

**HB 2524, HD 2**

**EDT-CPN**



NEIL ABERCROMBIE  
GOVERNOR

EXECUTIVE CHAMBERS  
HONOLULU

Testimony in SUPPORT of HB2524 HD2  
Relating to the Regulation of Telecommunications and Cable Television Services

Committee on Economic Development and Technology  
Senator Carol Fukunaga, Chair  
Senator Glenn Wakai, Vice Chair  
and  
Committee on Commerce and Consumer Protection  
Senator Rosalyn Baker, Chair  
Senator Brian Taniguchi, Vice-Chair

March 16, 2012  
1:15 pm Room 016

Chair Fukunaga, Chair Baker, Vice-Chair Wakai, Vice-Chair Taniguchi, and members of the Committees:

The Office of the Governor stands in SUPPORT of House Bill 2524, House Draft 2, Relating to the Regulation of Telecommunications and Cable Television Services. This measure establishes the telecommunications and cable television services commission within the Department of Business, Economic Development, and Tourism (DBEDT) to regulate telecommunications and cable television services.

While we are in support, we do have a few concerns. We prefer the original draft of the bill which transferred these regulatory functions to the Department of Commerce and Consumer Affairs (DCCA) rather than DBEDT and respectfully request the Committees to amend the bill accordingly. In addition, we have some concerns with the selection process for the Commissioners as prescribed in this version of the bill and would prefer if the process followed the standard advice and consent of the Senate.

We understand that various members of the industries involved have concerns, and look forward to continuing to work with them to address these issues. We are open to a transitional period to allow a timely and smooth transition to the new regulatory framework. However, we would like to stress the importance of establishing clear deadlines for these transitions to occur.

Thank you for this opportunity to testify.



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

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

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Statement of  
**RICHARD C. LIM**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY**  
**AND**  
**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**  
Friday, March 16, 2012  
1:15 PM  
State Capitol, Conference Room 016  
In consideration of  
**HB 2524 HD2 RELATING TO THE REGULATION OF TELECOMMUNICATIONS**  
**AND CABLE TELEVISION SERVICES.**

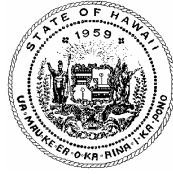
Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and Members of the Committees on Economic Development and Technology and Commerce and Consumer Protection:

The Department of Business, Economic Development and Tourism (DBEDT) respectfully **supports the intent of HB 2524 HD2 but prefers 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 HD2 transfers the authority to regulate telecommunications from the PUC and DCCA to a telecommunications and cable television services commission created within DBEDT. DBEDT prefers HB 2524 HD1, which establishes authority under DCCA.

Thank you for the opportunity to submit testimony.

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
INTERIM DIRECTOR

DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

March 12, 2012

TESTIMONY TO THE  
SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT AND TECHNOLOGY  
AND  
COMMERCE AND CONSUMER PROTECTION

For Hearing on Friday, March 16, 2012  
1:15 p.m., Conference Room 016

BY

BARBARA A. KRIEG  
INTERIM DIRECTOR

**House Bill No. 2524, H.D. 2**  
**Relating to the Regulation of Telecommunications and Cable Television Services**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSONS FUKUNAGA AND BAKER AND MEMBERS OF THE  
COMMITTEES:

The purpose of H.B. No. 2524, H.D. 2 is to establish the Telecommunications and Cable Television Services Commission within the Department of Business, Economic Development and Tourism to regulate telecommunications and cable television services.

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 recommend the following proposed transfer language be used in place of the transfer language in Section 63, lines 20-22 on page 196 and lines 1-13 on page 197 to read:

“All employees who occupy civil service positions and whose functions are transferred to the telecommunications and cable television services commission within the department of business, economic development and tourism 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 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 business, economic development and tourism 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.

TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT & TECHNOLOGY  
AND  
COMMERCE & CONSUMER PROTECTION

MARCH 16, 2012

**MEASURE:** H.B. No. 2524, H.D. 2

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

Chair Fukunaga, Chair Baker, and Members of the Committees:

**DESCRIPTION:**

This measure proposes to consolidate the regulation of telecommunications and cable services in the State under a single body called the Telecommunications and Cable Television Services Commission ("Commission") to be administratively attached to the Department of Business, Economic Development, and Tourism. All current regulatory functions concerning telecommunications carriers and cable services would be transferred to the Commission from the Public Utilities Commission ("PUC") and the Cable Television Division of the Department of Commerce and Consumer Affairs ("DCCA"), respectively, and conforming amendments throughout the Hawaii Revised Statutes would be made. In addition, this measure would initially fund the Commission's operations through a new telecommunications and cable television services commission special fund to be filled by 1) claiming 50% of the PUC special fund amounts collected from 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.).

**POSITION:**

The Public Utilities Commission understands that it is the prerogative of the Legislature to place the Telecommunication and Cable Television Services Commission within the department it deems most appropriate to fulfill statutory policy objectives, and we would like to submit these comments for consideration by the Committees.

**COMMENTS:**

The PUC supports the concept of enhancing the State's communications industries and related infrastructure by combining the activities and regulation of broadband, telecommunications, and cable service under a single agency that will serve as a "one stop shop" for the different types of modern communications services.

Section 60 on page 193, line 20, to page 194, line 6, provides an appropriation for the transfer of records and related transitional costs. These funds are critical for placing the Commission on firm ground to meet the objectives of this measure as soon as possible. To determine the sufficient funding level for transition costs, the PUC would be happy to work with the Committees to gauge these costs. With the exception of the overall defective effective date of March 15, 2034, the PUC supports the effective date schedule included in Section 67 on page 198, line 15, to page 199 of House Draft 2, to facilitate the transition process.

House Draft 2 includes several provisions that are of concern to the PUC, and we would like to offer the following proposed amendments:

1. Amend proposed language concerning regulation of electric utility pole access.

The PUC has concerns regarding proposed subsection -38(a)(4) on page 74, lines 5-15, regarding the obligations of telecommunications carriers. In order to avoid confusion or conflict over which agency will retain electric utility pole regulatory authority, the PUC requests that the Committees amend this provision as follows:

**§ -38 Obligations of telecommunications carriers.**

(a) In accordance with conditions and guidelines established by the commission to facilitate the introduction of competition into the State's telecommunications marketplace, each telecommunications carrier, upon bona fide request, shall provide services or information services, on reasonable terms and conditions, to an entity seeking to provide intrastate telecommunications, including:

...

(4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the



provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights-of-way owned or controlled by the telecommunications carrier, or the public utilities commission shall authorize access to electric utilities' poles [~~as provided by~~] in consideration of the joint pole agreement, commission tariffs, rules, orders, or Federal Communications Commission rules and regulations;

2. Delete proposed language concerning geothermal energy rates for telecommunications carriers.

Proposed section -31 on page 67, lines 3-13, discusses rates for geothermal steam or electricity payable by telecommunications carriers through an agreement between the telecommunications carrier and the "supplier" of that steam or electricity. This provision would give the Commission the power to oversee and establish rates for steam or electricity, which is currently the duty of the PUC. The PUC asks the Committee to remove this provision in its entirety to avoid creating conflicting administrative duties between agencies.

3. Delete proposed language concerning automatic fuel rate adjustment clause provisions for telecommunications carriers.

Proposed subsection -19(g) on page 40, line 15, to page 41, line 14, discusses automatic fuel rate adjustment clauses requested by telecommunications carriers. The PUC asks that the Committee consider removing this provision, since telecommunications carriers do not charge fuel rates as a part of providing their offered services.

4. Clarify transitional language regarding the deletion of the PUC from current law or other regulatory authority.

Proposed section 64 on page 197, line 14, to page 198, line 7, contains transitional language concerning references to regulatory agencies in existing law or other regulatory authority. A specific portion of the provision is overly broad as currently drafted, and the PUC would like to offer this proposed amendment:

SECTION 64. Beginning July 1, 2013, any telecommunications carrier or telecommunications common carrier as defined in section -1 of section 2 of this Act and subject to the authority of the telecommunications and cable television services commission pursuant to section -5 of section 2 of this Act shall not be a public utility solely for the purpose of chapter 269. Any reference to a public utility, utility company, or public utility facility that is referred to under any other chapter, charter, franchise, statute, ordinance, rule, or regulation, shall continue to apply to the telecommunications carrier or telecommunications common carrier[;—provided—that]. [any] Any reference in [said] a chapter, charter, franchise, statute, ordinance, rule, or regulation that conveys or discusses regulatory authority of the public utilities commission over a telecommunications carrier or a telecommunications common carrier [states or refers to the public utilities commission or chapter 269] shall instead mean and refer to the telecommunications and cable television services commission [or chapter , respectively].

