

**COUNCIL OF THE COUNTY OF MAUI**  
**HUMAN SERVICES AND ECONOMIC DEVELOPMENT SUBCOMMITTEE**  
**SUBCOMMITTEE ON COMMUNICATIONS**  
**INFRASTRUCTURE**

September 12, 2002

**Subcommittee**  
**Report No. \_\_\_\_\_**

Honorable Chair and Members of the  
Human Services and Economic Development Committee  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Subcommittee on Communications Infrastructure, having met on February 5, 2002, February 25, 2002, March 5, 2002, March 19, 2002, March 25, 2002, and May 31, 2002, makes reference to a Miscellaneous Communication dated January 17, 2002, from the Chair of the Human Services and Economic Development Committee, reporting that at its meeting of January 10, 2002, your Human Services and Economic Development Committee established your Subcommittee on Communications Infrastructure.

Your Subcommittee notes that its purpose is to:

1. propose a comprehensive County telecommunications ordinance;
2. study relevant Federal, State, County, and private regulations and agreements; including joint pole and franchise agreements, antenna siting policies, and institutional network planning;
3. discuss the use, regulation, and management of public rights-of-way in order to mitigate negative impacts and maximize public benefits;
4. research options to amend or renegotiate the use, regulation, and management of public rights-of-way and to assess the public service benefits relating to communications infrastructure; and
5. transmit recommendations to the Human Services and Economic Development Committee for further deliberation.

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Your Subcommittee is comprised of the following members:

1. Councilmember Michael J. Molina (Chair)
2. Jeanne Unemori Skog (Vice Chair)
3. Kathryn Matayoshi
4. Sean McLaughlin
5. Jocelyn Perreira
6. Jennifer Sabas
7. Lynne Woods
8. Councilmember G. Riki Hokama (Ex Officio, Non-voting Member)

Your Subcommittee's term was set to expire on April 10, 2002.

By correspondence dated January 23, 2002, Councilmember Tavares transmitted a copy of an article from the September 1999 edition of *American City and County*, entitled "Solving the problem of cell tower placement".

By correspondence dated January 30, 2002, your Subcommittee Chair transmitted: (1) a draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO WIRELESS COMMUNICATIONS ANTENNAS"; (2) correspondence dated April 10, 2001, from Eric Arner, Senior Assistant City Attorney, to Members of the Governing body and David Watkins, City Administrator, City of Lenexa; and (3) a "Local Officials Guide" entitled, "Siting Cellular Towers: What You Need to Know, What You Need to Do". The purpose of the draft bill is to minimize the construction of new wireless communications towers by establishing a policy to encourage the shared use of existing towers ("collocation").

At its meeting of February 5, 2002, your Subcommittee met with the Engineering Chief, Engineering Division, Department of Public Works and Waste Management; an Engineer, Land Use and Codes Division, Department of Public Works and Waste Management; the Planning Program Administrator, Long

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Range Planning Division, Department of Planning; a Captain, Department of Police; and a Deputy Corporation Counsel.

Ms. Elliott Krash, representing the Kula Community Association (KCA), provided written and oral testimony about various telecommunications concerns. She noted her support of creating an ordinance to guide the County on telecommunications matters because it is badly needed. While noting that the KCA uses the services provided by telecommunications providers, she stated that there is also a desire to balance technological advancements with the rural nature of the Kula area. She also noted that others in the community have voiced concerns about the aesthetic, environmental, cultural, historic, health and safety impacts of telecommunications facilities.

Your Subcommittee Chair provided your Subcommittee with a "Plan of Work" which includes the following elements: a research phase, a mission/vision creation stage, and a bill drafting stage.

In discussing the work that it needed to do, your Subcommittee agreed to learn more about the County's authority in various telecommunication matters, along with the authority of the State and Federal governments. Your Subcommittee also discussed the need to look at the applications that are currently before the County as well as consider those applications that will be submitted in the future. Your Subcommittee also discussed the possibility of limiting telecommunications facilities through zoning.

Your Subcommittee Chair stated that the impetus for the creation of your Subcommittee was to avoid a repeat of the placement of the Sprint tower in Paia's Rice Camp, which generated an outcry from the community.

Your Committee Chair asked representatives from the Administration to provide some insight on telecommunications matters in the County.

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The Land Use and Codes Engineer explained how permits for cell towers are currently obtained. He said that like any other structure, cell towers require building permits from his Department. If the tower required permits from other departments or agencies, the applicant would need to pursue those as well.

