

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

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RICHARD C. LIM
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the
COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Tuesday, February 07, 2012

8:30 AM

State Capitol, Conference Room 312

In consideration of

**HB 2654 RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION
SERVICE**

Chair McKelvey, Vice Chair Choy, and Members of the Committee on Economic Revitalization and Business: Thank you for this opportunity to submit testimony.

My name is Richard Lim, Director of the Department of Business, Economic Development and Tourism ("DBEDT"). DBEDT would like to offer comments on HB 2654. 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.

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.

The Administration has introduced HB 2524 and companion bill SB 2786 to establish a consolidated regulatory authority under DCCA. DBEDT prefers the Administration's bill to address this issue. While some of DBEDT's attached agencies include some permitting type activities, DBEDT should not be taking on new regulatory functions as not to conflict with its core economic development mission. DBEDT does not currently have the resources or expertise within its core department to support this.

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



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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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: Tuesday, February 7, 2012
Time: 8:30 a.m.

TESTIMONY ON H.B. 2654 - RELATING TO TELECOMMUNICATIONS AND CABLE
TELEVISION SERVICES

TO THE HONORABLE ANGUS MCKELVEY, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Donn Yabusaki, and I am the Cable Television Administrator, Department of Commerce and Consumer Affairs ("DCCA"). The DCCA opposes this bill as it is written.

Instead, as part of the Governor's Broadband Initiative, the DCCA strongly supports H.B. 2524 which 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 to provide our State with a superior communications backbone that will give our citizens a competitive edge in the global marketplace and a better quality of life. H.B. 2524 transfers 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) to a new communications division. This consolidation under the DCCA will expedite the availability of advanced communications

services and will allow for regulation that fosters competition for the benefit of Hawaii's residents.

While both measures call for the establishment of one agency to handle broadband, telecommunications, and cable, DCCA opposes transferring cable regulation from DCCA to Department of Business and Economic Development in H.B. 2654 and strongly prefers H.B. 2524.

Thank you for the opportunity to provide testimony on this measure.

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

February 6, 2012

TESTIMONY TO THE
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

For Hearing on Tuesday, February 7, 2012
8:30 a.m., Conference Room 312

BY

BARBARA A. KRIEG
INTERIM DIRECTOR

House Bill No. 2654
Relating to Telecommunications and Cable Television Services

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON McKELVEY AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2654 is to establish the Hawaii Communications Commission ("Commission") in the Department of Business, Economic Development, and Tourism; and transfer functions relating to telecommunications from the Public Utilities Commission and functions relating to cable services from the Department of Commerce & Consumer Affairs to the Commission.

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 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.

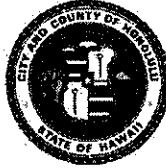
Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not 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 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.

DEPARTMENT OF INFORMATION TECHNOLOGY
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PETER B. CARLISLE
MAYOR



GORDON J. BRUCE
DIRECTOR & CIO

TESTIMONY
of
GORDON J. BRUCE, DIRECTOR AND CHIEF INFORMATION OFFICER
Department of Information Technology
City and County of Honolulu
before the
COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
on
Tuesday, February 7, 2012
8:30 a.m.
State Capitol, Conference Room 312

In consideration of
**HOUSE BILL 2654 – RELATING TO TELECOMMUNICATIONS AND
CABLE TELEVISION SERVICES**

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

My name is Gordon J. Bruce, and as the Director of the Department of Information Technology and the Chief Information Officer for the City and County of Honolulu, I submit testimony in support of HB 2654.

The intent of this bill is to enable the delivery of competitively priced, high speed broadband, while leveling the playing field to competition amongst the various providers.

We believe that the "commissioner" also be given the authority to apply for federal broadband grants in partnership with both the counties and the state, and oversee the deployment of the systems for which the grants were obtained.

Thank you for this opportunity to provide testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Gordon J. Bruce", written over a circular stamp or seal.

