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Statement of
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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 2788 RELATING TO REPORTING REQUIREMENTS FOR
TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDERS.**

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

The Department of Business, Economic Development and Tourism (“DBEDT”) supports SB 2788. In leading the Hawaii Broadband Initiative (“HBI”), DBEDT requires statistical data to make accurate and timely analysis, assessments and evaluations on the status of broadband infrastructure and services that are provided and available in the State. Such analyses will also aid DBEDT greatly in its development of initiatives related to the future expansion and enhancement of broadband infrastructure and services.

Hawaii’s current broadband mapping activities, as required under federal grant guidelines, compile broadband data at the census block level. With the passage of SB 2788, broadband data collected from and provided by telecommunications and cable television providers can be compiled at a more granular level. Broadband data, including but not limited to availability and pricing, could be aggregated on an address or tax map key (“TMK”) basis, rather than currently done at the census block level. Such broadband data will provide much greater detail of broadband penetration and availability, and will more accurately depict the status of broadband access in Hawaii.

The Departments will continue to work with industry stakeholders on any concerns with this bill.

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



NEIL ABERCROMBIE
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KEALI`I S. LOPEZ
DIRECTOR

February 13, 2012

MEMORANDUM:

TO: The Honorable Carol Fukunaga
Chair, Committee on Economic Development & Technology

The Honorable Rosalyn H. Baker
Chair, Committee on Commerce & Consumer Protection

FROM: Everett S. Kaneshige, Chair, Broadband Assistance Advisory Council
Cathy Takase, Broadband Program Specialist

THROUGH: Keali`i S. Lopez
Director of Commerce & Consumer Affairs

RE: SB2786 and SB2788 – Proposed SD1s

At the joint hearing of the Senate Committees on Economic Development and Tourism and Commerce and Consumer held on February 8, 2012, the Department of Commerce and Consumer Affairs (DCCA) was asked to contact the various stakeholders who had submitted testimony in opposition or concerns regarding SB 2786 and SB 2788 (the “Bills”) in an attempt to come up with language that might be acceptable to DCCA and the stakeholders, which would form the basis for a proposed SD1 of the Bills. As part of these efforts a meeting of the Hawaii Broadband Assistance Advisory Council (BAAC) was held on February 10, 2012, for the primary purpose of soliciting specific amendments to the Bills.

As of February 12, 2012, DCCA had received proposed amendments and/or comments from the following stakeholders: Hawaiian Telcom (HT), Oceanic Time Warner Cable (Oceanic), AT&T Wireless (AT&T), Hawaiian Electric Company (HECO), the Public Utilities Commission (PUC).

Set forth below, is a summary of the changes and comments received by DCCA pertaining to each of the Bills and DCCA's response. In those cases where DCCA agreed with the requested revision or comments, an amendment was made to the applicable section in the proposed SD1 of the Bills. In those cases where DCCA did not agree with the requested revision or comments, the rationale for DCCA's position is contained in this memorandum.

Proposed SD1's for each of the Bills are attached to this memorandum in redlined form.

SB 2786

1. HT proposed the following amendments to this bill:
 - Deletion of the Consumer Advocate (CA). HT proposed several revisions which would result in the elimination of the role of the CA to represent the interests of consumers in all proceeding before the telecommunications commissioner (commissioner). Rejected: DCCA believes that the CA performs a vital role to represent and protect consumers. See pp. 8, 26, 33-37.
 - Narrowed the authority of the commissioner to delegate his/her authority. Accepted. See pp. 19-20.
 - Changed the arbitration provision to be non-binding. Rejected. Since the section giving the commissioner the authority to use alternative dispute resolution procedures already included mediation, DCCA felt it was both unreasonable and impractical if any arbitration was also non-binding. See p. 30.
 - Proposed deletion of various sections in the existing statute including those involving "price caps" as being obsolete in the current marketplace. Rejected. DCCA has been advised by legal counsel that while price cap regulation is no longer deemed necessary for telecommunications services provided on a retail basis, such regulation arguably remains necessary and available for wholesale telecommunications services and in those instances where HT is the carrier of last resort. Thus, although DCCA looks forward to a future in which all consumers in Hawaii enjoy vibrant competition in their access to modern communications service, the existing regulatory tools should remain available to DCCA in order to help facilitate this outcome. See pp. 51-53.
 - Proposed changing provisions in the existing statute which appear to allow HT to raise rates for ancillary services (call waiting, VOIP, etc.) above the tariff rate without regulatory approval. Rejected. The Consumer Advocate has advised DCCA that the deletion of this section could have the same effect as SB 2108, which the Consumer Advocate opposed because HT could use ancillary service rates to subsidize basic exchange rates. Doing so would make it difficult for the Consumer Advocate and the Commissioner to monitor HT's performance in this area. See pp. 52-53.
 - Added a new provision which would require the commissioner to ensure confidentiality of propriety and confidential that was submitted in annual financial reports. Accepted. See p. 43.

