in the current bill's definitions provision under § -1:

"Basic exchange service" means those services consisting of single-line dial tone, touch-tone dialing, access to operator service, access to enhanced 911, telecommunications relay service, telephone directory, and access to directory-assistance service via 411 dialing.

"Dial tone" means the ability to make or receive telephone calls with or without operator intervention.

"Single-line" means a single-party line or a one-party line.

"Touch-tone dialing" means dual-tone multi-frequency, as opposed to dial-pulse signaling.

5. Inclusion of defective effective dates.

The PUC request that the Committee correct the defective effective dates throughout the bill.

Should this measure continue to move forward, the PUC would like to work with the Committee to ensure that all necessary amendments to Hawaii's telecommunications law are made and that all required steps for transferring records, funding, and fees are considered.

Thank you for the opportunity to testify on this measure.



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**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION & COMMERCE**

February 15, 2012

2:00 p.m.

HB 2524, HD1

**RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE  
TELEVISION SERVICES.**

Chair Herkes, Vice Chair Yamane, and committee members, thank you for the opportunity to testify on HB 2524, HD1. This bill allows an exemption from HRS chapter 103D, Hawaii Public Procurement Code, for the designation of access organizations for public, educational, or governmental access channels.

The State Procurement Office (SPO) continues to oppose the selection of a public, educational, or governmental (PEG) access organization exempt from HRS chapter 103D. The bill identifies the "*commissioner shall have the authority to designate and select access organizations*" and defines an access organization as "*any nonprofit organization ... to oversee the development, operation, supervision, management, production, or cable casting of programs for any channels...*" which are essentially management services. The department may competitively solicit using the procurement method pursuant to HRS section 103D-303, competitive sealed proposals (CSP).

On May 20, 2010 the SPO issued a request for proposals (RFP), RFP-10-007-SW for the services to *Operate, Maintain, and Manage Public, Educational, and Governmental (PEG) Access Channels, Funds, Facilities, and Equipment*. On June 3, 2011 the RFP was cancelled at the request of the Department of Commerce and Consumer Affairs due to the enactment of Act 19, SLH 2011 that exempted access services contracts from HRS chapter 103D, Hawaii Public Procurement Code, effective July 1, 2011.

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House Committee on Consumer Protection & Commerce  
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Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion or fraud in awarding of contracts.

There is no compelling reason to statutorily exempt management services for public, educational, or governmental access channels from the requirements of HRS chapter 103D since current statutes and administrative rules already provides independence and flexibility in the awarding of contracts.

The SPO recommends the HRS chapter 103D exemption language on page 79, lines 18 to 20 be deleted. Thank you.



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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KEALI'I S. LOPEZ  
DIRECTOR

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Date: February 15, 2012

Time: 2:00 p.m.

**TESTIMONY ON HB 2524 HD1 - RELATING TO THE REGULATION OF  
TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Keali'i Lopez. I am the Director of the Department of Commerce and Consumer Affairs (DCCA). The Department appreciates the opportunity to express its strong support for H.B. No. 2524, HD1

In August, Governor Abercrombie established the Hawaii Broadband Initiative with the ambitious goal of providing access to world-class broadband services at affordable prices throughout the State by 2018. In so doing, he recognized that we must act now to create the economy and to grow the quality of industry we want for tomorrow. He also recognized, as this Legislature has through legislation passed in the last few sessions, that developing this critical 21<sup>st</sup> century infrastructure will require the



joint, cooperative efforts of all state agencies and branches, county governments, broadband providers, and other private stakeholders.

The DCCA has been directed to help lead the Governor's Initiative and to work with all of these groups to create and implement a plan to achieve the Initiative's goal. More specifically, the DCCA has been tasked among other things with developing a modern regulatory and permitting environment to advance investment in, and development of, broadband infrastructure.

The State Legislature, through Act 199, has also placed responsibilities upon the DCCA related to the development of broadband infrastructure and the expansion of accessible broadband services to unserved and underserved areas of the State. These responsibilities also include facilitating implementation of recommendations of the Hawaii Broadband Task Force, established by Act 2, First Special Session Laws of Hawaii 2007, one of which was to create a broadband advancement authority within the DCCA to provide leadership through short-term and long-term strategies to achieve the Act's broadband vision.

The proposed bill will provide the DCCA with the authority, structure and means needed to apply the department's capabilities and resources to fulfill the visions of the Governor and the State Legislature. The bill leverages the strengths and the mission of the department to advance the State's clear and ambitious broadband goals to provide our State with a superior communications backbone that will give our citizens a competitive edge in the global marketplace and, in many ways yet unimaginable, a better quality of life.

We have, through private investment and federal ARRA grants and other federal monies, a strong start. We must keep the momentum. We must continue to increase broadband speeds and capacity while also increasing digital literacy and access to broadband services to allow our citizens to take advantage of, and participate in, the incredible technological advancements broadband offers today and those to come tomorrow. These advancements touch every aspect of our lives, from remote specialized healthcare, to instant access to the worldwide marketplace for sellers and consumers, to virtual classroom learning, to improved public safety systems, to expanded citizen access to government.