5. Add the following clarifying definitions concerning the treatment of telecommunications rates for basic exchange services

Although House Draft 2 includes a provision on basic exchange services, there is no clear definition(s) for what constitutes “basic exchange services” in this measure. The following definitions are taken from the Hawaii Administrative Rules and the PUC would like to offer them collectively as an amendment to be appropriately included in the definitions section -1 starting on page 3, line 3:

‘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; provided that for this definition:

'Dial tone' means the ability to make or receive telephone calls with or without operator intervention;

'Single-line' means single-party line or a one-party line; and

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

These definitions will help clarify the intention of the bill, and will assist both the Commission and Hawaii's telecommunications carriers to better understand their statutory requirements.

6. Reinsertion of consumer protection provisions relating to the telecommunications and cable services regulatory process.

House Draft 2 deleted provisions found in earlier versions of H.B. No. 2524 that 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. The PUC asks that those earlier provisions dealing with stock issuances, mergers, acquisitions, and consolidations be reinserted into this measure. Specifically, the PUC would ask that sections -47 through -50 found starting on page 65, line 7, and ending on page 69, line 13, of the original version of H.B. No. 2524 be reinserted appropriately. However, if the Committees decide otherwise, the PUC asks for a provision that would require telecommunications carriers to give the Commission at least 30-days prior notice of any stock issuance, merger, acquisition, or consolidation. This alternative provision would provide the Commission with adequate notice to commence an investigatory proceeding if necessary to protect the interest of ratepayers and the general public.

The PUC also asks that the Committees ensure that the funds provided for under proposed section 57 on page 193, lines 1-7, for the startup operations of the Commission come from excess amounts in the PUC special fund and not from necessary appropriations made for operations of the PUC and the Consumer Advocate.

Finally, some concern has been raised regarding the potential loss of waivers previously granted by the PUC for various guidelines concerning telecommunications carriers.<sup>1</sup> Section 61 on page 194, line 7, to page 196, line 4, specifically states that all effective waivers issued by either the DCCA or the PUC to implement applicable state law “shall remain in full force and effect until amended or repealed, as applicable, by the [Commission].” The PUC believes this provision is sufficient to allow for a comprehensive and orderly transfer of all regulatory functions over the proposed timeframe.

As this measure moves forward, the PUC would like to work with the Committees 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 to facilitate and implement the transition.

Thank you for the opportunity to testify on this measure.

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<sup>1</sup>Testimony of AT&T Services, Inc. on H.B. No. 2524, H.D. 1, submitted to the House Committee on Consumer Protection & Commerce; February 15, 2012; page 5, note 14.



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE  
SENATE COMMITTEES  
ON  
ECONOMIC DEVELOPMENT AND TECHNOLOGY  
AND  
COMMERCE AND CONSUMER PROTECTION

March 16, 2012

1:15 p.m.

HB 2524, HD2

RELATING TO THE REGULATION OF TELECOMMUNICATIONS AND CABLE  
TELEVISION SERVICES.

Chairs Fukunaga and Baker, Vice Chairs Wakai and Taniguchi, and members of the committees, thank you for the opportunity to testify on HB 2524, HD2. The State Procurement Office's (SPO) testimony is limited to PART III, page 92, lines 13 to 18. This section 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 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).

HB 2524, HD2-Testimony  
Senate Committees on Economic Development and Technology  
and Commerce and Consumer Protection  
March 16, 2012  
Page 2

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, and effective July 1, 2011.

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. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application.

As stated earlier, the SPO continues to oppose the exemption language in PART III, page 92, lines 13 to 18.. Thank you.