- Proposed deletion of a provision which would allow fees assessed for the one-call center to be used for the PUC's administrative costs. Rejected. Because the PUC will continue to operate the one-call center, DCCA defers to the PUC on this item. See p. 68.
- Deleted a provision pertaining to separate affiliate audits. DCCA was advised by its legal counsel that this requirement is governed by federal law. Accepted. See p. 50.
- Deleted all provisions giving the commissioner oversight over a carrier's issuance of stock as it relates to changes of ownership and control of a telecommunication provider/carrier and approval of mergers and consolidations. Rejected. These are present in the current law administered by the PUC. DCCA feels that there is strong public interest to retain this oversight authority. See p. 63-67.
- Proposed deletion of broadband service providers from the state universal service fund section. This is inconsistent with the trend at the federal level where the universal service fund is being transitioned from telecommunications to broadband. Rejected. See pp. 71-73.
- Clarified the section related to the payment of the public utility fee would not apply to telecommunications carrier to as to avoid duplicate payments. Accepted. See p. 128; see also p. 126-27.
- Clarified that existing filings, waivers, exemptions, rulings, tariffs would be included in the transfer of regulatory oversight from PUC to DCCA. Accepted. See p. 161-62.
- Proposed an amendment which specified that find that telecommunications carriers are not public utilities for purposes of HRS Chapter 269. Rejected. DCCA was advised by counsel that this could have unintended consequences regarding such issues as access to rights-of-ways, condemnation, obligations under common law, etc. As an alternative, a new Section 21 to the bill was added which states that although a telecommunications carrier is a public utility, it is no longer subject to regulation by the PUC. This provision was added to ensure the avoidance of confusion regarding whether the PUC will have continued authority to regulate and collect fees from telecommunications carriers and common carriers following the appointment of the Commissioner and the effective date of those provisions transferring authority to the Commissioner. See pp. 120, 122, 126-27.

2. HECO and the Public Utilities Commission.

- Both of these entities submitted proposed revisions to section -6(d) of this Bill which covers the approval process where a telecommunications provider or carrier requests access to poles, ducts, conduits or other infrastructure owned by the electric utility company. Because of current time constraints, DCCA has deleted this section of the bill and will continue to discuss this issue with the parties. See p. 13.
- In addition HECO proposed language to specify that the Commissioners duties and authorities would be exercised in accordance with applicable PUC safety and engineering standards, orders, guidelines and policies. Accepted. See p. 17.

3. AT&T

- AT&T had requested insertion of a specific provision stating that would “deregulate wireless”. Rejected. DCCA does not support such a provision at this time.
- AT&T also requested deletion of the Commissioner’s approval of mergers of telecommunications providers. Rejected. For the reasons stated in the HT section, DCCA does not support the removal of this provision at this time.
- AT&T proposed insertion of a provision stating “wireless would not be regulated to any more degree than it is now.” DCCA is receptive to this request and suggested that AT&T provide such a provision which could be inserted into section 1 of the Bill. AT&T countered that such a statement should be in section 2 of the Bill. Since the parties could not agree, no statement was inserted. AT&T provided written comments that they asked to be included with this memorandum. They are attached as Appendix A.

4. Oceanic

- Oceanic did not provide any specific amendment to the bill but offered comments which have been attached to this memo as Appendix B.

SB 2788

1. Oceanic provided the following amendments to this bill:

- Revised the reporting requirements for the mapping data to be done on a census block basis or in cases where service was only available to a portion of the census block, then the report could specific a percentage of the census block. This revision was the result of the discussion during the BAAC meeting on 2/10/12. After further review, DCCA felt this method would not be useful because no other governmental authorities accepted reporting using this method (including federal agencies responsible for determining broadband coverage in conjunction with federal grants and loans) nor would there be any readily accessible means to verify data reported in this fashion. As such, DCCA has proposed a reporting requirement based on street location v. individual address or tax map parcel. DCCA was advised that reporting by street location is done in other jurisdictions and doing so should alleviate concerns regarding the disclosure of individual customer data.
- Revised the confidentiality section of the bill to be more explicit. Accepted.

2. AT&T.

- AT&T proposed an amendment which would provide a different data reporting procedure for wireless broadband providers which would include maximum available download and upload speeds in various locations. DCCA accepts the idea that a separate reporting requirement that is more applicable for wireless providers makes sense but at the same time, as pointed out during the previous committee hearings, there is clearly a difference between maximum speeds and generally available coverage v. actual speeds and actual coverage. The parties are in discussions concerning specific language that would be mutually acceptable. In the meantime, the current bill contains "generic" reporting

language to provide for the concept of a separate reporting requirement for wireless providers.

- DCCA has proposed a requirement that is more specific than just maximum speeds but instead tries to obtain actual speeds and coverage.