Gordon J. Bruce
Director and Chief Information Officer

HB 2654

RELATING TO TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES

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

HAWAIIAN TELCOM

February 7, 2012

Chair McKelvey and Members of the Economic Revitalization & Business Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on HB 2654, Relating to Telecommunications and Cable Television Services. HT has major concerns with this bill.

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, it is unclear how this measure, as currently drafted, changes the status quo, and will assist businesses like HT to effectively compete with other providers of communications and information services in an evolving industry that is expected to continuously change over time.

It appears that HB 2654 proposes to transfer the regulatory authority of telecommunications carriers from the Public Utilities Commission (PUC) to the Department of Business, Economic Development, and Tourism (DBEDT) by merely extracting various outdated utility and telecommunications provisions from Hawaii Revised Statutes (HRS) Chapter 269. This bill combines these provisions with the cable regulation statutory provisions under HRS Chapter 440G regulation of telecommunications service with the regulation of cable under a newly created regulator (AKA, Hawaii Communications Commission) with no consideration that many of these provisions are outdated and should not necessarily be applicable in today's competitive and evolving environment.

HT has been and is currently subject to many State telecommunications laws and requirements that were enacted long ago, some as early as 1913 when the incumbent local exchange carrier was a monopoly with no other competitors. These laws and requirements have not been updated over the years to recognize that HT is no longer a monopoly and is now subject to significant competition in the services it currently provides to its customers. Today, consumers have the freedom to choose between a wide array of telecommunications providers (e.g., wireless, cable, VoIP, and competing wireline providers).

In light of the above, the bill fails to "level the regulatory playing field" among the many telecommunications providers of the various communication service technologies (and the technologies themselves) in Hawaii. Our company will still be burdened with a legacy regulatory structure that has existed for a long time and which other less regulated telecommunications providers (e.g., wireless, cable, VoIP and competing wireline providers) do not need to follow to the same degree as HT. Since telecommunication services in Hawaii is competitive, regulations (if any) for telecommunications carriers like HT should more closely mirror the state regulation of wireless, cable or VoIP providers. This type of change to the existing regulatory structure will help to provide HT a degree of regulatory parity with our competitors by enabling us to offer consumers a more timely and greater selection of products, services, and bundled offerings at competitive prices in the same manner as other service providers such as wireless and VoIP, which are either unregulated or do not face the same level of regulatory oversight that HT currently faces.

Among other things, HT's concerns regarding HB 2654 are summarized below:

1. Price Cap: Retail telecommunications services, which have already been declared fully competitive, will continue to be subject to a price cap and price caps should be repealed.
2. Rate Base/Rate of Return Methodology: Rate Base/Rate of return is an obsolete ratemaking methodology of setting rates in a competitive market (similar to the motor carrier industry). Rate Base/Rate of return regulation is contrary to the goal of competition in the telecommunications marketplace and should be repealed.
3. Duplicate Regulation: HRS Section 269-6 grants the PUC general supervision over all public utilities and under the proposed legislation, HT continues to be classified as a public utility under HRS Section 269-1. As a result, HT would be subject to regulation by both the PUC and DBEDT at the same time.
4. New Regulatory Fee: HT would be subject to a new regulatory fee, not to exceed one-fourth of one per cent of gross income. There is no provision to exempt telecommunication carriers from paying the existing Public Utility Fee under HRS Section 269-30. Regulation by the PUC should be repealed once regulatory authority over telecommunications is transferred to the DBEDT. In addition, there is no parity between the fees collected from telecommunications carriers and cable operators.
5. Development Duties: Requires the Hawaii Communications Commission to evaluate whether residential and business telecommunications services should be classified as 'fully competitive.' In 2009, Act 180 classified retail telecommunications services as fully competitive so further evaluation is unnecessary and this language should be removed.

