

LATE TESTIMONY

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Honorable Robert Herkes, Chair
House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, HI 96813

RE: **HB 2524 HD1 - Relating to the Regulation of Telecommunications and Cable Television Services - Oppose**
February 15, 2012, 2:00 PM, Hawaii State Capitol Room 325

Aloha Chair Herkes, Vice Chair Yamane and members of the committee,

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to offer comments opposing this bill.

Because cable operators and telecommunication providers are already separately regulated on the federal level and state level, consolidating them together would appear to complicate rather than streamline the regulatory scheme and process.

As an active member of the Broadband Assistance and Advisory Council, we support the state's expansion of broadband infrastructure that is in line with consumer and market demands.

Per our discussion during the Broadband Assistance and Advisory Council meeting on February 10, 2012, the intent of SB2786 and its House companion was for the DCCA not to gain any additional regulatory powers or to put any new regulatory burdens on the providers. Unfortunately, this bill does provide new powers to the commissioner overall (power to subpoena, conduct investigations, involve the consumer advocate, etc.) that the cable administrator doesn't currently have. Moreover, there are many other concerns this legislation raises for us. In an attempt to develop language that would alleviate these concerns, we quickly realize that this task needs much more time than is available and would require further discussion with other stakeholders.

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Cable is different from telecom and so deserves a separate regulator as is the case now. While this legislation does have distinct sections for telecom and cable, these services are regulated and defined separately under federal law and not combined under a single regulatory scheme. Therefore, we advocate that the state should mirror the federal separation of regulation for these services.

If the main intent is to transfer the regulatory authority of telecommunications providers from the PUC to the DCCA with the same authority, structure and means needed to apply the department's capabilities and resources to fulfill the visions of the Hawaii Broadband Initiative, while maintaining the current cable authority, structure and means needed to operate the cable division, we request the removal of all references for cable service providers from this bill, thereby leaving the current cable regulatory structure operating as is. In the future with more available time, work can be done to integrate cable and telecom under a different structure as may be allowed by federal law.

If broadband availability is the goal, we feel that working on adoption and increasing service demand instead of complicating the regulatory scheme will be a better solution.

For these reasons, we respectfully urge your committee to hold this bill.

We appreciate the opportunity to offer our testimony and are available for any questions.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

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Testimony before the House Committee On Consumer Protection & Commerce

By Paul A. Nakagawa
Superintendent, Planning Division
Construction and Maintenance Department
Hawaiian Electric Company, Inc.

Wednesday, February 15, 2012
2:00 pm, Conference Room 325

HB 2524 HD1 - Relating to the Regulation of Telecommunications and Cable Television Services

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

My name is Paul Nakagawa and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

We support the deployment of high-speed broadband infrastructure in Hawaii and the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the development and implementation of broadband services. However, we ask that the “consolidating” and “streamlining” of the State’s regulatory processes for the telecommunications sector in support of the broadband initiative does not abate or exempt an entity from compliance to any and all of applicable safety and engineering requirements relating to the installation, improvement, or construction of overhead and/or underground electrical facilities that Hawaiian Electric Company and its subsidiaries currently comply with. By discounting or eliminating the issue of compliance to engineering and safety standards, public safety and electrical reliability would be at risk when installing new or modifying existing broadband facilities.

We therefore suggest the following amendments for your consideration:

- o In reference to pg. 13, Section 6 General powers and duties. We respectfully request the deletion of subsection (d) in its entirety: “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.” . Our concern with this subsection is that the “communications commissioner” will have the discretion and authority over the electric utilities to expedite approvals in favor of telecommunications carriers and cable operators potentially without approval from the PUC, which currently regulates and

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insures that the electric utility's facilities are in compliance with the applicable safety and engineering requirements.

- o In reference to pg. 17, Section 8 Communications infrastructure permitting. For the same reasons as above, we respectfully request that line 22 be revised to read "*and authorities, **including but not limited to those subject to applicable public utility commission safety and engineering standards, orders, guidelines, and policies;** provided that the assumption of such duties and authorities is deemed by the commissioner to be appropriate and efficient, such duties and authorities can be delegated by the relevant governmental entities, and the relevant governmental entities approve.*"
- o In reference to pg. 35, Section 21 Finances; regulatory fee. Each telecommunications carrier will be subject to this fee set by the "communications commissioner" not to exceed one-fourth of one per cent of the gross income from the telecommunications carrier's business in the State during the preceding year, or the sum of \$30, whichever is greater. While Hawaiian Electric and its subsidiaries do not provide telecommunications services, we may arguably be subject to this regulatory fee by definition of "Telecommunications carrier" in this bill. "Telecommunications carrier" is defined on pg. 10, line 21 as "...any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services." Hawaiian Electric and its subsidiaries currently pay a Public Utility Fee to the PUC. It is unclear if this new regulatory fee will supersede or be collected in addition to the existing Public Utility Fee. Hawaiian Electric and its subsidiaries should not be subject to both fees.

We will continue to work with the Legislature as well as the BAAC to develop appropriate language as it relates to insuring public safety and code compliance with respect to the addition of broadband technology onto existing utility poles, as well as other necessary amendments in support of the deployment of high-speed broadband technology in Hawaii.

Thank you for the opportunity to testify on this matter.