The Planning Program Administrator noted that the telecommunications issues raised recently are new ones for the Department of Planning. He noted that the Department has hired a consultant to provide an inventory of a number of facilities within the County, including roads, water systems, drainage, parks and even wireless communication networks.

He further noted that during the Sprint tower controversy, the Administration attempted to obtain information about coverage, and other issues, but was told by the wireless communications provider that the information was proprietary. Therefore, it became difficult to determine who needed coverage, and in what locations. He also reminded your Subcommittee that the technology is evolving very quickly, which will require County government to be flexible enough to adjust for technological advances.

The Police Captain noted that the County has invested \$6 million in its 800 megahertz emergency communication system to date. He noted that his concern was to ensure that this system was protected by the draft bill. He noted that currently, police and fire personnel use the system. There are plans to include emergency/ambulatory medical personnel as well as the Department of Public Works and Waste Management on the system.

Your Subcommittee also discussed Congressional lobbying efforts by private communications providers to relocate emergency services personnel to a different portion of the 800 megahertz band. One provider has apparently offered to contribute \$500 million to assist public safety entities nationwide with the costs associated with the proposed relocation. According to the Police Captain, any movement of public safety to another location will be a costly

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endeavor. He further offered to provide an estimate of costs associated with relocating the current system.

Your Subcommittee discussed the work that would need to be completed at its next meeting, including the development of roles and opportunities once the research phase of the work has been done.

Your Subcommittee noted that it would like to learn from the different telecommunications providers about their current and future plans, as well as any challenges they've faced in dealing with the public sector. Your Subcommittee agreed to invite as many providers as possible to future meetings to discuss these topics.

Further, your Subcommittee agreed to send correspondence to the Mayor asking if he would consider deferring approval of any pending application for a wireless communication facility until your Subcommittee completed its work.

Additionally, your Subcommittee requested that a matrix be provided to show the boundaries of Federal, State and County authority in terms of franchise agreements, easements, right-of-way agreements, and joint pole agreements.

Your Subcommittee also requested that the representatives of the Department of Commerce and Consumer Affairs (representing Subcommittee member Matayoshi) bring information about the State's authority in telecommunications issues, as well as any related legislation that is currently pending before the Legislature.

Your Subcommittee deferred this matter pending further discussion.

By correspondence dated February 7, 2002, to the Department of the Corporation Counsel, your Subcommittee Chair requested guidance on the County's role in franchise agreements.

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By correspondence dated February 7, 2002, to the Chief of Police, your Subcommittee Chair requested an estimate on the cost to the County if public safety entities are required to relocate its emergency radio system to a different bandwidth.

By correspondence dated February 13, 2002, the Chief of Police noted that the estimated cost of replacing the current system would range between \$7 to \$15 million. The correspondence also included a number of related documents regarding emergency radio systems.

By correspondence dated February 19, 2002, your Subcommittee Chair transmitted a copy of City of Eugene Ordinance No. 20083, relating to telecommunications, from Subcommittee Member McLaughlin.

By correspondence dated February 19, 2002, your Subcommittee Chair transmitted a copy of "Sandwich Isles Communications Network for Hawaiian Home Lands, Fact Sheet", from Devon Nekoba, Agency Coordination Officer, Sandwich Isles Communications, Inc. The fact sheet included information such as the company description, a description of the benefits of its services, a description of its operations, a description of its network and an overview of its financing.

At its meeting of February 25, 2002, your Subcommittee met with the Engineering Chief, Engineering Division, Department of Public Works and Water Management; an Engineer, Land Use and Codes Division, Department of Public Works and Waste Management; the Planning Program Administrator, Long Range Planning Division, Department of Planning; a Captain, Department of Police; a Deputy Corporation Counsel; Sandy Baz, Deputy Director, Maui Economic Opportunity (MEO); Devon Nekoba, Agency Coordination Officer, Sandwich Isles Communications, Inc.; and Harvey Makii, Technical Superintendent, Distribution Department, Maui Electric Company, Ltd. (MECO).

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Your Subcommittee is in receipt of a copy of Congressional Research Service (CRS) Report for Congress, entitled "The Siting of Wireless Communications Facilities: An Overview of Federal, State and Local Law", dated January 16, 2001, submitted by Subcommittee Member Sabas. The report includes an overview of applicable laws, as well as legislation that has been proposed to amend provisions of the Telecommunications Act of 1996.