6. Rate Regulation Alternatives: Directs the Hawaii Communications Commission to evaluate rate regulation alternatives including “incentive regulation, one goal of which shall be to increase broadband competitive availability and affordability.” The regulation of telecommunications should not be linked to broadband service which is not a regulated service.
7. Shared Infrastructure: The bill envisions the Hawaii Communications Commission to help facilitate and construct shared broadband communications infrastructure that may be shared by competing providers. This may result in overbuilding of existing networks. Language should clarify that the priority for such shared infrastructure shall be solely for currently unserved or underserved areas.
8. Consumer Advocate (CA) Resources Stretched: Further clarification as to the CA’s role is necessary as it appears that the DBEDT Director is recognized as the CA in hearings and proceedings before the Hawaii Communications Commission. The CA’s role is also expanded to include the cable industry and would need to appear and/or participate before two separate commissions with potentially different rules, policies and procedures. This may result in delays in having issues resolved due to, among other things, workload constraints, conflicts in priorities, and inadequate resources.
9. Increased Cost of Government: Transferring telecommunications and consolidation with cable will increase the cost of government regulation/oversight because additional staff (e.g., hearing officers, analysts and attorneys) will need to be hired and trained for the newly created regulatory agency, with no apparent benefit to the communications industry or its customers.
10. Approval to Refinance Debt or Encumber Property: As previously mentioned, these provisions were extracted from outdated provisions under HRS Chapter 269 and were intended for utilities that are subject to rate base/rate of return regulation. Since retail telecommunications services are fully competitive and should not be subject to rate base/rate of return regulation anymore, these provisions should not be applied to the telecommunications industry.
11. Single Authority: Regulatory oversight transferred to one Commissioner rather than a three-member PUC raises concerns that this may be too much power and authority concentrated in the hands of one individual. In addition, the delegation of such power and authority to the Deputy Commissioner and staff members raises similar concerns.
12. Missing References: Sections related to HT in the HRS are missing and must be amended. For example, 205A-16 HRS includes language that provides HT with a variance for certain utility improvements that will be lost if this section of the law is not amended.

13. County Ordinances: Several county ordinances related to repair and construction provide HT the ability to make repairs or installations on an expedited basis. Unless clarified in the measure, HT will be unable or delayed in repairing downed poles or out of service lines jeopardizing public safety and E911 service.

14. Electric Utility: Since many of the utility poles are jointly owned by both HT and Hawaiian Electric, it will be difficult to regulate the use of these jointly owned poles in the future because HT and Hawaiian Electric will be regulated by two different entities making enforcement and coordination difficult.

There is also a question on the impact the proposed transfer will have on past decisions made by the PUC going forward, as well as the impact of future PUC decisions made for other public utilities that also have a bearing on telecommunication matters

Based on the aforementioned, Hawaiian Telcom respectfully requests that this committee carefully consider our concerns regarding HB 2654. Thank you for the opportunity to testify.



LIFE OF THE LAND

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COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

DATE: Tuesday, February 07, 2012
TIME: 8:30 a.m.
PLACE: Conference Room 312
HB 2654: RELATING TO TELECOMMUNICATIONS AND
CABLE TELEVISION SERVICES.

Position: **COMMENTS WITH PROPOSED AMENDMENTS**

Aloha Chair McKelvey, Vice Chair Choy 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.

SB 2654 establishes the Hawaii communications commission in DBEDT, transfers functions relating to telecommunications from the PUC to the Hawaii communications commission, transfers functions relating to cable services from DCCA to the Hawaii communications commission, and makes an appropriation.

The internet has transformed how business is done. We are entering an era of **Webocracy** -- the online participation of citizens in democratic processes. Collaborative Democracy provides better solutions where bids, plans, and processes are all transparent, documents are web-based and accessible; and entities are held accountable to the taxpayers.

Life of the Land supports making Hawai`i a world leader in broadband technology and telecommunication interconnectivity. We must vastly increasing high-speed internet capacities within the State. Every student should have a computer.

The goals of HB 2654 are laudable. The proposed bill seeks to modernize telecommunication regulation in a rapidly changing environment.

The concept is great, its just that the 161-page bill proposes to put all of the power of cable regulation in the hands of one person with little oversight and minimal public participation.