As an island state, we face many challenges in the development of broadband infrastructure. We must find new and cooperative ways to efficiently use our resources and to foster investment in our State. This bill provides DCCA the means and flexibility to do so while recognizing the need for convergence of regulation with the convergence of technologies used to provide voice, data and video services through wireline, wireless, cable and satellite infrastructure.

Under this bill, state regulation of these communications services will be consolidated under a new communications division within the DCCA, headed by a communications commissioner. The bill transfers to the new communications division the current telecommunications regulatory functions of the Hawaii Public Utilities Commission (PUC) and the current cable television franchise functions of the DCCA's Cable Television Division (CATV division). This consolidation will expedite the availability of advanced communications services and will allow for regulation that

fosters competition for the benefit of Hawaii's residents. The bill further tasks the communications commissioner to, among other things, develop programs and comprehensive state policies to facilitate deployment of broadband services and to provide access to those services; to advocate the State's interests to other government agencies, community groups, the communications industry and other stakeholders; and to investigate measures that could streamline and expedite the governmental permitting and approval processes for the construction of broadband infrastructure. Above all, the communications commissioner must strive to ensure that all consumers throughout the State are provided with equitable access to high quality broadband service at reasonable and nondiscriminatory rates.

The communications division will initially be funded from existing fees collected by the PUC for telecommunications and by funds from the CATV division subaccount of the DCCA's Compliance Resolution Fund. From July 1, 2013 forward, it will be self-funded by fees, penalties and fines collected by the commissioner from telecommunications and cable television providers, which will be deposited into a communications special fund established under this bill.

In closing, we believe that this bill will give DCCA the needed authority and resources to accomplish the aligned goals set by the State Legislature and by the Governor's Hawaii Broadband Initiative to provide ultra high speed broadband services at affordable prices for all communities throughout the State. The new communications commissioner will lead the efforts to promote cooperative and synergistic effort by all

Testimony for H.B. No. 2524 HD1  
House CPC  
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stakeholders to ensure this growth of broadband infrastructure and just access to world-class broadband services.

Again, thank you for the opportunity to testify on this critical piece of legislation in our joint mission to secure our State's economic future and to enhance the quality of life for our residents.

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Consumer Protection and Commerce

From: Cheryl Kakazu Park, Director

Date: February 15, 2012, 2:00 p.m.  
State Capitol, Room 325

Re: Testimony on H.B. No. 2524, H.D. 1  
Relating to the Regulation of Telecommunications and Cable  
Television Services

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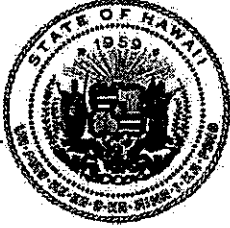
Thank you for the opportunity to submit testimony on H.B. No. 2524, H.D. 1. OIP takes no position on the substance of this bill, which would create a communications division within the Department of Commerce and Consumer Affairs, but is testifying to request clarification of a confidentiality provision on page 42, lines 11-15, of the bill.

The proposed section -33(b), as amended, requires that “[n]otwithstanding chapter 92F or any other law to the contrary,” confidential information in financial reports must be held confidential “to the extent necessary to ensure confidentiality under chapter 92F.” In other words, the provision requires the information to be held confidential to the extent that it is protected by chapter 92F, the Uniform Information Practices Act, but at the same time states that this is to be done **notwithstanding** chapter 92F. Obviously, it would not violate chapter 92F for DCCA to hold confidential records that are already protected from disclosure under chapter 92F, so the provision is circular and confusing. OIP suggests that the provision (b) be amended by removing the “notwithstanding” clause, so that the sentence will read, “Confidential and proprietary information

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Page 2

submitted by telecommunications carriers as part of the annual financial reports shall be held in confidence by the commissioner to the extent necessary to ensure confidentiality under chapter 92F.”

Thank you for the opportunity to testify.



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

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**NEIL ABERCROMBIE**  
GOVERNOR

**RICHARD C. LIM**  
DIRECTOR

**MARY ALICE EVANS**  
DEPUTY DIRECTOR

WRITTEN ONLY

Statement of  
**RICHARD C. LIM**  
Director

Department of Business, Economic Development, and Tourism  
before the

**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Wednesday, February 15, 2012

2:00 PM

State Capitol, Conference Room 325

In consideration of

**HB 2524 HD1 RELATING TO REGULATION OF TELECOMMUNICATIONS AND  
CABLE TELEVISION SERVICES**

Chair Herkes, Vice Chair Yamane, and Members of the Committee on Consumer Protection and Commerce:

The Department of Business, Economic Development and Tourism ("DBEDT") supports HB 2524 HD1. In leading the Hawaii Broadband Initiative ("HBI"), DBEDT recognizes the need for a streamlined regulatory framework to be in place as a prerequisite to the wide-area deployment and adoption of broadband networks.