Dan Youmans  
President –Washington/Hawaii  
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March 16, 2012

The Honorable Senator Carol Fukunaga  
Chair, Committee on Economic Development and Technology

The Honorable Senator Rosalyn Baker  
Chair, Committee on Commerce and Consumer Protection

*Re: Testimony on House Bill 2524, HD2  
Hearing before the Senate Committee on Commerce and Consumer Protection and the  
Senate Committee on Economic Development and Technology  
1:15 p.m., March 16, Conference Room 016*

Thank you for giving AT&T this opportunity to comment on proposed House Bill 2524 HD2. This bill would create a new three-member Telecommunications and Cable Services Commission within the Department of Business, Economic Development and Tourism (“DBEDT”).

Generally, AT&T is satisfied with the current regulatory structure for telecommunications in the State of Hawaii, although we would urge statutory deregulation of wireless services. However, if the Legislature believes regulation of all services should be consolidated in one agency, we support the approach taken by House Bill 2524 HD2. By establishing a new commission within DBEDT – where the focus of the agency is on economic growth and job creation – this legislation provides an opportunity for the state to advocate for infrastructure investment and technology innovation. This approach is vastly superior to previous versions of House Bill 2524.

We believe a three-member commission has many advantages over a single commissioner. Three commissioners can bring different perspectives and backgrounds to bear on the issues surrounding telecommunications, which would not be possible with a single commissioner.

House Bill 2524 HD2 also moves the current telecommunications regulatory statutes directly over to the new commission without adding new and heavy-handed regulation. In this era of exploding technological growth in our industry, this is the way to advance these services to Hawaii consumers.

If the Legislature wants to truly encourage the expansion of modern telecom services in Hawaii, this bill could also serve as a vehicle to deregulate wireless services in statute. The wireless industry is highly competitive and has thrived in a free-market environment. Many other states have freed up the wireless industry so that carriers hands are not tied to unnecessary regulation.

AT&T greatly appreciates all of the discussion and work that has gone into this critical issue for the citizens of the State of Hawaii. We look forward to continued investment and expansion of our services in Hawaii, especially new and exciting wireless data services.

Respectfully Submitted,

Dan Youmans, AT&T

March 15, 2012

The Honorable Carol Fukunaga  
Chair, Hawaii Senate Committee on Economic Development and Technology

The Honorable Rosalyn Baker  
Chair, Hawaii Senate Committee on Commerce and Consumer Protection

The Honorable Glenn Wakai  
Vice Chair, Hawaii Senate Committee on Economic Development and Technology

The Honorable Brian Taniguchi  
Vice Chair, Hawaii Senate Committee on Commerce and Consumer Protection

Dear Senators Fukunaga, Baker, Wakai, and Taniguchi:

On behalf of CTIA-The Wireless Association, I write to comment on proposed House Bill 2524 HD2, which would create a new Telecommunications and Cable Services Commission within the Department of Business, Economic Development and Tourism. CTIA is the international trade association for the wireless telecommunications industry, representing wireless providers, device manufacturers, and Internet service providers.

CTIA urges the Hawaii Legislature to include provisions in HB 2524 HD2 to modernize state telecommunications regulations by recognizing the competitive nature of the wireless ecosystem and join 36 other states and the District of Columbia by deregulating wireless providers. CTIA believes that Hawaii's competitive mobile marketplace and its consumers will be best served by deregulating the wireless market to ensure that providers can continue to operate within a national regulatory framework.

The wireless industry's competitive nature has spurred a wireless renaissance that has witnessed the growth of subscribers to over 300 million nationally. This renaissance was ushered in by Congress' decision in 1993 to create a national regulatory framework for wireless. This national framework allowed wireless providers to offer innovative options like national rate plans, which significantly lowered the cost of wireless services and provided more consumers with greater access to wireless services.

This framework has also allowed the wireless industry, absent government regulation, to quickly respond to ever-changing consumer demands. Since 2003, CTIA's Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers. The Code – which is followed in all 50 states – has helped consumers make informed decisions when selecting a wireless plan and has contributed to the continued competitiveness within the wireless industry. The Code's 11 consumer standards include commitments to disclose rates, additional taxes, fees, surcharges and terms of service; provide coverage maps; make customer service readily accessible; and allow a trial period for new service, among others.