Life of the Land hopes that as the bill moves forward, a greater emphasis can be added to insure expanded opportunities for public involvement within the process.

With that in mind, we have proposed a number of amendments.

Hawaii Communications Commission

The bill creates the "Hawaii Communications Commission" (HCC). (p. 5)
The Commission is a one person operation, the commissioner, although he has the right to expand it by having the option to hire staff. The Hawaii communications commissioner shall regulate telecommunication.

Management and Oversight

"The commissioner ... shall be appointed by the governor, with the consent of the Senate." (p. 12)

Proposed Amendment: Three commissioners serve on the Hawaii Communications Commission, one appointed ever two years for six year staggered terms.

HB 2654 adds that there is an advisory board established in the same method as the Commission itself: "There is established the communications advisory committee. The committee shall consist of five members "appointed by the governor" subject to Senate confirmation. (p. 34)

Proposed Amendment: There is a five member advisory board, two members appointed by the Governor, one by the Senate President, one by the House Speaker, and one by the largest PEG provider.

Affiliated Agencies

HB 2654: Two agencies (DCCA, PUC) with experience in telecommunications are removed of any regulatory authority: "The Act removes authority from the director of commerce and consumer affairs [DCCA] to regulate cable operators and, following a one-year transition period, removes authority from the public utilities commission [PUC] to regulate telecommunications carriers." (p. 5)

HB 2654 then assigns the role of the consumer advocate to the business advocate. The director of business, economic development, and tourism (DBEDT) "shall serve as the consumer advocate in hearings and proceedings before the commission." (pp. 9, 34) However, DBEDT has no mechanism for engaging consumer input.

Proposed Amendment: The DCCA Director should serve as the consumer advocate.

Functions

The HCC will oversee all regulation, and may choose to waive that regulation: "All rates, fares, charges ...shall be just and reasonable" (p. 47) "The commission may waive rate regulation" (p. 48)

Public Hearings

The only time the public may enter the picture is to provide testimony when a new company wishes to be issued a certificate of public convenience and necessity (CPCN) and in rate cases:

"Any public hearing ...shall be a noticed public hearing or hearings on the island on which the telecommunications carrier is situated." (p. 24)

However the HCC has the right to eliminate that right by waiving regulation.

The "commission may waive any application requirement whenever it deems the waiver to be in furtherance of the purposes of this section. ...The commission may waive other regulatory requirements under this chapter ...when it determines that competition will serve the same purpose as public interest regulation." (p. 42)

There is one confusing section which appears to state that the HCC will allow contested case hearings until it decides that it does not want to hold contested

case hearings; and if they choose to hold a contested case hearing, then a public hearing is appropriate. Conversely, it appears that a decision to not have a contested case proceeding eliminates the requirement for a public hearing and thus eliminates the legal opportunity for community input:

"Unless and until the commission 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 ...at which the consumers or patrons of the telecommunications carrier may present testimony to the commission concerning the increase." (pp. 48-49)

Proposed Amendment: There shall be a public hearing on the relevant island(s) for the issuance of a certificate of public convenience and necessity (CPCN), any proposed change in rates, and any shift in the bandwidth that PEG access facilities are using.

Legal Appeals

In actions before most State agencies, an entity that files a Motion to Intervene and they may or may not be accepted as a party in the regulatory proceedings. If they are accepted, they get all of the legal rights and responsibilities of other parties.

The language of the bill states that a "party ...or permitted intervenor shall have the right to be present and ...to cross-examine any witness who may be called." (pp. 24-25)

It appears that an intervenor might remain simply an intervenor and not be a party and thus not have a right to appeal: "If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the State intermediate appellate court" (p. 28)

Our above stated interpretation might be wrong. But it appears that there might be another way to limit the public.

Unconstitutional Provisions

According to the proposed bill, the only way to appeal a case is if the contested case hearing was held, because that is the only way of having standing for an appeal.