Your Subcommittee is in receipt of a copy of correspondence dated June 14, 2001 to the Director of Public Works and Waste Management, from the Engineering Division Chief, relating to proposed easements for Sandwich Isles Communications, Inc., Waiehu to Puunene Fiber Optics Ductline.

Your Subcommittee Chair noted that in the time that has passed since its prior meeting, the DCCA has decided against allowing staff members to hold a seat on your Subcommittee. He further noted that since the Council Rules are silent on the appropriate procedures for filling vacancies on subcommittees, he stated that Mr. Baz may be considered as a possible replacement. Your Subcommittee Chair invited Mr. Baz to provide information about himself to your Subcommittee.

Mr. Baz stated that prior to his current position at MEO, he was a staff member of the County of Maui's Management Information Systems (MIS) Division, responsible for the County's wide area network (WAN). He also served as MEO's MIS Director, overseeing its WAN and has many years of experience as a computer consultant to various private sector organizations. When questioned about his availability to meet with your Subcommittee, Mr. Baz noted that he could probably spare two to six hours a month, due to his workload at MEO.

Your Subcommittee Chair asked the Deputy Corporation Counsel to report on your Subcommittee's request for information at the last meeting, relating to County authority in telecommunications issues. The Deputy Corporation Counsel stated his preliminary research shows that there is heavy litigation

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between the telecommunications industry and various levels of government. Many times, he found that communications providers would sue local municipalities for overstepping perceived boundaries put in place by the 1996 Telecommunications Act. He further requested additional time to research these areas more fully, and to research the County's current franchise agreements.

A Subcommittee member noted that the complexities of telecommunications legal issues may justify the cost of sending the Deputy Corporation Counsel to attend the National Association of Telecommunications Officers and Advisors (NATOA) conference in April in Washington D.C.

Your Subcommittee stated that if the Deputy Corporation Counsel's supervisor approved the travel request, it would support his attendance at the conference, and further, it would extend the research deadlines until after the conference ends.

A Subcommittee member provided information about Federal level telecommunications guidelines. According to information compiled by the CRS, although the 1996 Federal Telecommunications Act is in place, there is room for state and local municipalities to create telecommunications rules as long as those rules are reasonable and have a basis.

Your Subcommittee staff provided a brief listing of bills currently pending before the State Legislature regarding telecommunications issues.

The Police Captain provided an overview of the materials he submitted to your Subcommittee. Namely, he stated that movement of the public safety system to another portion of the 800 megahertz bandwidth would cost at least \$300,000.

The Police Captain also noted that there are 14 radio sites located throughout Maui County, in addition to one site on the Big Island. Although the system is shared by the Department of Police, the Department of Fire Control,



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the Highways Division of the Department of Public Works and Waste Management, the Wastewater Reclamation Division of the Department of Public Works and Waste Management, the Maui Humane Society, and the ambulance system, maintenance of the system is handled solely by the Department of Police.

Further, he warned against endorsing collocation too strongly, mainly to protect the emergency radio system from interference with other communications providers.

Your Subcommittee briefly discussed the America On Line (AOL)/Time Warner franchise agreement which required the cable company to connect all County facilities with fiber. The Police Captain stated that the Department had no current or future plans to utilize that system, even as a backup.

The Engineering Chief stated that he hoped the use of right-of-ways would be limited, mainly due to space limitations currently found in these areas.

Your Subcommittee noted that the construction of the Sprint tower in Rice Camp was allowed because of the property's Interim zoning classification. Your Subcommittee also noted that despite the Sprint tower precedent, it did not want to focus solely on cell tower issues, but wanted to be sure to broaden its scope to include the many facets of telecommunications regulation in the County.

The Engineering Chief noted that if a company applied for access to a County-controlled easement, it would require Council approval, even if the company would be seeking to share a pole or conduit with another pre-approved entity. Currently, Maui County has only one joint pole agreement where a County traffic signal (located at the intersection of Lower Main Street and Hookahi Street) is shared with Verizon and MECO. Further, even if the applicant would need to cut into the roadway in order to access a conduit, the County currently does not charge any fee for damage to the roadway, just a normal easement permit processing fee. Additionally, the applicant would have to

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maintain an insurance policy that would protect the County against any liabilities. The Department is working with the utility companies that regularly request easement permits to provide that information in digital format so that it can easily be added to the Geographic Information System (GIS).