HB 2524 HD1 transfers the authority to regulate telecommunications from the PUC to a broadband division created within the DCCA. DCCA has reported that the PUC is supportive of the proposed transfer.

A streamlined regulatory framework minimizes cost, variability, and risk for our industry stakeholders; without it, future expansion and enhancement of broadband infrastructure and services will stall.

Should there be any concerns with the language of this bill as introduced, the Departments can continue to work with all stakeholders through the Broadband Assistance Advisory Council (BAAC), which was legislatively created by Act 199 to supply recommendations to DCCA for the streamlining of permitting.

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

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
INTERIM DIRECTOR

DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
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February 13, 2012

TESTIMONY TO THE  
HOUSE COMMITTEES  
ON

CONSUMER PROTECTION AND COMMERCE  
AND  
JUDICIARY

For Hearing on Wednesday, February 15, 2012  
2:00 p.m., Conference Room 325

BY

BARBARA A. KRIEG  
INTERIM DIRECTOR

**House Bill No. 2524, H.D. 1**  
**Relating to the Regulation of Telecommunications and Cable Television Services**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSONS HERKESAND KEITH-AGARAN AND MEMBERS OF THE  
COMMITTEES:

The purpose of H.B. No. 2524, H.D. 1 is to create a Communications Division within the Department of Commerce and Consumer Affairs to regulate telecommunications and cable television services; to promote the development of broadband infrastructure; and to advance the provision of broadband, telecommunications, and video programming services, effective July 1, 2112.

The Department of Human Resources Development has **comments** on the proposed transfer. To protect the rights and benefits of the employees to be transferred, we prefer the following proposed transfer language be used in place of the transfer language pertaining to employees in Section 56 of the bill:



"All employees who occupy civil service positions and whose functions are transferred to the communications division from the television division of the department of commerce and consumer affairs by this Act shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class and/or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act, provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of the department of commerce and

consumer affairs may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.”

Thank you for the opportunity to offer comments on this measure.

**HB 2524 HD 1**

**RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE  
TELEVISION SERVICES**

**KEN HIRAKI  
VICE PRESIDENT - GOVERNMENT AND COMMUNITY AFFAIRS**

**HAWAIIAN TELCOM**

**February 15, 2012**

*OPPOSED*

Chair Herkes and members of the Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on HB 2524 HD 1, Relating to the Regulation of Telecommunications and Cable Television Services.

While we support the stated intent of consolidating and streamlining the State's regulatory processes for the telecommunications sector and the promotion and development of advanced broadband communications services in Hawaii, we do have concerns related to the concentration of regulatory oversight being held in the hands of one Commissioner rather than a three-member panel as currently exists at the Public Utilities Commission.

If it is the intent of this committee to move this measure forward, we would recommend that the Broadband Assistance Advisory Council discuss this issue at its next meeting to help determine whether a minimum of three commissioners is preferable to a single commissioner. In addition, the Council should review whether delegation of such broad power and authority to the Deputy Commissioner and staff members should be narrowed to more limited instances or conditions than is allowed under the current HD1.

Based on the aforementioned, Hawaiian Telcom respectfully requests that your committee carefully consider our concerns. Thank you for the opportunity to testify.



Dan Youmans  
President -Washington/Hawaii  
External Affairs

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February 15, 2012

The Honorable Rep. Robert Herkes  
Chair, Committee on Consumer Protection

*Re: Testimony on House Bill 2524 HD1  
Hearing before the House Committee on Consumer Protection  
February 15, 2012, 2 p.m., Room 325*

Thank you for giving AT&T this opportunity to comment on House Bill 2524 HD1. This bill would create a new communications division within the department of commerce and consumer affairs ("division") to be headed by a single communications commissioner ("commissioner"). The commissioner would be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within the State. The bill would also consolidate the regulation of telecommunications carriers and cable operators in the State in the division under the commissioner.

AT&T supports efforts to make broadband services available to all Americans and, to that end, is an active participant on Hawaii's Broadband Task Force. However, we are concerned that the bill's worthy goals will not be fostered by moving regulation of telecommunications to the new communications division. In fact, the changes contemplated by the bill may actually inhibit broadband development by limiting the points of view addressing these issues and increasing regulation of broadband development.

Currently and for many years, regulation of telecommunications has been performed by the Hawaii Public Utilities Commission ("PUC"). That body and its staff have knowledge of and experience with telecommunications. Moreover, the PUC is composed of three Commissioners with different perspectives and backgrounds that can be brought to bear on the many issues surrounding telecommunications. For example, PUC commissioners are required to have experience in accounting, business, engineering, government, finance, law, or other similar fields. That diversity of perspectives would be lost with a one-commissioner communications division.