The Code is a living document that affords wireless providers the flexibility to respond to changes in consumer demand. For example, an eleventh point was added in October 2011 that calls for providers to send postpaid customers free notifications for voice, data and messaging usage, and international roaming alerts to help them avoid unexpected overage charges. The Code operates without regard to state



boundaries and within the industry's national framework. It has clearly proven to be an effective method for improving consumer education about wireless services and delivering higher quality customer service.

CTIA supports including provisions in HB 2524 HD2 that would deregulate the wireless market to help ensure that the national regulatory framework for wireless and its resulting benefits are not threatened by the type of state-by-state regulation that could potentially increase consumer costs and limit consumer choice. A patchwork of state regulations would disrupt the immense benefits U.S. consumers are enjoying as a result of the highly competitive mobile marketplace. State-by-state regulation of wireless providers has the potential to harm consumers because providers could be denied the business efficiencies of national billing platforms, customer care operations, and other back-office support in order to meet balkanized state requirements. This result will benefit no one.

We respectfully urge the Hawaii Legislature to include provisions in HB 2524 HD2 to deregulate wireless providers and join 36 other states and the District of Columbia that have recognized the competitive nature of the wireless ecosystem by deregulating the wireless market. Please do not hesitate to contact me at 202.736.3238 or [gkeegan@ctia.org](mailto:gkeegan@ctia.org) if you have questions or need more information.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerard Keegan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerard Keegan  
Director  
State Legislative Affairs

# Testimony before the Senate Committees On Economic Development & Technology and Commerce & Consumer Protection

By Tracy Nishibun  
Facilities Attachment Program Manager  
Hawaiian Electric Company, Inc.

Friday, March 16, 2012  
1:15 pm, Conference Room 016

## HB 2524, HD2 - Relating to the Regulation of Telecommunications and Cable Television Services

Chairs Fukunaga & Baker, Vice Chair Wakai & Taniguchi, and Members of the Committees:

My name is Tracy Nishibun 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 have the following concern with this bill as written:

1. In reference to pg. 73, § **-38 Finances, regulatory fee**. Each telecommunications carrier will be subject to “a fee equal to one-fourth of one per cent of the gross income from the telecommunications carrier’s business during the preceding year, or the sum of \$30, whichever is greater.” Hawaiian Electric Company 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 Company and its subsidiaries should not be subject to both fees.

We appreciate the continued support of the Legislature and BAAC in hearing and understanding our concerns as we work together to address these issues.

Thank you for the opportunity to testify on this measure.

**HB 2524 HD 2**

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

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

**HAWAIIAN TELCOM**

**March 16, 2012**

Chairs Fukunaga, Baker and members of the Committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on HB 2524 HD 2, Relating to the Regulation of Telecommunications and Cable Television Services.

While we support the stated intent of streamlining the State's regulatory structure for telecommunications, broadband, and cable services in Hawaii, we oppose HB 2524 HD2 as drafted because the legislation still preserves and maintains the obsolete rate of return methodology for regulating telecommunications that is no longer relevant or useful in a competitive marketplace like the one that exists in Hawaii today. We believe rate of return regulation is contrary to the goal of promoting competition in the telecommunications marketplace and should be either comprehensively overhauled or repealed.

Rather than moving forward a voluminous 200-page document that appears to have mixed support among the various interested parties, we would recommend instead that the Committee defer legislation this session and allow the Broadband Assistance Advisory Council to discuss this issue during the interim to ensure that any efforts to combine the oversight of telecommunications, broadband and cable services will truly provide consumers with what they demand most: more innovation, quality service, and a greater selection of new products and offerings.

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

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



**tw telecom inc.**  
9665 Granite Ridge Drive  
Suite 500  
San Diego, CA 92123  
858-805-6050

Honorable Carol Fukunaga, Chair  
Senate Committee on Economic Development and Technology

Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

RE: **HB2524 HD2 - Regulation of Telecommunications and Cable Television Services**  
March 16, 2012; Conference Room 016 – 1:15 PM

Aloha Chairs Fukunaga and Baker and Members of the Committees:

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 on HB2524 HD2.