"An appeal from an order of the commission under this chapter shall lie ...in the manner provided for civil appeals from the circuit courts. Only a person

aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order." (p. 29)

However, the Commission could avoid appeals by not holding public hearings.

"Unless and until the commission waives this requirement [there shall be] a public hearing." (pp. 48-49)

Thus if they choose not to hold a contested case hearing, no one can appeal, except that the Hawai`i Supreme Court has already ruled otherwise.

Life of the Land (1971-75)

During the 1960s HECO ran an advertising campaign asking people to increase their use of electricity. In HECO's 1971 rate case, HECO asked that the cost of the ad campaign be passed on to the ratepayers. Life of the Land filed to intervene in the docket. The Public Utilities Commission said no, but we could ask questions through their staff. (The Consumer Advocate was part of the PUC staff until the devastating 3 volume audit in the mid 1970s at which point they were moved to DCCA).

Life of the Land convinced the staff but not the PUC Commissioners that ratepayers should not pay for the ad campaign. We appealed to the Hawaii Supreme Court (at that time appeals went directly to the HSC, a few years ago this was legally changed, and now PUC appeals have been redirected to the Intermediate Court of Appeals).

The PUC argued that because they had not let us into the contested case proceeding, we had no right to appeal.

Associate Justice Benjamin Menor wrote the unanimous decision for the Hawai`i Supreme Court in 1975. In essence, because we had sought to get involved at every step in the process we had a due process right to appeal. Furthermore, the cost of the ad campaign could not be passed through to ratepayers. Shortly thereafter the Legislature changed the law, in effect banning the practice of making ratepayers pay for such advertisement.

Proposed Amendment: Entities who actively participate in the administrative process have a due process right of appeal.

Public TV vs. `Olelo

A fee on cable operations pays for both PBS and `Olelo. The HCC would regulate `Olelo and other PEG access facilities but not PBS. Both are

telecommunication entities, but as George Orwell in his book "Animal Farm" stated: "All animals are equal but some animals are more equal than others."

The HCC has total control over Public, Educational, or Governmental (PEG) access entities:

"The commission shall have the authority to designate and select PEG access organizations, the authority to contract with the PEG access organizations and enforce the terms and conditions of the contracts, and general supervision over PEG access in the State." (pp. 14-15)

"The commission may examine the condition of each ...PEG access organization, the manner in which each is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the services provided by it, the steps being taken to provide those services, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." (p. 18)

That appears to put one individual in charge of modifying conditions for PEG community television facilities before receiving any community input.

Proposed Amendment: The Hawaii Communications Commission may propose changes to PEG access facilities after holding public hearings.

Mahalo

Henry Curtis

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 05, 2012 6:53 PM
To: ERBtestimony
Cc: basager42@gmail.com
Subject: Testimony for HB2654 on 2/7/2012 8:30:00 AM

Testimony for ERB 2/7/2012 8:30:00 AM HB2654

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bill Sager
Organization: Individual
E-mail: basager42@gmail.com
Submitted on: 2/5/2012

Comments:

I'm concerned with the apparent efforts to streamline the permitting process at the expense of public hearings

SB 2654 states: The director of business, economic development, and tourism (DBEDT) "shall serve as the consumer advocate in hearings and proceedings before the commission."

The "commission may waive any application requirement whenever it deems the waiver to be in furtherance of the purposes of this section. ...The commission may waive other regulatory requirements under this chapter ...when it determines that competition will serve the same purpose as public interest regulation."

The HCC would have total control over Public, Educational, or Governmental (PEG) access entities: "The commission shall have the authority to designate and select PEG access organizations, the authority to contract with the PEG access organizations and enforce the terms and conditions of the contracts, and general supervision over PEG access in the State."

Proposed Amendment: The Hawaii Communications Commission should consist of 3 Commissioners appointed to staggered terms, one appointed every two years. The Director of DCCA should serve as the consumer advocate. The Hawaii Communications Commission shall propose changes to rates and PEG access only after holding public hearings.