HB 2524 HD1 also appears to increase regulation of broadband facilities and deployment at a time when the State should allow the market to dictate how broadband will be deployed. The legislature needs to look no further than the vast and successful deployment and usage of wireless telecommunications to see the value of allowing market forces work with little regulation. If anything, the State should be examining ways to deregulate telecommunications, rather than increase regulation.

Finally, setting up a new division in DCCA would necessarily result in a steep learning curve for the new division since it is unlikely many PUC staff would transfer to the new division. This will result in lost technical and legal expertise in analyzing issues, processing filings, and rendering decisions. Additionally, the creation of a new division will result in a significant increase in state expenditures to properly staff up the new division. This would seem counterproductive at a time when the State is just beginning to come out of a major recession.

A detailed analysis by AT&T of House Bill 2524 that supports these concerns is attached.

AT&T once again thanks the Committee for considering the concerns raised in this testimony.

Respectfully Submitted,

Dan Youmans, AT&T

## **AT&T Detailed Analysis of HB 2524 to Move Regulation of Telecommunications Companies To the Department of Commerce and Consumer Affairs**

HB 2524 would transfer the regulation of telecommunications companies and cable companies to a "Communications Division" within the Department of Commerce and Consumer Affairs ("DCCA"). The Communications Division would be headed by a single Communications Commissioner ("Commissioner"), who would be appointed by the director of the DCCA with the approval of the governor. The Commissioner would be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within Hawaii and regulating telecommunications and cable operators. To ensure that there is no gap in regulatory authority caused by the transition, the Bill provides for the current rules and decisions established by the Public Utilities Commission for telecommunications carriers to remain in effect unless and until they are changed by the Commissioner.

### **GENERAL CONCERNS**

There are two general concerns about the Bill: (1) vesting all regulatory authority in one Commissioner, and (2) provisions that appear to give the Commissioner regulatory authority over broadband services, including wireless broadband services.

**One Commissioner.** Currently and for many years, regulation of telecommunications has been performed by the Hawaii Public Utilities Commission ("PUC"), composed of three commissioners. That body and its staff have knowledge of and experience with telecommunications. Importantly, the commissioners on a three-person commission bring different perspectives and backgrounds to bear on the many issues surrounding telecommunications. For example, in the case of the PUC, the commissioners are required to have experience in accounting, business, engineering, government, finance, law, or other similar fields. That diversity of perspectives would be lost with a one-commissioner communications division.

**Authority over broadband provided on various technologies.** Although described as simply transferring the PUC's current authority to the Communications Commissioner, the Bill appears to increase the State's regulation of broadband providers and services. Currently, the statutory authority of the PUC does not extend to broadband services. Moreover, because many broadband services, including broadband Internet access service, are interstate information services, states lack jurisdiction to regulate providers of these services. Permitting individual states to regulate broadband providers could result in a patchwork quilt of inconsistent and expansive state requirements across the nation, which would impose incredibly burdensome obligations on providers like AT&T that offer broadband services in all 50 states and the District of Columbia. State regulation of broadband services is inconsistent with FCC and Congressional policies that seek to promote broadband deployment with a light regulatory touch. Yet, the Bill includes many provisions authorizing the Commissioner to regulate broadband services. For example:

1. **(p. 3)<sup>i</sup>** The Commissioner may develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the state of Hawaii. It is worthwhile for Hawaii to set broad policies to encourage the deployment of broadband facilities by creating a political and business environment that motivates broadband providers to invest in the state. However, to the extent the Commissioner attempts to mandate the construction of broadband facilities or impose rules concerning rates, terms, or conditions for broadband services, the Commissioner would exceed state jurisdiction over broadband services and discourage broadband investment.
2. **(pp. 3-4)<sup>ii</sup>** The Commissioner can develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public. Again, to the extent the Commissioner's programs require providers to construct infrastructure or share that infrastructure that would constitute regulation beyond the State's jurisdiction. Moreover, history has

shown that sharing infrastructure by competing providers can lead to serious disputes between those competitors, as was the case with sharing of the legacy telecommunications infrastructure.

3. (p. 6)<sup>iii</sup> The Bill would allow the Commissioner to establish a minimum speed for an application to be considered "broadband" (p. 6). This would be inappropriate regulation of terms and conditions of broadband service.
4. (pp. 13-16)<sup>iv</sup> The Commissioner's duties would also include:
  - Ensuring that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video and that are available at just, reasonable, and nondiscriminatory rates.
  - Developing a comprehensive policy to further the deployment of broadband services, including Internet access, in the state. The study shall include consideration of communications by wire and radio, including satellite and wireless services.

As stated before, developing policies to reach these goals by creating a fertile environment for broadband providers to invest and operate is admirable. Attempting to achieve the goals by rules and regulations on broadband providers, including wireless carriers, would exceed the state's jurisdiction and be counterproductive.