The purpose of this bill is to establish the Hawaii Communications Commission ("HCC") and to consolidate the regulation of telecommunications carriers and cable operators into a "one stop shop". While TWTC supports the intent to facilitate the growth of telecommunications and cable television infrastructure and services, we continue to have some concerns about this bill.

Among our concerns are the following:

1. **Consolidation of telecommunications and cable regulation.** TWTC is satisfied with the current regulatory structure of telecommunications. We also note that no other state has consolidated telecommunications and cable services under one commission, and we continue to be concerned that combining the regulation of telecommunications and cable under a single agency may result in blurring of the differing laws and regulations, on both the state and federal levels, applicable to providers of these services. However, if the legislature believes that the regulation of cable and telecommunications should be consolidated, we do not have strong objections. We believe, however, that the Department of Commerce and Consumer Affairs, as a regulatory agency, is better suited to assume the regulatory functions of the Public Utilities Commission ("PUC") than the Department of Business, Economic Development & Tourism.
2. **Composition of Hawaii Communication Commission** – TWTC believes that the three member commission provided for in this bill is preferable to other proposals for a single commissioner. Three commissioners can bring different perspectives and backgrounds to bear on the issues presented to them.

3. **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. This bill contains several proposed amendments that raise these concerns.

a. Retail Telecommunications Services. Section – 24 of the bill includes amendments that would allow a telecommunications carrier to charge a higher rate than the rate in its tariff for “retail telecommunications basic exchange service”. TWTC has two concerns with this amendment. First, as noted by the Division of Consumer Advocacy in testimony opposing similar language in SB 2108, “allowing a telecommunications carrier the opportunity to charge higher rates than what is provided for in the carrier’s filed tariff goes against public and regulatory policy for transparency and notice”. Carriers should be required to charge the rate in their tariffs. This does not mean they have to obtain PUC approval to change their rates just that they have to charge the rates which they file with the commission.

Second, Hawaii’s enterprise business market differs greatly from the residential market. While many providers exist on equal footing in delivering residential retail communications services, that same fair competition does not yet exist in the business market. Today, competition in the enterprise business market is insufficient and regulation is still required to assure that businesses can acquire alternative telecommunications services from smaller, innovative telecommunications carriers. Regardless of the underlying technology at use, the Commission should retain the ability to address anticompetitive behaviors, including predatory or discriminatory pricing, and to resolve disputes between carriers, e.g. interconnection arrangements and dispute resolution.

For these reasons we respectfully request the following amendment:

"(a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat residential retail intrastate telecommunications services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges for residential retail services, or to bundle any such service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not [~~charge a higher~~] increase a rate for any residential retail telecommunications basic service [than the rate for the same service included in the telecommunications carrier's filed tariff]. All residential retail rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only."

b. Approvals to Refinance Debt or Encumber Property. Hawaiian Telecom previously testified that because retail services are not subject to rate of return regulation, provisions requiring approval to refinance or encumber debt are unnecessary. Accordingly, this draft eliminates section -29 to -32 of the new chapter. TWTC agrees that Commission approval to refinance or encumber a carrier's property is no longer necessary. However, elimination of all four sections referred to above go beyond that, and also eliminate Commission approval of transactions resulting in the change of control of a telecommunications carrier. In the absence of these provisions, the PUC would have lacked authority to review the recent acquisition of Hawaiian Telecom by the Carlyle Group and the subsequent sale of the company out of bankruptcy. As long as Hawaiian Telecom is the dominant carrier in Hawaii, and has a virtual monopoly on wholesale services provided to other carriers, the Commission should retain authority to review and approve transactions that affect its ownership or control. Therefore, TWTC requests that these provisions be amended to only delete the portions of these sections that require approval to finance or encumber a carrier's property.

As always, we appreciate your consideration of our request.