The Planning Program Administrator stated that in the case of cell towers, it is true that such structures are allowed on Interim zoned land. Other land use classifications would require permits of some form, especially since there are height limits for each classification. If the towers exceed the 35-foot height limit, neighbors would be notified and permits would need to be obtained. The Planning Program Administrator reminded your Subcommittee that the County has hired a consultant to provide an inventory of existing infrastructure in the County, and is being required to show that information in a digital format for use with the GIS system and other systems, which will help with current as well as future demand estimations.

Mr. Nekoba provided your Subcommittee with an overview of Sandwich Isles Communications' (SIC) current and future plans for development. He noted that SIC is the exclusive State Department of Hawaiian Home Lands (DHHL) licensee authorized to serve DHHL residents with telephone service. SIC has also been designated as a "rural exchange carrier" by the Federal Communications Commission (FCC). Currently, SIC is in the process of building a fiber optic network that would link all of the DHHL throughout the state via submarine cables. Landing sites for each island have not been determined at this time. Further, Mr. Nekoba indicated that although the main priority is to install phone service, there is a possibility that high-speed internet connectivity could also follow.

Mr. Nekoba stated that in extremely remote areas, SIC would service DHHL residents, and companies such as Verizon would be able to lease lines from SIC in order to serve other non-DHHL residents. SIC would not be allowed to service non-DHHL residents, or they would risk losing funding. Mr. Nekoba

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further mentioned that his hope is that your Subcommittee's work would not impact SIC's ability to gain easements in County rights-of-way.

Mr. Makii provided an overview on MECO joint pole agreements. He noted that there are several layers of lines strung between poles. The lowest level of lines are communication lines, the second level of lines are distribution lines, and the third and highest level of lines are transmission lines. When negotiating joint pole agreements, Mr. Makii stated that fees for lines on standard poles are negotiated depending on height, while fees for lines on steel poles are negotiated by weight.

He also confirmed that MECO pays franchise agreement fees to the County, which are based on gross amounts. The franchise information is located in Act 12 of the Hawaii Revised Statutes (HRS). As far as collocation, Federal guidelines specify that as long as the antennas do not interfere with MECO's ability to provide service, they are allowed to lease space to communications providers. Currently, there are two requests for collocation in Pukalani and in Wailea. He noted that efforts are made to inform the community through meetings and other methods.

Your Subcommittee wanted to know if the joint pole agreement fees are regulated by the State's Public Utilities Commission (PUC). Mr. Makii said he would find out and report back to your Subcommittee.

Your Subcommittee asked the Deputy Corporation Counsel for guidance on the County's authority to limit the number of new communication service providers, and further information regarding Section 92-16 HRS, relating to County authority to exercise subpoena powers.

Your Subcommittee requested a GIS map, detailing public rights-of-ways/easements and sites for County emergency radio systems.

Your Subcommittee deferred this matter pending further discussion.

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By correspondence dated February 27, 2002, to: (1) JoAnn Yosemite, Government Affairs, Verizon; (2) Chuck Bergson, President & CEO, Pacific Radio Group; (3) Dan Evert, Director of Sales and Marketing, Loea Communications; (4) Malia Gerard, General Manager, Time Warner Entertainment Co., LP dba Hawaiian Cablevision; (5) Jamie Hartnett, Executive Director, Hawaii Association of Broadcasters; (6) Rod Taylor, AT&T Wireless; (7) Kay Yonamine, Site Development Manager, Sprint PCS; (8) John Gelman, President, Nextel; (9) Michael Napora, Manager, Voice Stream; (9) Mark Harmer, President, Harmer Communications; (10) Roger Stout, President, Maui Net; (11) George Fontaine, President, Maui Gateway; and (12) Michael Frane, Director of Marketing, Pacific LightNet, your Subcommittee Chair requested an overview of the current and upcoming communications infrastructure plans for each provider.

By correspondence dated, March 1, 2002, the Managing Director noted that the requested GIS map detailing the Police Department's emergency radio system sites would be hand-delivered prior to the next meeting. He also noted that the GIS Division does not have the data sets for public rights-of-way and easements; therefore, this information could not be illustrated on the map.

By correspondence dated March 1, 2002, to Cheryl Kikuta, Utilities Administrator, Division of Consumer Advocate, State Department of Commerce and Consumer Affairs; and Bryan Kageyama, PUC, Maui District Office, your Subcommittee Chair requested the attendance and an overview by a representative from each office at its March 5, 2002 meeting.