5. (p. 16)<sup>v</sup> The Bill requires the Commissioner to develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services in the state. The legislation indicates that the Commissioner shall fund those programs with fees collected pursuant to the legislation and from appropriations from the state. It is unclear what effect this provision would have on fees paid by telecommunications and cable carriers.
6. (pp. 44-47)<sup>vi</sup> As is the case under current law, the Bill would allow the Commissioner to exempt a telecommunications carrier from any or all of the provisions of this chapter, except the requirements of section 36 (interconnection rules), upon a determination that the exemption is in the public interest (similar criteria as HRS §269-16.9. The Bill, however, adds the following factor for the Commissioner to consider: "the impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers (p.47). This would give the Commissioner the improper ability to influence the broadband plans of telecommunications carriers by conditioning exemptions on certain broadband activities.
7. (pp. 71-75)<sup>vii</sup> These sections address universal service. Under current law, the state universal service fund can be used to maintain affordable, just, and reasonable rates for residential basic service. The bill would allow the Commissioner to develop universal service programs for broadband services "as defined by the Commissioner." For example, at page 72, the Bill states that the universal service program "would ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by majority consumers located in the metropolitan areas of the state." Also, at page 74, the Bill provides that the Commissioner shall require all telecommunications carriers providers to contribute to the universal service program.

#### EXAMPLES OF OTHER CONCERNS

In addition to the general concerns above, there are several other concerns with the language in the Bill. A non-exhaustive list of those concerns is as follows:

1. (p.5)<sup>viii</sup> The Bill provides for transitional provisions that ensure that there is no gap in regulatory authority caused by the transition, if and until, the Commissioner takes appropriate action to change existing rules, decisions, and other determinations. While there definitely is a need for such a rule, the Bill is not clear as to what procedures the Commissioner must follow in order to change rules, decisions, and other determinations of the previous Commission.

2. **(p. 19)<sup>x</sup>** The Commissioner has authority to initiate an investigation "for any other reason determined by the Commissioner to be necessary or appropriate to carry out the requirements of this chapter." This very broad language is not included in the investigatory powers currently provided to the PUC.
3. **(p. 20)<sup>x</sup>** The Commissioner's delegating powers are too broad. For example, the Commissioner can delegate any of his or her powers to any employee of the division (e.g., an office assistant).
4. **(pp. 25-26)** The Commissioner has broad power under proposed § - 15 to investigate a telecommunications carrier if it believes the carrier is violating or failing to comply with any provision of the legislation or any rule, order or other requirement of the Commissioner. Waivers were granted to wireless carriers pursuant to Decision and Order No. 20890 issued on April 7, 2004 in PUC Docket No. 03-0186. These waivers should continue.
5. **(p. 39)** Under current law (HRS § 269-28(b)) there is a cap of \$500,000 on penalties for actions arising out of the same act or omission. The Bill would eliminate that cap.
6. **(pp. 40-41)<sup>xi</sup>** Currently carriers are required to obtain a certificate of public convenience and necessity, certificate of authority, or certificate of registration before providing service. The Bill would create a new obligation to file a separate application (instead of tariff) to provide any modified or new service. Also, the Bill would require wireless carriers to provide certain information when applying for a certificate of registration. Wireless carriers currently are not required to provide that information pursuant to PUC D&O Number 20890.
7. **(p. 53)<sup>xii</sup>** The provision on lines 5 and 6 allows the Commissioner to impose alternative rate regulation procedures. However, there is no indication of what notice and process the Commissioner must use prior to imposing alternative rate regulation procedures. Notice and process should be established.
8. **(p. 54)<sup>xiii</sup>** The Bill allows the Commissioner to waive rate regulation for services the Commissioner determines "by whatever process the Commissioner determines to be appropriate pursuant to rule," to be effectively competitive. Again, this is too vague. Notice and process should be identified.
9. **(p. 55)<sup>xiv</sup>** At lines 6 through 8, the Bill would require that "the rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area." To the best of our knowledge, this requirement is not present today, and rates do vary between islands. Also, there is a proposed bill, HB 1868, that would eliminate the need for Commission review of price increases for services other than basic service. If that bill is passed, this section would have to change.
10. **(pp. 55-56)<sup>xv</sup>** Beginning at line 21 on page 55, the Bill provides that "unless and until the Commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section ... provided, however, that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier." This is inconsistent with HAR 6-80-136 (4), which waives public and contested case hearings for proposed rate increases, except for proposed increases to basic service rates in high-cost areas. It is extremely important to make sure that this Bill does not eliminate current rules adopted by the PUC, unless and until the Commissioner changes them after notice and an opportunity to be heard. Such changes could amount to a large step backward in Hawaii's regulation of telecommunications.
11. **(p. 60)<sup>xvi</sup>** Section 41 requires the Commissioner to adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers, which may include unauthorized changes in subscriber carrier selections. Current statutes address cramming and slamming (i.e., HRS §269-26.92), which the Bill would delete. The current statutory rules should be maintained. Additional rules are unnecessary.
12. **(p. 70)<sup>xvii</sup>** Section 52 would allow the Commissioner to require telecommunications carriers to pay a fee for the operation of the "one call center." Currently, there is a provision which allows the crediting of this

fee for carriers who pay the public utility fee required under HRS §269-30. This legislation does not appear to continue that exemption. This would be another new fee on telecommunications carriers.

