



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

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by

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Chair Kim, Vice Chair Tsutsui and Members of the Committee:

I am pleased to present this testimony today not in my capacity at the University of Hawaii, but as Chair of the Hawaii Broadband Task Force, which developed the recommendations at the core of this proposed legislation.

The Hawaii Broadband Task Force was established by the 2007 Legislature with a mix of public and private sector members appointed by the Speaker of the House and Senate President to provide recommendations on how to advance broadband within the State of Hawaii. I was honored to be elected chair by my fellow Task Force members.

The Task Force gratefully acknowledges the work of the State Auditor and her office in facilitating our work. We fulfilled our duties under full Sunshine, through public meetings that were fully noticed and with approved minutes published on the web. One interim report was provided to the Legislature before the 2008 Session and made public at that time. And as we neared completion last fall, intermediate drafts of our final report were publicly available on the web.

Summary of Report and Proposed Legislation

While there wasn't enough time or money to do everything we had hoped, the Task Force unanimously put forward four key recommendations, summarized as follows.

1) **Broadband is Vital to Hawaii**

Broadband is critical infrastructure for Hawaii's 21st century advancement in education, health, public safety, research & innovation, economic diversification and public services. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. The task force recommends that Hawaii establish an aggressive and forward-looking vision that positions the State for global competitiveness.

2) **Driving Broadband Deployment**

The task force found that the U.S. as a whole is dramatically lagging the leaders in the developed world in our broadband capabilities and pricing, and is falling farther behind each year. While Hawaii is doing well on some measures relative to some other parts of the U.S., the State also falls to the bottom in many national broadband studies. The task force recommends that the State consolidate all relevant regulatory and permitting responsibilities in a new, one-stop, broadband advancement authority that promotes Hawaii's policy objectives, streamlines permitting and access to public infrastructure, promotes sharing to reduce costs, collects data including broadband maps in support of Hawaii's progress and provides advocacy at all levels of government.

3) **Maximize Hawaii's Connectivity to the World**

Hawaii's "lifeline" for broadband to the rest of the world is expensive submarine fiber. While Hawaii was once the crossroads for trans-Pacific telecommunications, all of the new fiber systems built across the Pacific since 2001 have bypassed Hawaii. The task force recommends that Hawaii aggressively promote the landing of new trans-Pacific submarine fiber in Hawaii,

including a shared access cable station that reduces barriers to fiber landing in Hawaii.

4) Stimulate Broadband Adoption and Use

The task force believes supplying advanced broadband at affordable prices is just one side of the equation. The task force recommends that Government lead by example in demonstrating the value of broadband to our citizenry, deploying broadband services to the public, and ensuring that we do not leave behind the economically disadvantaged members of our communities who may be inhibited from full participation in the 21st century.

There is much more data and detail in our full report, which was provided to each Legislator and the Governor just before the end of last year.

By the time we completed our work it was quite clear that we were facing our most difficult financial condition in decades. While the Task Force had many ideas on public support that would advance Hawaii's broadband capabilities in ways that could aid our economic revitalization, we realized that new public investments would be nearly impossible this Session. We therefore worked with the Administration to develop legislation that would be completely revenue neutral. Thus, the legislation before you implements only the Task Force's first and second recommendations. In a remarkable sign of consensus, similar bills were introduced this session by the House Majority, House Minority, Senate Majority and State Administration.

In addition, since the completion of the Task Force report the Federal Government has enacted the American Recovery and Reinvestment Act (ARRA), which include several significant activities related to broadband investment. The Bills now under consideration also vest in the proposed new Hawaii Broadband Commissioner the responsibility for those broadband activities delegated by the ARRA to state governments.

Comments on the Issues that Have Arisen

As the bills worked their way through each Chamber, many entities shared their concerns and recommendations. I'd like to share my perspective on the general themes of the testimony that was presented, as I ask you to continue to support legislation to implement the recommendations provided to you by your Task Force.

There was one set of comments about the specific recommendations of the Task Force as implemented in the proposed legislation. I'd like to describe four recurring concerns expressed:

- **Shared Infrastructure**

A number of private providers expressed concern in their testimony about the goal of increasing sharing of infrastructure for broadband. In particular, they expressed grave concern at the possible "taking" of infrastructure built with private investment and the chilling effect this would have on the kinds of future investments needed to advance.