3. HT

- HT did not provide any specific amendment to the bill but offered comments which have been attached to this memo as Appendix C.

Appendix A

Re: AT&T Comments on Hawaii SB2786 to Move Regulation of Telecommunications Companies To the Department of Commerce and Consumer Affairs

SB2786 would transfer the regulation of telecommunications companies and cable companies to a "Communications Division" within the Department of Commerce and Consumer Affairs ("DCCA"). The Communications Division would be headed by a single Communications Commissioner ("Commissioner"), who would be appointed by the director of the DCCA with the approval of the governor. The Commissioner would be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within Hawaii and regulating telecommunications and cable operators. To ensure that there is no gap in regulatory authority caused by the transition, the Bill provides for the current rules and decisions established by the Public Utilities Commission for telecommunications carriers to remain in effect unless and until they are changed by the Commissioner.

GENERAL CONCERNS

There are two general concerns about the Bill: (1) vesting all regulatory authority in one Commissioner, and (2) provisions that appear to give the Commissioner regulatory authority over broadband services, including wireless broadband services.

One Commissioner. Currently and for many years, regulation of telecommunications has been performed by the Hawaii Public Utilities Commission ("PUC"), composed of three commissioners. That body and its staff have knowledge of and experience with telecommunications. Importantly, the commissioners on a three-person commission bring different perspectives and backgrounds to bear on the many issues surrounding telecommunications. For example, in the case of the PUC, the 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.

Authority over broadband provided on various technologies. Although described as simply transferring the PUC's current authority to the Communications Commissioner, the Bill appears to increase the State's regulation of broadband providers and services. Currently, the statutory authority of the PUC does not extend to broadband services. Moreover, because many broadband services, including broadband Internet access service, are interstate information services, states lack jurisdiction to regulate providers of these services. Permitting individual states to regulate broadband providers could result in a patchwork quilt of inconsistent and expansive state requirements across the nation, which would impose incredibly burdensome obligations on providers like AT&T that offer broadband services in all 50 states and the District of Columbia. State regulation of broadband services is inconsistent with FCC and Congressional policies that seek to promote broadband deployment with a light regulatory touch. Yet, the Bill includes many provisions authorizing the Commissioner to regulate broadband services. For example:

1. **(p. 3)**¹ The Commissioner may develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the state of Hawaii. It is worthwhile for Hawaii to set broad policies to encourage the deployment of broadband facilities by creating a political and business environment that motivates broadband providers to invest in the state. However, to the extent the Commissioner attempts to mandate the construction of broadband facilities or impose rules concerning rates, terms, or conditions for broadband services, the Commissioner would exceed state jurisdiction over broadband services and discourage broadband investment.
2. **(pp. 3-4)**² The Commissioner can develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public. Again, to the extent the Commissioner's programs require providers to construct infrastructure or share that infrastructure that would constitute regulation beyond the State's jurisdiction. Moreover, history has shown that sharing infrastructure by competing providers can lead to serious disputes between those competitors, as was the case with sharing of the legacy telecommunications infrastructure.
3. **(p. 6)**³ The Bill would allow the Commissioner to establish a minimum speed for an application to be considered "broadband" (p. 6). This would be inappropriate regulation of terms and conditions of broadband service.
4. **(pp. 13-16)**⁴ The Commissioner's duties would also include:
 - Ensuring that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video and that are available at just, reasonable, and nondiscriminatory rates.
 - Developing a comprehensive policy to further the deployment of broadband services, including Internet access, in the state. The study shall include consideration of communications by wire and radio, including satellite and wireless services.

As stated before, developing policies to reach these goals by creating a fertile environment for broadband providers to invest and operate is admirable. Attempting to achieve the goals by rules and regulations on broadband providers, including wireless carriers, would exceed the state's jurisdiction and be counterproductive.

5. **(p. 16)**⁵ The Bill requires the Commissioner to develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services in the state. The legislation indicates that the Commissioner shall fund those programs with fees collected pursuant to the legislation and from appropriations from the state. It is unclear what effect this provision would have on fees paid by telecommunications and cable carriers.

6. **(pp. 44-47)**⁶ As is the case under current law, the Bill would allow the Commissioner to exempt a telecommunications carrier from any or all of the provisions of this chapter, except the requirements of section 36 (interconnection rules), upon a determination that the exemption is in the public interest (similar criteria as HRS §269-16.9. The Bill, however, adds the following factor for the Commissioner to consider: "the impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers (p.47). This would give the Commissioner the improper ability to influence the broadband plans of telecommunications carriers by conditioning exemptions on certain broadband activities.
7. **(pp. 71-75)**⁷ These sections address universal service. Under current law, the state universal service fund can be used to maintain affordable, just, and reasonable rates for residential basic service. The bill would allow the Commissioner to develop universal service programs for broadband services "as defined by the Commissioner." For example, at page 72, the Bill states that the universal service program" would ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by majority consumers located in the metropolitan areas of the state." Also, at page 74, the Bill provides that the Commissioner shall require all telecommunications carriers providers to contribute to the universal service program.