13. (pp. 93-97)<sup>xviii</sup> Beginning at line 20 of page 94, the Bill establishes a compliance resolution fund and a mechanism for collecting contributions to that fund. Currently, it is our understanding that telecommunications companies do not contribute to such a fund. Rather, they pay an annual regulatory fee, which would continue under the Bill as contributions to the communications fund established in the Bill. Although the Bill allows for the transfer of up to 30% of the regulatory fee to the compliance resolution fund, it is not clear whether telecommunications companies could additionally be assessed a direct contribution to the compliance resolution fund.
14. (p. 165)<sup>xix</sup> Section 54 is a critical provision. Its intent is to keep all current regulation of telecommunications carriers effective unless and until changed by the Commissioner. This provision is critical because the Public Utilities Commission has granted waivers and exemptions to various rules governing both wireline and wireless carriers. Loss of these waivers and exemption would be a huge regulatory step backward for telecommunications in Hawaii. To ensure this does not occur, we would propose edits to this section. Unfortunately, we suspect there would still be different interpretations as to what PUC regulations will continue and which ones the Commissioner will need to establish.

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## FOOTNOTES

<sup>i</sup> “The commissioner shall: (1) Develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the State of Hawaii,” (p.3, line 8)

<sup>ii</sup> “(3) Develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public.” (p.3, line 19.)

<sup>iii</sup> “ ‘Broadband’ means an ‘always on’ service that combines computer processing capabilities, information provision, and computing interactivity with data transport, enabling end users to access the internet and use a variety of applications, at minimum speeds set by the commissioner.” (p.6, line 18)

<sup>iv</sup> “(a) The commissioner shall strive to ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video, and that are available at just, reasonable, and nondiscriminatory rates.” (p.13, line 18). “No later than July 1, 2014, the commissioner shall study and develop a comprehensive policy to further the deployment of broadband services, including Internet access, in the State. The study shall include consideration of communications by wire and radio, including satellite and wireless services. The commissioner shall develop plans and strategies to increase broadband affordability, penetration, and competitive availability in the State. (p.14, line 3).

<sup>v</sup> “(c) The commissioner shall develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services by users in the State. The commissioner shall fund these programs and initiatives using funds collected pursuant to section -21 and deposited in the communications special fund pursuant to section -20. In addition, the commissioner may seek appropriations of funds from the State.” (page 14, line 14)

<sup>vi</sup> “(13) The impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers. (p.47, line 1).



- vii “Maintain affordable, just, and reasonable rates for basic residential telecommunications service and broadband service, as defined by the commissioner” (p. 72, line1) “Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by a majority of consumers located in metropolitan areas of the State.”(p.72, line 13)  
“(e) The commissioner shall require all telecommunications carriers and broadband service providers to contribute to the universal service program. The commissioner may require a person other than a telecommunications carrier or broadband service provider to contribute to the universal service program if, after notice and opportunity for hearing, the commissioner determines that the person is offering a commercial service in the State that directly benefits from the telecommunications or broadband infrastructure, and that directly competes with a telecommunications or broadband service provided in the State for which a contribution is required under this subsection.” (p.74, line 16).
- viii “This Act also provides for transitional provisions that assure that there is no gap in regulatory authority caused by the transition, and provides that prospectively the commissioner may take appropriate action to change existing rules, decisions, and other determinations. Finally, this Act proposes conforming amendments to other chapters of the Hawaii Revised Statutes.” (p.5, line 3)
- ix “(d) The commissioner may initiate an investigation concerning a possible violation of this chapter, or to ascertain the conditions of the broadband, telecommunications, or cable industries in the State, or for any other reason determined by the commissioner to be necessary or appropriate to carry out the requirements of this chapter.” (p. 19, line 14).
- x “§ -10 Delegation of powers. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the division employed pursuant to section -5(a), (b), or (d) acting in the name and by the delegated authority of the commissioner. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the department utilized pursuant to section -5(c) or (e) acting in the name and by the delegated authority of the commissioner, with the approval of the director.” (p. 20, line 1)
- xi “Further, before substantially altering, modifying, or changing the nature or scope of authorized telecommunications service under its existing certificate, or expanding the nature or scope of service of telecommunications services beyond the existing certificate, a telecommunications carrier shall file a separate application for the proposed, modified, or new service. (p.40, line 22).
- xii “(b) The commissioner may issue an order imposing alternative rate regulation procedures.” (p.53, line 6)
- xiii “(d) The commissioner may waive rate regulation and allow telecommunications carriers to have pricing flexibility for services that the commissioner determines, by whatever process the commissioner determines to be appropriate pursuant to rule, to be effectively competitive” (p. 54, line 14;
- xiv “The rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area. (p.55, line 6)
- xv “Unless and until the commissioner waives this requirement, a contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section -13(c), at which the customers of the telecommunications carrier may present testimony to the commissioner concerning the increase; provided that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier. (p. 55, line 21).  
’6-80-136 Standard list of waivers. (a) Unless ordered otherwise by the commission,