Sincerely,

/s/

Lyndall Nipps

Vice President, Regulatory Affairs-Western Region

tw telecom of hawaii lp

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**Testimony of Michael Bagley  
Director of Public Policy for Verizon  
Before the Committee on Economic Development and Technology and  
Committee on Commerce and Consumer Protection  
On H.B. 2524, HD 2  
March 16, 2012**

The Honorable Carol Fukunaga  
Chair  
Committee on Economic Development and Technology  
Hawaii Senate

The Honorable Rosalyn Baker  
Committee on Commerce and Consumer Protection  
Hawaii Senate

**Re: H.B. 2524, HD 2 – Regulation of Telecommunications and Cable Television Services**

Chairman Fukunaga, Chairman Baker, and Members of the Committee:

On behalf of Verizon, I appreciate the opportunity to present the company's views and concerns with regard to H.B. 2524, HD 2, legislation aimed at setting up a new Commission within the Department of Business, Economic Development, and Tourism, to oversee telecommunications and cable services, with the goal of stimulating and facilitating the expansion of broadband.

Verizon will support HB 2524, HD 2, if the bill can be amended to include language that provides specific language to pre-empt the regulation of wireless and VOIP services. This bill needs to be amended to include specific language on the deregulation of wireless and VOIP services in order for the legislation to serve as a catalyst to ensure greater wireless investment in the State of Hawaii and to help Hawaii lead the nation in broadband deployment.

There is no language in the current draft of the legislation that provides incentive to the wireless industry to accelerate deployment of wireless broadband, and wireless is very important for the future of broadband. All of the current high tech smart phones that are in the marketplace currently, from the I-Phone to the Android Google phones, are all possible because of 3G and 4G broadband. Verizon is the leader in deployment of 4G, which is ten times faster than 3G, and is the largest wireless carrier in Hawaii and the nation.

The wireless industry's competitive nature has spurred a wireless renaissance that has witnessed the growth of subscribers to over 300 million nationally. This renaissance was ushered in by Congress' decision in 1993 to create a national regulatory framework for wireless. This national framework allowed wireless providers to offer innovative options like national rate plans, which significantly lowered the cost of wireless services and provided more consumers with greater access to wireless services.

If the goal is to have HB 2524 serve as a catalyst to accelerate broadband deployment, then we ask that language be included to allow for the deregulation of wireless and VOIP services.

Legislatures in 36 states plus the District of Columbia have preempted their public utility or service commissions from regulating the wireless industry. This type of regulatory framework has helped empower consumers and businesses with innovative wireless products and services and helped spur U.S. economic growth, even during the current tough economic period.

22 states have also passed specific legislation to pre-empt the de-regulation of VOIP (Voice over internet protocol) IP-enabled services so far. Legislation to do this is also moving right now in California, and has passed in Utah and been sent to the Governor for signature.

If Hawaii is to be a leader in advancing broadband and in giving the wireless industry incentive to invest the millions in capital that is needed to advance wireless broadband, which is a big part of the future of broadband, Hawaii needs to pass pre-emption legislation to send the strong message that many other states have, which is that Hawaii wants accelerated wireless broadband deployment.

The proposed amendment, which we are providing with this testimony, will accomplish this goal, and is what many other states, both blue and red states, are doing to ensure that the competitive wireless industry is viable and has incentive to invest in their states.

Thank you for your consideration of Verizon's request.



## fukunaga2 - Ashley-Jane

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 13, 2012 12:18 PM  
**To:** EDTTestimony  
**Cc:** rfripp@aloha.net  
**Subject:** Testimony for HB2524 on 3/16/2012 1:15:00 PM

Testimony for EDT/CPN 3/16/2012 1:15:00 PM HB2524

Conference room: 016  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Robert Ripp  
Organization: Individual  
E-mail: [rfripp@aloha.net](mailto:rfripp@aloha.net)  
Submitted on: 3/13/2012

### Comments:

I am opposed to the skimming of funds away from PEG. TW has an educational clause in their franchise agreement that should be changed to have them create the broadband network, infrastructure, and operation at no cost to the state. Require a 10% re-investment in educational broadband as a good corporate resident. We had to fight hard for PEG funds and for the operation of access operations. It is truly a uniquely American freedom of speech. Do not quash it.