EXAMPLES OF OTHER CONCERNS

In addition to the general concerns above, there are several other concerns with the language in the Bill. A non-exhaustive list of those concerns is as follows:

1. **(p.5)**⁸ The Bill provides for transitional provisions that ensure that there is no gap in regulatory authority caused by the transition, if and until, the Commissioner takes appropriate action to change existing rules, decisions, and other determinations. While there definitely is a need for such a rule, the Bill is not clear as to what procedures the Commissioner must follow in order to change rules, decisions, and other determinations of the previous Commission.
2. **(p. 19)**⁹ The Commissioner has authority to initiate an investigation "for any other reason determined by the Commissioner to be necessary or appropriate to carry out the requirements of this chapter." This very broad language is not included in the investigatory powers currently provided to the PUC.
3. **(p. 20)**¹⁰ The Commissioner's delegating powers are too broad. For example, the Commissioner can delegate any of his or her powers to any employee of the division (e.g., an office assistant).
4. **(pp. 25-26)** The Commissioner has broad power under proposed § - 15 to investigate a telecommunications carrier if it believes the carrier is violating or failing to comply with any provision of the legislation or any rule, order or other requirement of the Commissioner. Waivers were granted to wireless carriers

pursuant to Decision and Order No. 20890 issued on April 7, 2004 in PUC Docket No. 03-0186. These waivers should continue.

5. (p. 39) Under current law (HRS § 269-28(b)) there is a cap of \$500,000 on penalties for actions arising out of the same act or omission. The Bill would eliminate that cap.
6. (pp. 40-41)¹¹ Currently carriers are required to obtain a certificate of public convenience and necessity, certificate of authority, or certificate of registration before providing service. The Bill would create a new obligation to file a separate application (instead of tariff) to provide any modified or new service. Also, the Bill would require wireless carriers to provide certain information when applying for a certificate of registration. Wireless carriers currently are not required to provide that information pursuant to PUC D&O Number 20890.
7. (p. 53)¹² The provision on lines 5 and 6 allows the Commissioner to impose alternative rate regulation procedures. However, there is no indication of what notice and process the Commissioner must use prior to imposing alternative rate regulation procedures. Notice and process should be established.
8. (p. 54)¹³ The Bill allows the Commissioner to waive rate regulation for services the Commissioner determines "by whatever process the Commissioner determines to be appropriate pursuant to rule," to be effectively competitive. Again, this is too vague. Notice and process should be identified.
9. (p. 55)¹⁴ At lines 6 through 8, the Bill would require that "the rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area." To the best of our knowledge, this requirement is not present today, and rates do vary between islands. Also, there is a proposed bill, HB 1868, that would eliminate the need for Commission review of price increases for services other than basic service. If that bill is passed, this section would have to change.
10. (pp. 55-56)¹⁵ Beginning at line 21 on page 55, the Bill provides that "unless and until the Commissioner 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 as prescribed in section... provided, however, that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier." This is inconsistent with HAR 6-80-136 (4), which waives public and contested case hearings for proposed rate increases, except for proposed increases to basic service rates in high-cost areas. It is extremely important to make sure that this Bill does not eliminate current rules adopted by the PUC, unless and until the Commissioner changes them after notice and an opportunity to be heard. Such changes could amount to a large step backward in Hawaii's regulation of telecommunications.
11. (p. 60)¹⁶ Section 41 requires the Commissioner to adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers, which may include unauthorized changes in subscriber carrier selections. Current statutes address cramming and slamming (i.e., HRS §269-26.92), which the Bill would delete.

The current statutory rules should be maintained. Additional rules are unnecessary.

12. **(p. 70)**¹⁷ Section 52 would allow the Commissioner to require telecommunications carriers to pay a fee for the operation of the "one call center." Currently, there is a provision which allows the crediting of this fee for carriers who pay the public utility fee required under HRS §269-30. This legislation does not appear to continue that exemption. This would be another new fee on telecommunications carriers.
13. **(pp. 93-97)**¹⁸ Beginning at line 20 of page 94, the Bill establishes a compliance resolution fund and a mechanism for collecting contributions to that fund. Currently, it is our understanding that telecommunications companies do not contribute to such a fund. Rather, they pay an annual regulatory fee, which would continue under the Bill as contributions to the communications fund established in the Bill. Although the Bill allows for the transfer of up to 30% of the regulatory fee to the compliance resolution fund, it is not clear whether telecommunications companies could additionally be assessed a direct contribution to the compliance resolution fund.
14. **(p. 165)**¹⁹ Section 54 is a critical provision. Its intent is to keep all current regulation of telecommunications carriers effective unless and until changed by the Commissioner. This provision is critical because the Public Utilities Commission has granted waivers and exemptions to various rules governing both wireline and wireless carriers. Loss of these waivers and exemption would be a huge regulatory step backward for telecommunications in Hawaii. To ensure this does not occur, we would propose edits to this section. Unfortunately, we suspect there would still be different interpretations as to what PUC regulations will continue and which ones the Commissioner will need to establish.