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the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

- (1) Requirement that a separate, formal application for certification be filed with the commission for each new telecommunications service the telecommunications carrier proposes to offer, as mandated by '269-7.5, HRS, and '6-61-86. Instead, the carrier shall file a separate tariff for each proposed new service;
  - (2) Requirement that a telecommunications carrier maintain its financial records in conformance with the uniform system of accounts, as mandated by '269-8.5, HRS. Instead, the carrier may maintain its financial records in accordance with generally accepted accounting principles;
  - (3) Requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in the State, as mandated by '269-8.2, HRS. Instead, the carrier shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request; and
  - (4) Requirement subjecting telecommunications carriers to rate of return regulation and to public and contested case hearings on proposed rate increases, as mandated by '269-16, HRS, and "6-61-86 to 6-61-88; except that waiver of this requirement does not apply to basic service in high cost areas provided by carriers receiving State or federal universal service fund subsidy or to noncompetitive services.
- (b) In addition to subsection (a), fully competitive services shall be exempt from the '6-80-142 thirty-day tariff filing requirement.

<sup>xvi</sup> “ -41 Unfair or deceptive acts or practices. The commissioner shall adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers and telecommunications service providers, including resellers and aggregators of telecommunications services. Such unfair or deceptive acts or practices may include unauthorized changes in subscriber carrier selections.” (p.60, line 11)

<sup>xvii</sup> “ -52 One call center; advance warning to excavators. To finance the establishment and operation of the one call center pursuant to chapter 2693, and the administrative costs of the public utilities commission, the commissioner may direct all telecommunications carriers and cable operators to pay to the public utilities commission a fee in an amount and at a schedule determined by the commissioner.

Hawaii Rev. Stat. § 269-30 : (d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f)

<sup>xviii</sup> “SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (0) to read as follows: “(0) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section.” (p.93, line 12)

<sup>xix</sup> “SECTION 54 [HB 2524]. Transfer of functions. (a) All rules, policies, procedures, orders, certificates of authority, certificates of registration, certificates of public convenience and necessity, franchises, guidelines, and other material adopted, issued, or developed by the department of commerce and consumer affairs and public utilities commission to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the communications commissioner by this Act,

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shall remain in full force and effect until amended or repealed, as applicable, by the communications commissioner. In the interim, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission in those rules, policies, procedures, orders, franchises, guidelines, and other material is amended to refer to the communications division or the communications commissioner, as appropriate.

(b) All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of commerce and consumer affairs and public utilities commission pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect. Effective upon approval of this Act, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission therein shall be construed as a reference to the communications division or communications commissioner, as appropriate.

**Testimony for HB2524 on 2/15/2012 2:00:00 PM**

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

**Sent:** Tuesday, February 14, 2012 6:50 PM  
**To:** CPCtestimony  
**Cc:** henry.lifeoftheland@gmail.com  
**Attachments:** 02.15.12 HB 2524 Telecommu~1.pdf (97 KB)

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Testimony for CPC 2/15/2012 2:00:00 PM HB2524

Conference room: 325  
Testifier position: Comments Only  
Testifier will be present: Yes  
Submitted by: Henry Curtis  
Organization: Life of the Land  
E-mail: henry.lifeoftheland@gmail.com  
Submitted on: 2/14/2012

Comments:



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### **COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

DATE: Wednesday, February 15, 2012  
TIME: 2:00 pm  
PLACE: Conference Room 325  
BILL: HB 2524, HD1

### REGULATION OF TELECOMMUNICATIONS & CABLE TV SERVICES

Position: **COMMENTS**

Aloha Chair Herkes, Vice Chair Yamane and Members of the Committee,

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

#### **GOALS OF HB 2534**

- (1) Development of broadband infrastructure to ensure ubiquitous access to world-class broadband service at affordable prices throughout State; **LOL Supports Goal**
- (2) Competition in the telecommunications marketplace to reduce prices, increase service penetration, and improve service. **LOL Supports Goal**

(3) A modern regulatory and permitting environment that supports and advances investment in broadband infrastructure and provision of broadband services for the public. **LOL has concerns**

**The bill appears to be putting enormous power into one person who will have little interaction with the public and who can't be carefully monitored by community watchdog groups. His power does not seem to be required in order to achieve the other three goals.**

	Public Utilities Commission	TV and Cable Commission
Commissioners	3	1
Companies	monopolies	mostly competitors with limited state control
Rules	Yes	Optional
Hearings	Mandatory	Optional
Third Party Intervention	Allowable, PUC determines status	None. Only applicant is party, TCC can waive hearing
Are hearings Constitutional?	Yes	No, violates LOL appeal of HECO 1971 rate case to Hawaii Supreme Court*

Legislation states only party (applicant) can appeal ruling. In 1971 the PUC denied us the right to intervene and argued that therefore we could not appeal. Hawaii Supreme Court Associate Justice Benjamin Menor wrote the unanimous decision: because we participated at every step we had a right to appeal.