Nothing in the Task Force report or proposed legislation proposes such a "taking." Rather, the Legislation would establish increased sharing of infrastructure as a policy objective. This recommendation stems from the observation that shared infrastructure is a common element in places that have capabilities far beyond those found in Hawaii or the U.S. We also heard many concerns from Hawaii's providers, incumbents and competitors alike, about the unfairness and difficulty of sharing certain utility infrastructure, such as poles and access to governmental facilities. It is important to note that broadband infrastructure is not just fiber optic cabling and wires, but also the towers, poles, conduits and submarine fiber landing stations that are necessary to deploy and provide services. Neither Hawaii nor our providers benefit when our providers must compete and invest to dig up roads and put up poles and pull duplicative bundles of fiber down our streets. When done well, shared infrastructure reduces costs to providers, reduces time to deployment, stimulates innovation, increases competition and results in lower prices and increased choice for consumers. Late last year the International Telecommunications Union issued a major report recommending the sharing of infrastructure as a key to economically viable advancement of broadband capabilities. There are many policy approaches to achieve this that do not involve "taking," and the Hawaii Communications Commissioner will be well-positioned to work with the providers and the community to identify strategies that are appropriate for Hawaii. The Task Force would have no objection to any clarification in the Bill that would make it clear that we are not advocating the "taking" of purely private assets.

- Power of the Hawaii Communications Commissioner

A number of private providers expressed concern in their testimony about the potential power that would be vested in one commissioner. The Task Force recognizes the discomfort that may be caused by a shift from the current model of 3 fulltime PUC Commissioners and one fulltime DCCA Cable Administrator. We modeled our recommendation on the Hawaii Insurance Commissioner. We believe this kind of proven approach will support our goal of a streamlined and consolidated process that maintains revenue neutrality but is supportive of the kind of fast action and advocacy we heard the industry request. We note that the proposed single Commissioner could be selected for her or his expertise in this specific domain, unlike the PUC commissioners who must balance an extraordinarily broad scope of responsibility. We also note that the proposed legislation reformulates the current Cable Advisory Council as the Communications Advisory Council. The Task Force would be very supportive of further improvements in the Legislation that would make it clear that this Advisory Council must be broadly representative and purposefully consulted to provide meaningful input on all key decisions. One idea might be the creation of a broad-based selection committee to prepare nominations to submit to the Governor.

While appreciative of the concerns expressed, we believe that Hawaii must have proactive, professional and cost-effective broadband leadership to achieve Hawaii's goals.

- Concern over New or Increased Fees

A number of testifiers expressed concern that the proposed legislation would increase fees. Your Task Force worked hard to provide recommendations that would be revenue-neutral in these difficult financial times. We would urge that all fees be kept static during the transition to the new regulatory structure, and that all authority available to the PUC or DCCA under current statute be transferred to the Hawaii Broadband Commissioner intact.

- Concern over Broadband Data Collection

Several testifiers have expressed concern over language that would allow the Commissioner to require providers to furnish data about their services and infrastructure, which would be protected from disclosure under UIPA other than in summary form. In general, providers would prefer an approach in which all data collection is voluntary and in which they furnish the data to a non-profit organization of their choice. Several federal laws, including Senator Inouye's Broadband Data Improvement Act and the ARRA, have highlighted the importance of state-level broadband data. Your Broadband Task Force attempted to collect such data as part of our work and included the results we were able to produce in our Final Report. As a result of our efforts, we realized the importance of making this important task someone's job rather than leaving it to chance, and included this task in the portfolio of the Commissioner. We can appreciate the concerns from providers that this requirement not become excessively costly or put their proprietary data at risk. But we believe the Commissioner will be in the best position, in consultation with the providers and consumers, to execute Hawaii's mission under federal law and determine what data is appropriate to advance Hawaii's vision of world-class broadband for all at affordable prices. Case law indicates that the provisions suggested will protect proprietary provider data from unwarranted disclosure.