FOOTNOTES

¹ "The commissioner shall: (1) Develop state policies relating to the provision of broadband services and interstate and international communications services and facilities serving or transiting the State of Hawaii;" (p.3, line 8)

² "(3) Develop and implement initiatives and programs to construct or otherwise make available additional infrastructure for the provision of broadband services, and the sharing of such infrastructure by competing providers of broadband services to the public." (p.3, line 19.)

³ "'Broadband' means an 'always on' service that combines computer processing capabilities, information provision, and computing interactivity with data transport, enabling end users to access the internet and use a variety of applications, at minimum speeds set by the commissioner." (p.6, line 18)

⁴ "(a) The commissioner shall strive to ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality network facilities and services that provide subscribers with sufficient network capacity to access services that provide a combination of voice, data, image, cable, and video, and that are available at just, reasonable, and nondiscriminatory rates." (p.13, line 18).
"No later than July 1, 2014, the commissioner shall study and develop a comprehensive policy to further the deployment of .broadband services, including Internet access, in the State. The study shall include

consideration of communications by wire and radio, including satellite and wireless services. The commissioner shall develop plans and strategies to increase broadband affordability, penetration, and competitive availability in the State. (p.14, line 3).

⁵“(c) The commissioner shall develop programs and initiatives to encourage and facilitate the deployment of broadband services and access to those services by users in the State. The commissioner shall fund these programs and initiatives using funds collected pursuant to section -21 and deposited in the communications special fund pursuant to section -20. In addition, the commissioner may seek appropriations of funds from the State.” (page 14, line 14)

⁶“(13) The impact of the exemption on the competitive availability and affordability of broadband and other advanced services to consumers. (p.47, line 1).

⁷“Maintain affordable, just, and reasonable rates for basic residential telecommunications service and broadband service, as defined by the commissioner” (p. 72, line1)
“Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications and broadband services which are used by a majority of consumers located in metropolitan areas of the State.”(p.72, line 13)
“(e) The commissioner shall require all telecommunications carriers and broadband service providers to contribute to the universal service program. The commissioner may require a person other than a telecommunications carrier or broadband service provider to contribute to the universal service program if, after notice and opportunity for hearing, the commissioner determines that the person is offering a commercial service in the State that directly benefits from the telecommunications or broadband infrastructure, and that directly competes with a telecommunications or broadband service provided in the State for which a contribution is required under this subsection.” (p.74, line 16).

⁸“This Act also provides for transitional provisions that assure that there is no gap in regulatory authority caused by the transition, and provides that prospectively the commissioner may take appropriate action to change existing rules, decisions, and other determinations. Finally, this Act proposes conforming amendments to other chapters of the Hawaii Revised Statutes.” (p.5, line 3)

⁹“(d) The commissioner may initiate an investigation concerning a possible violation of this chapter, or to ascertain the conditions of the broadband, telecommunications, or cable industries in the State, or for any other reason determined by the commissioner to be necessary or appropriate to carry out the requirements of this chapter.” (p. 19, line 14).

¹⁰“§ -10 Delegation of powers. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the division employed pursuant to section -5(a), (b), or (d) acting in the name and by the delegated authority of the commissioner. Any power, duty, or function vested in the commissioner by this chapter may be exercised, discharged, or performed by any employee of the department utilized pursuant to section -5(c) or (e) acting in the name and by the delegated authority of the commissioner, with the approval of the director.” (p. 20, line 1)

¹¹“Further, before substantially altering, modifying, or changing the nature or scope of authorized telecommunications service under its existing certificate, or expanding the nature or scope of service of telecommunications services beyond the existing certificate, a telecommunications carrier shall file a separate application for the proposed, modified, or new service. (p.40, line 22).

¹²“(b) The commissioner may issue an order imposing alternative rate regulation procedures.” (p.53, line 6)

¹³“(d) The commissioner may waive rate regulation and allow telecommunications carriers to have pricing flexibility for services that the commissioner determines, by whatever process the commissioner determines to be appropriate pursuant to rule, to be effectively competitive” (p. 54, line 14;

¹⁴ “The rate charged shall be available at the same terms for all customers in all geographic locations within the telecommunications carrier's service area. (p.55, line 6)

¹⁵ “Unless and until the commissioner 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 as prescribed in section -13(c), at which the customers of the telecommunications carrier may present testimony to the commissioner concerning the increase; provided that a contested case hearing and public hearing shall be held upon request by the consumer advocate or any customer of the telecommunications carrier. (p. 55, line 21).