(4) Increased, flexible, timely, and responsible access to public rights-of-way and public facilities for broadband service providers to encourage broadband infrastructure investment and deployment. **LOL Conditional Support:** High speed broadband and bringing wireless to under-served areas are important but should not automatically trump community values and concerns re location of antennas.

**Lyndall W. Nipps**  
Vice President, Regulatory-Western Region



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Honorable Robert Herkes, Chair  
House Committee on Consumer Protection & Commerce

**RE: HB2524 HD1 - Regulation of Telecommunications and Cable Television Services**  
Hawaii State Capitol Room 325 – February 15, 2012; 2:00 p.m.

Aloha Chair Herkes, Vice Chair Yamane and Members of the Committee:

I am Lyndall Nipps, Vice President of Regulatory Affairs for **tw telecom of hawaii lp** ("TWTC"), which has operated in Hawaii since 1994, providing voice, Internet and data networking, and managing nearly 25,000 access lines to state and local governments, military, and businesses in the State. Thank you for the opportunity to present testimony opposing HB2524 HD1.

While we support the intent to speed the construction and deployment of broadband infrastructure within the state at levels that meet demand for the advancement of education, health, research and other purposes, we disagree with increased level of regulation, the added costs to comply with such regulation and consolidation of such regulatory power to one individual contained in the bill.

Moreover, although the stated purpose of this bill is to establish the Hawaii Communications Commission ("HCC") to investigate, promote and ensure the growth and development of broadband infrastructure and to consolidate the regulation of telecommunications carriers and cable operators into a "one stop shop," it is unclear how this advances construction of broadband infrastructure within the state.

Among our concerns are the following:

1. **Separation of telecommunications and cable services exists for a reason** – No other state has consolidated telecommunications and cable services under one commission. Historically, telecommunications and cable services have been regulated under differing laws and regulations on both the state and federal levels. The Public Utilities Commission ("PUC") is knowledgeable of this history and is experienced in telecommunication regulations. Combining regulation under a single agency may result in blurring of these distinctions. This distinction needs to be maintained and not upended.
2. **Make-ready pole attachments under purview of PUC** – Facilitating the construction and sharing of broadband infrastructure is one of the purposes of this bill. However, a major roadblock for deploying facilities is the electric companies, who control most of the poles. If an agency other than the PUC is tasked with facilitating sharing of infrastructure, this could be more difficult for the PUC, since they will not have jurisdiction over the electric utilities.
3. **Mandatory infrastructure sharing should not be imposed on carriers** – The sharing of infrastructure continues to be a great concern. 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.

4. **Effect of proposed mandated reporting requirements in conjunction with other requirements of this bill** – As a company that offers high-speed broadband service within the state, we are affected by provisions in a related bill HB2526 HD1, which would mandate TWTC to provide reports for each county that include broadband access availability and pricing over the most recent 30-day period, detailed by address or tax map key without any other personal or private information. We have concerns regarding this request since no other state mandates companies to provide the same information at such a granular level. Complying with this request would add significantly to our costs and to consumer costs and would slow the construction of broadband infrastructure.
5. **Composition of Hawaii Communication Commission** - The bill provides for a single commissioner who is appointed by the governor with the consent of the Senate. TWTC believes that a HCC of at minimum three commissioners is preferable to a single commissioner.
6. **Market not “Fully Competitive”**- In connection with this and other telecom bills, Hawaiian Telcom continues to claim that regulatory reforms are required to “level the playing field.” TWTC acknowledges that competition has evolved in the residential retail market. However, there is still very limited competition in the enterprise business retail market (i.e. 6 lines or more), and there is no competition in the provision of wholesale services. With respect to these services, the PUC must retain the ability to address anticompetitive behaviors, including predatory or discriminatory pricing or access to facilities, and to resolve disputes between carriers. The legislature should not approve any amendments to the existing telecom statutes that seek further deregulation without acknowledging these crucial distinctions.

Further, the determination of the proper level of regulation is dependent on a factual examination of the level of competition in the market. This examination should be done by the PUC, pursuant to the PUC's existing rules governing telecommunications carriers, rather than by piecemeal amendments to the statute.

Altogether these proposed changes have a chilling effect on the construction of broadband infrastructure within the state. For these reasons, we respectfully request that you consider indefinitely deferring action on this bill to allow stakeholders to work out these differences.

As always, we appreciate your consideration of our request.

Sincerely,  
/s/  
Lyndall Nipps  
Vice President, Regulatory Affairs-Western Region  
tw telecom of hawaii lp  
Email: Lyndall.Nipps@twtelecom.com