



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

**SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION**

**Senator Carol Fukunaga, Chair - EDT
Senator Rosalyn Baker, Chair - CPN
Senator Glenn Wakai, Vice Chair - EDT
Senator Brian Taniguchi, Vice Chair - CPN**

**February 8, 2012
1:15 pm Room 016**

**Testimony in SUPPORT on SB 2786
Relating to the Regulation of Telecommunications and
Cable Television Services**

Chair Fukunaga, Chair Baker, Vice-Chair Wakai, Vice-Chair Taniguchi, members of the Economic Development and Technology and Commerce and Consumer Protection Committees:

The Office of the Governor is in strong support of Senate Bill 2786, 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.



**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 COMMITTEES ON ECONOMIC DEVELOPMENT & TECHNOLOGY AND
COMMERCE & CONSUMER PROTECTION**

Wednesday, February 08, 2012

1:15 PM

State Capitol, Conference Room 016

In consideration of

**SB 2786 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 & Technology and Commerce & Consumer Protection:

My name is Richard Lim, Director of the Department of Business, Economic Development and
Tourism ("DBEDT"). DBEDT supports SB 2786. 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.

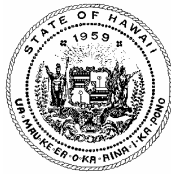
SB 2786 transfers the authority to regulate telecommunications from the PUC to a broadband
division created within the DCCA. DCCA has reported that the PUC is supportive of the
proposed transfer.

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
235 S. BERETANIA STREET
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January 31, 2012

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

For Hearing on Wednesday, February 8, 2012
1:15 p.m., Conference Room 016

BY

BARBARA A. KRIEG
INTERIM DIRECTOR

Senate Bill No. 2786
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 S.B. No. 2786 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 department of commerce and consumer affairs by this Act shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class and/or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

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

qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.”

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



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI`I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEE ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY

AND

THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Date: February 8, 2012

Time: 1:15 p.m.

**TESTIMONY ON SB 2786 - RELATING TO THE REGULATION OF
TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES**

TO THE HONORABLE CAROL FUKUNAGA AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

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 S.B. No. 2786.

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 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 DEVELOPMENT AND TECHNOLOGY
and
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
on

Wednesday, February 8, 2012
1:15 p.m.
State Capitol, Conference Room 016

In consideration of
**SENATE BILL 2786 – RELATING TO THE REGULATION OF
TELECOMMUNICATIONS AND CABLE TELEVISION SERVICES.**

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

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 SB 2786.

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

SB 2786

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

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

HAWAIIAN TELCOM

February 8, 2012

Chairs Fukunaga and Baker and members of the Economic Development Committee and Commerce and Consumer Protection committees:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom (HT) on SB 2786, Relating to the Regulation of 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 SB 2786 proposes to transfer the regulatory authority of telecommunications carriers from the Public Utilities Commission (PUC) to the Department of Commerce and Consumer Affairs (DCCA) 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 have 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 telecommunications service 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 SB 2786 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 the price cap 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 the Communications Division 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 JRS Section 269-30. Regulation by the PUC should be repealed once regulatory authority over telecommunications is transferred to the DCCA. In addition, there is no parity between the fees collected from telecommunications carriers and cable operators.
5. Consumer Advocate (CA) Resources Stretched: The CA’s role is 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 arrangement may result in delays in resolving issues due to workload constraints, conflicts in priorities and inadequate resources.

6. 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.
7. Approval to Refinance Debt or Encumber Property: 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.
8. 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 should not be applied to the telecommunications industry.
9. 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.
10. County Ordinances: Several county ordinances related to repair and construction provides 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.
11. 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 the committees carefully consider our concerns regarding SB 2786. Thank you for the opportunity to testify.