'6-80-136 Standard list of waivers. (a) Unless ordered otherwise by the commission, the following regulatory requirements of chapter 269, HRS, for the provision of intrastate telecommunications services by telecommunications carriers other than the incumbent carrier are waived:

(1) Requirement that a separate, formal application for certification be filed with the commission for each new telecommunications service the telecommunications carrier proposes to offer, as mandated by '269-7.5, HRS, and '6-61-86. Instead, the carrier shall file a separate tariff for each proposed new service;

(2) Requirement that a telecommunications carrier maintain its financial records in conformance with the uniform system of accounts, as mandated by '269-8.5, HRS. Instead, the carrier may maintain its financial records in accordance with generally accepted accounting principles;

(3) Requirement that all records and books pertaining to the telecommunications carrier's intrastate operations be located in the State, as mandated by '269-8.2, HRS. Instead, the carrier shall promptly provide copies of its out-of-state records and books to the commission upon the commission's request; and

(4) Requirement subjecting telecommunications carriers to rate of return regulation and to public and contested case hearings on proposed rate increases, as mandated by '269-16, HRS, and "6-61-86 to 6-61-88;

except that waiver of this requirement does not apply to basic service in high cost areas provided by carriers receiving State or federal universal service fund subsidy or to noncompetitive services.

(b) In addition to subsection (a), fully competitive services shall be exempt from the '6-80-142 thirty-day tariff filing requirement.

¹⁶ “ -41 Unfair or deceptive acts or practices. The commissioner shall adopt rules prohibiting unfair or deceptive acts or practices by telecommunications carriers and telecommunications service providers, including resellers and aggregators of telecommunications services. Such unfair or deceptive acts or practices may include unauthorized changes in subscriber carrier selections.” (p.60, line 11)

¹⁷ “ -52 One call center; advance warning to excavators. To finance the establishment and operation of the one call center pursuant to chapter 2693, and the administrative costs of the public utilities commission, the commissioner may direct all telecommunications carriers and cable operators to pay to the public utilities commission a fee in an amount and at a schedule determined by the commissioner.

Hawaii Rev. Stat. § 269-30 : (d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f)

¹⁸ “SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (0) to read as follows:

“(0) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485A or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee

to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section.” (p.93, line 12)

¹⁹ “SECTION 54 [UNEDITED]. Transfer of functions. (a) All rules, policies, procedures, orders, certificates of authority, certificates of registration, certificates of public convenience and necessity, franchises, guidelines, and other material adopted, issued, or developed by the department of commerce and consumer affairs and public utilities commission to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect until amended or repealed, as applicable, by the communications commissioner. In the interim, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission in those rules, policies, procedures, orders, franchises, guidelines, and other material is amended to refer to the communications division or the communications commissioner, as appropriate. (b) All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of commerce and consumer affairs and public utilities commission pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the communications commissioner by this Act, shall remain in full force and effect. Effective upon approval of this Act, every reference to the department of commerce and consumer affairs, director of commerce and consumer affairs, public utilities commission, or chairperson of the public utilities commission therein shall be construed as a reference to the communications division or communications commissioner, as appropriate.

APPENDIX B

Date: 02/12/2012 03:02PM
Subject: Draft redline of SB2786

Aloha Everett,

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

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

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

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

For these reasons, we urge you to adopt these changes.

My best,

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APPENDIX C

From: Lester Chu <Lester.Chu@hawaiiantel.com>
Date: 02/12/2012 07:31PM
Subject: BAAC meeting: Feedback on SB 2788 / HB 2526

Everett,

Thanks for giving the BAAC an opportunity to provide input to the telecommunications bills under consideration. As discussed, the advancement of broadband is core and critical to the success of Hawaiian Telcom, and we look forward to working with others on the BAAC on a cooperative approach to aggressively expand broadband coverage and speeds across the State.

Hawaiian Telcom continues to be very concerned that the proposed draft of SB 2788 / HB 2526 calls for detailed confidential customer information without a clear indication of why this information is required and how it would be beneficial to our stated objectives. During the BAAC broadband symposium on January 12, 2012, the speakers from North Carolina and Ohio described how they have achieved success by working collaboratively with all parties on a voluntary basis, and not by imposing regulations on broadband services. For that reason, Hawaiian Telcom recommends that a better approach could be voluntary mapping such as that used by South Carolina (<http://www.connectsc.org/> and <http://www.gis.sc.gov/news.html>).

Again, thanks for the opportunity to comment. We look forward to continued dialogue on meaningful solutions to advance broadband in the State of Hawaii.