- Concern over Attempts to Pre-empt Federal Regulation

A number of private providers expressed concern in their testimony that the proposed legislation would pre-empt federal regulation. The Task Force clearly understands this would be illegal and proposed no such thing. The proposed legislation simply consolidates and merges the various authorities that currently flow down from the federal government and which Hawaii currently assigns independently to the PUC and to DCCA. We believe this consolidation of current authorities and responsibilities will position Hawaii to be more effective now and better-positioned for a future that will likely be based on new approaches to federal regulation under a new federal administration that has placed a new emphasis on broadband. The Task Force would have no objection to any amendments that make it clear that Hawaii is not attempting to illegally pre-empt any federal law or regulation.

- Concern that the Bill Does Not Streamline Permitting

A number of private providers expressed concern in their testimony that the proposed legislation

does not actually streamline permitting. The Task Force spent quite a bit of time listening to our private providers describe their frustrations at the costs of the current processes in time and money. We began to meet with County officials, since much of the work must involve both State and County agencies. Nobody had every tried to do this before, and the Task Force observes that, at present, there is no public official at any level in any office with the mission, responsibility or authority to even attempt to streamline the broad range of permitting involved in the deployment of broadband infrastructure. Unfortunately, the time and budget available to the Task Force were simply insufficient for us to redesign the permitting processes that hinder timely and cost-effective progress. We therefore urge that the Hawaii Broadband Commission be established and empowered with this responsibility so that this important work can begin as soon as possible.

Another set of comments requested changes to the proposed legislation on matters that were not part of the Task Force deliberations at all.

- PEG Access

Your Hawaii Broadband Task Force did not address the contentious issues around PEG Access that have been unresolved for several years. We were well-aware that an independent Task Force was at work on these issues. The Broadband Task Force proposal was to simply take the existing PEG responsibilities from DCCA and move them over as-is to the Hawaii Communications Commissioner, with the assumption that any changes the Legislature adopted could be independently rolled into the final statute.

Testifiers have passionately brought their concerns about PEG to this bill, including whether or not the designation of PEG entities should be subject to Chapter 103(D), what the commitment of the PEG entities should be to the first amendment rights of their communities, how the Boards of the PEG entities should be structured, whether there should be more or fewer PEG channels assigned, whether cable franchise fees should be higher or lower, whether more or less of the cable franchise fees should be assigned to PEG entities, and whether new video franchises should be subject to the same requirements as established providers.

The Task Force did not address these issues in our work, and views it as unfortunate that the Broadband bills have become the focus of these difficult, longstanding and contentious PEG conversations that were originally addressed in other measures this session. We urge the Legislature to ensure that Hawaii move forward to create our broadband future regardless of whether or how you choose to resolve these longstanding PEG issues this session.

- Regulation of the Incumbent Carrier

Finally, there has been substantial testimony regarding whether the incumbent carrier should be provided with certain kinds of relief from the current regulatory requirements. We note that these issues have also been the subject of separate legislation. The Task Force did urge movement toward a more level playing field for all providers. However, the Task Force did not do the analysis necessary to make any specific proposals. Our hope was that the establishment of the Hawaii Broadband Commissioner would provide Hawaii with an expert consolidated regulator who could consider all perspectives across what are currently both the PUC and DCCA arenas in a reasoned manner. As with the PEG issues, if the Legislature chooses to make changes at this time we hope you do so in a manner that does not endanger the passage of legislation to enact the recommendations of your Task Force.

Closing

As the task force completed its work at the end of last year, we greeted with great enthusiasm the words of then President-Elect Obama on December 6, 2008: "It is unacceptable that the United States ranks 15th in the world in broadband adoption. Here, in the country that invented the Internet, every child should have the chance to get online, and they'll get that chance when I'm President - because that's how we'll strengthen America's competitiveness in the world."

I hope the Legislature can maintain a focus on the goals and approaches recommended to you by your Task Force to pass a meaningful broadband bill. If Hawaii is able to enact the basic recommendations of the Task Force this year we will be well-positioned for the future, including with the help of federal stimulus funds that will be available for competitive award through the American Recovery and Reinvestment Act.