



NEIL ABERCROMBIE
GOVERNOR

EXECUTIVE CHAMBERS
HONOLULU

**HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION AND BUSINESS**

**Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair**

**February 9, 2012
8:30 am Room 312**

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

Chair McKelvey, Vice-Chair Choy, and members of the Economic Revitalization and Business Committee:

The Office of the Governor is in strong support of House Bill 2524, 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.

As technology evolves, communications and information delivery systems are converging. Likewise, a consolidation of telecommunications regulations within one body simply makes sense. Additionally, this new regulatory framework will aid the adoption of broadband in Hawaii. Finally, moving these functions out of the jurisdiction of the Public Utilities Commission will allow them to focus more resources on energy.

Thank you for this opportunity to testify.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

TO THE HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Date: February 9, 2012
Time: 8:30 a.m.

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

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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.

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 21st 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

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.



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

NEIL ABERCROMBIE
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RICHARD C. LIM
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MARY ALICE EVANS
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Thursday, February 09, 2012

8:30 AM

State Capitol, Conference Room 312

In consideration of

**HB 2524 RELATING TO REGULATION OF TELECOMMUNICATIONS AND CABLE
TELEVISION PROVIDERS.**

Chair McKelvey, Vice Chair Choy, and Members of the Committee on Economic Revitalization & Business:

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

HB 2524 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 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
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February 7, 2012

TESTIMONY TO THE
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION AND BUSINESS

For Hearing on Thursday, February 9, 2012
8:30 a.m., Conference Room 312

BY

BARBARA A. KRIEG
INTERIM DIRECTOR

House Bill No. 2524
Relating to the Regulation of Telecommunications and Cable Television Services

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON MCKELVEY AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2524 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.

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."

db

H.B. No. 2524
February 7, 2012
Page 3

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



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February 8, 2012

The Honorable Rep. Angus L.K. McKelvey;
Chair, Committee on Economic Revitalization & Business
Hawaii House of Representatives

*Re: Testimony on House Bill 2524
Hearing before the House Committee on Economic Revitalization & Business
02-09-12 8:30am in House conference room 312*

Representative McKelvey and Members of the Committee:

Thank you for giving AT&T this opportunity to comment on House Bill 2524. HB2524 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.

HB2524 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.

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

Respectfully Submitted,

Dan Youmans, AT&T

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Honorable Angus McKelvey, Chair
House Committee on Economic Revitalization and Business
Hawaii State Capitol
Honolulu, HI 96813

RE: **HB 2524 - Relating to Telecommunications and Cable Television Services**
February 9, 2012, 8:30 AM, Hawaii State Capitol Room 312

Aloha Chair McKelvey, Vice Chair Choy 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 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.

Therefore, we urge the committee to allow the council to review and comment on this and other bills listed on the agenda for its February 10, 2012, meeting.

We appreciate the opportunity to offer our testimony on this bill.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

Lyndall W. Nipps
Vice President, Regulatory-Western Region



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Honorable Angus McKelvey, Chair
• House Committee on Economic Revitalization and Business

RE: HB2524 - Regulation of Telecommunications and Cable Television Services
Hawaii State Capitol Room 312 – 8:30 am

Aloha Chair McKelvey, Vice Chair Choy 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 on HB2524.

We support the intent of the bill 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.

However, 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.

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 than 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.

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 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