Thanks, Lester

Ph. (808) 546-3130

S.B. NO. 2788 SD1

A BILL FOR AN ACT

RELATING TO REPORTING REQUIREMENTS FOR TELECOMMUNICATIONS AND
CABLE TELEVISION PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Governor Abercrombie's creation of the Hawaii broadband initiative boldly states that advanced broadband capability is an essential infrastructure necessary to drive innovation, the economy, and job creation in the twenty-first century. High-speed broadband infrastructure and affordable broadband services are essential for the advancement of education, health services, public safety, research, innovation, e-government services, economic development, and public safety. The telecommunications industry is an essential element of Hawaii's economy and vital to the health and welfare of the people of Hawaii.

Implementation of the Hawaii broadband initiative requires statistical data for accurate and timely analyses. The data will also assist in assessments and evaluations of available broadband infrastructure and services. Such analyses will also aid in the development of initiatives related to the future expansion and enhancement of broadband infrastructure and services.

SECTION 2. In January 2010, the United States Department of Commerce's National Telecommunications and Information Administration awarded the State of Hawaii a broadband data and development grant, number 15-50-M09057, to create and maintain a broadband map illustrating available broadband services throughout the State. In addition to the mapping, other grant activities included analysis of broadband availability and adoption, identification of services at public schools, libraries, hospitals, colleges, universities and public buildings (referred to as community anchor institutions), and development of a five year plan and roadmap to increase access and adoption through legislation and local technical assistance.

Of particular interest, the federal grant required broadband data to be aggregated at the census block level. Due to this requirement, if any subscriber in a census block receives broadband service from a provider, that entire census block is deemed to be served by that provider. The legislature finds that reporting on census block basis, standing alone, may result in an inaccurate assessment or overrepresentation of broadband availability within the State.

~~Broadband~~ The legislature recognizes, however, that requiring reporting of broadband data collected from and provided by providers can and should be compiled at on a more elementalgranular level. ~~Broadband data, including availability~~

~~and pricing, can be aggregated on an address or tax map key basis, rather than at~~ requires the census block disclosure of information that broadband providers consider proprietary. Accordingly, the legislature finds that reporting broadband data by street level. ~~Reporting broadband data by address or tax map key~~ will provide increased detail of broadband penetration and availability, and will more accurately depict the locations and the status of broadband access in Hawaii while alleviating some of the concerns regarding the confidential and proprietary nature of this information.

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TELECOMMUNICATIONS AND CABLE INDUSTRY INFORMATION REPORTING

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Broadband access or broadband service" means an "always on" service that includes but is not limited to computer processing capabilities, information provision, and computing interactivity with data transport, enabling end users to access the internet and use a variety of applications at minimum speeds pursuant to the Federal Communications Commission.

"Broadband infrastructure" means the medium used to provide broadband access or broadband service, including fiber optic cable, copper cable, coaxial cable, and wireless media, such as satellite communications, wi-fi, and worldwide interoperability for microwave access.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Mapping information" means that information required under the United States Department of Commerce's National Telecommunications and Information Administration broadband data and development grant, number 15-50-M09057.

"Provider" means any cable operator, telecommunications carrier, or telecommunications common carrier that provides broadband service.

§ -2 Informational reports. ~~(a) for wireline providers.~~ On ~~January 31 and~~ July 31, commencing on July 31, 2012, every provider shall file with the department, in a form as prescribed by the director, separate reports for each county that include broadband access availability, along with maximum and pricing average speeds and bandwidth over the most recent thirty-day period, detailed by ~~address or tax map key~~ street

without the disclosure of any other personal or private information.

~~— (b) The department may request that a provider submit additional information to the department when the department deems it necessary to perform its responsibilities under this chapter.~~

~~— § -3 § -3 **Informational reports for wireless providers.** On July 31, commencing on July 31, 2012, every facilities-based provider of wireless broadband internet service shall file with the department, in a form as prescribed by the director, separate reports for each county that include the provider's name, information regarding the broadband services they make available in each area, and GIS-compatible map layers depicting areas where such broadband services are available to end users. the maximum advertised downstream speed, the maximum advertised upstream speed, the effective average downstream speed, the effective average upstream speed, and GIS-compatible map layers separately depicting geographic areas in which (1) the maximum advertised downstream speed is available, (2) the maximum advertised upstream speed is available, (3) the effective average downstream speed is available on an average basis, (4) the effective average upstream is available on an average basis, and (5) broadband service, as defined by the minimum speeds set by the director, is available, but separately~~

~~identified to show where it is available at (a) less than the maximum advertised downstream speed, (b) less than the maximum advertised upstream speed, (c) less than the effective average downstream speed on an average basis, and (d) less than the effective average upstream on an average basis.~~

§ -4 Confidential information. (a) Notwithstanding chapter 92F, statements and reports provided to the department pursuant to ~~sectionsections~~ -2 and -3, and the data contained therein, shall be deemed confidential and proprietary; provided that the department may disclose mapping information.

(b) Information and data collected by the department may only be shared with the attorney general, the consumer advocate, and the director of business, economic development, and tourism, and their authorized representatives and employees on a need to know basis, if the information and data are necessary for the performance of the agency's or other department's duties and functions and are compatible with the purpose for which the information was collected or obtained.

(c) Unless otherwise provided by law, the department and any other department or agency permitted access under subsection (b) shall be prohibited from:

- (1) Using the information furnished or obtained for any purpose other than the purposes for which it is supplied;

- (2) Making any publication whereby the data furnished by any person can be identified; and
- (3) Allowing any person other than the director, the attorney general, the consumer advocate, the director of business, economic development, and tourism, and their authorized representatives and employees, to examine the individual reports or statements provided.^u.

(d) The department and any other department or agency permitted access to confidential information shall, to the extent that it does not already have such policies and procedures in place, implement and train its staff on a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of confidential information and data. The information security program shall be designed to:

- (1) Ensure the security and confidentiality of confidential information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of confidential information;
and
- (3) Protect against unauthorized access to or use of confidential information that could result in personal or competitive harm to individuals or providers.

SECTION 4. This Act shall take effect on July 1, 2012.

Draft

Report Title:

Broadband Providers; Reporting Requirements

Description:

Requires broadband providers to report to DCCA availability and ~~pricingspeeds~~ on ~~an address or TMA~~ street basis, instead of the current census block basis, ~~to DCCA~~. (SD1 Proposed)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

Draft

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

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

**RE: SB2788 - Reporting Requirements for Telecommunications and Cable
Television Providers – CONCERNS**

February 8, 2012; 1:15 p.m., Hawaii State Capitol Room 016

Aloha Chair Fukunaga, Chair Baker, 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 express our concerns on SB2788 – Relating to reporting requirements for telecommunications and cable television providers.

Oceanic is supportive of the Governor's Broadband Initiative and is an active member of the Broadband Assistance and Advisory Council and Broadband Working Group. We continue to support the state's expansion of broadband infrastructure that is in line with consumer and market demands.

Recently, Oceanic was informed that the purpose for this bill is to provide information for planning and for expanding the deployment of broadband in the state. However, as currently drafted, we see unintended consequences that will have serious implications on broadband deployment.

Among our concerns are:

1. Reporting requirements would be costly to administer:
 - Disruptive to Oceanic's current business processes – substantial time and manpower would be diverted from actual building of broadband network to provide the immense amount of detailed reports being requested;

- Highly burdensome on broadband providers and would require additional staffing just to keep up with reporting requirements;
 - Increases overall burden and cost of doing business and ultimately would increase cost of services to consumers; and
 - Likely to slow down future deployment of upgrades and expansion.
2. Onerous requirements for providers to submit reports on highly proprietary information including but not limited to:
- ALL DATA CENTER LOCATIONS AND OPERATIONS MAPS;
 - DETAILED CONNECTION INFORMATION, including number of connections supplied, bandwidth of each connection and upstream backhaul providers; numbers of network nodes and locations including connection speeds and number of subscriber connections; and
 - FINANCIAL INFORMATION including income statements, balance sheets, and cash flow statements on a periodic basis and an annual independent financial audit.
3. Subjects Oceanic's proprietary and competitive information to be publicly shared:
- Product design and operations are normal a function a company conducts internally to protect valuable proprietary processes and trade secret information from public discussion; and
 - Use of information could be used to give advantage to providers without sharing of investment made by existing broadband providers.
4. No other states subject telecommunications and cable television providers to similar reporting requirements – this would have a chilling effect on broadband deployment in the state:
- Broadband providers could stop investing in the network if they are subject to these requirements; and
 - This also would be a disincentive to other carriers from entering the Hawaii market.

For these reasons, we respectfully ask the committee to carefully consider our concerns regarding SB2788.

As always, we appreciate the opportunity to offer our testimony on this bill.

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

LATE



Lyndall W. Nipps
Vice President, Regulatory-Western Region

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

February 8, 2012

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

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

RE: **SB 2788 - Reporting Requirements for Telecommunications and Cable Television Providers**

Hawaii State Capitol Room 016 – 1:15 pm

Aloha Chair Fukunaga, Chair Baker 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 SB 2788.

As a company that offers high-speed broadband service within the state, we are affected by provisions in this bill that would mandate TWTC to provide reports for each county which includes broadband access availability, pricing, and other detailed proprietary 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.

Furthermore, there are proprietary data and confidentiality concerns we have with this level of detail as it could lead our competitors to predatory pricing of services out of the market.

Finally, there is no clear reason why this data is needed since all providers recently participated in the state's Broadband Mapping Project.

We would like to work with the committee and other stakeholders to resolve these issues and, to perhaps, provide reasonable information on a voluntary basis.

For this reasons, we respectfully urge members to hold this bill in committee.

Sincerely,

/s/

Lyndall Nipps
Vice President, Regulatory Affairs-Western Region
tw telecom of hawaii lp