By correspondence dated March 4, 2002, Mr. Makii stated that when MECO leases space to a communications provider, it must receive PUC approval first. The actual compensation rates, however, are set by MECO and are negotiated with the provider. Information relating to specifics relating to compensation rates is proprietary, according to Mr. Makii.

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By correspondence dated March 5, 2002, Cheryl S. Kikuta, Utilities Administrator, Division of Consumer Advocate (DCA), DCCA, stated that no one would be able to attend your Subcommittee's March 5, 2002 meeting to explain the role of the DCCA in person. She did, however, provide a written summary that details the responsibilities of the DCCA as outlined in the HRS and the Hawaii Administrative Rules (HAR). She also noted that the only wireless telecommunication applications her Division reviews are limited to those in which the provider is seeking PUC approval to certify the provider, to acquire an already certified wireless company, or to merge with another wireless provider.

At its meeting of March 5, 2002, your Subcommittee met with the Engineering Chief, Engineering Division, Department of Public Works and Waste Management; an Engineer, Engineering Division, Department of Public Works and Waste Management; an Engineer, Land Use and Codes Division, Department of Public Works and Waste Management; the Information Systems Manager, Management Information Systems Division, Department of Management; a Captain, Department of Police; a Deputy Corporation Counsel; Jo Anne Yosemite, Government Affairs, Verizon Hawaii; and Stacy Shishido, Section Manager, Network Engineering and Planning Department, Verizon Hawaii.

Your Subcommittee is in receipt of a copy of "Communications Infrastructure Subcommittee Proposed Plan of Work", dated March 5, 2002, submitted by Vice Chair Skog. The updated plan of work provides greater details on the manner in which your Subcommittee should proceed with its research, development of roles and opportunities, development of the proposed County policy on communications, development of an ordinance and finalizing of recommendations to the Human Services and Economic Development Committee.

Your Subcommittee is in receipt of a GIS map entitled, "County of Maui Public Safety 800 MHz Relay Points", dated March 2002, from the Department of Police and the GIS Division.

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Your Subcommittee is in receipt of "TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS, CHAPTER 5 - WIRE OR RADIO COMMUNICATION, SUBCHAPTER V-A - CABLE COMMUNICATIONS, Part III - Franchising and Regulation" and "TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS, CHAPTER 5 - WIRE OR RADIO COMMUNICATION, SUBCHAPTER V-A - CABLE COMMUNICATIONS, Part I - Common Carrier Regulation", submitted by Subcommittee Member Sabas.

Your Subcommittee Chair noted that in addition to the DCCA declining to serve as a member of your Subcommittee, Lynne Woods, the Executive Director of the Maui Chamber of Commerce, has also requested to be excused from serving as a member of your Subcommittee. Therefore, the Chair stated that he would leave both vacancies unfilled for the following reasons: (1) your Subcommittee has covered quite a bit of ground to date, and it would be difficult to bring two additional people up to speed; (2) the remaining members of your Subcommittee are competent and can complete the work needed to be done; and (3) the Council Rules do not require that minimum levels of Subcommittee membership be maintained.

Additionally, your Subcommittee Chair stated that he would be requesting an extension of your Subcommittee's term from April 10, 2002 to May 31, 2002.

Your Subcommittee received a written and oral overview from Verizon Hawaii. Mr. Shishido stated that his company provides service ranging from plain old telephone service (POTS) over copper lines to multiple DS3 levels over fiber. Currently, Verizon installs copper cable to service residential areas as well as what is called "next generation digital loop carriers" which move switching equipment into the residential area to provide dial tone. These carriers require access to easements because they are not standard equipment. He described their dimensions as 6 feet high by 4 feet wide by 5 feet long, and they would house all of the electronics. Depending on the size of the cabinet, the carriers

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could service between 192 to 2,048 lines. Co-locating with other providers is a possibility, he noted.

Your Subcommittee also received an overview from Mr. Kageyama, the District Representative for the PUC. He explained that the PUC regulates all utility companies, all trucking companies, the shipping companies (such as Young Brothers), all passenger companies, private water and sewer systems (such as Kapalua, Kaanapali, Molokai, etc). In his capacity, he follows up with the companies when complaints are logged with the PUC regarding rates and services.

He noted that the parameters relating to rate making could be found in HRS Sections 269.16 and 269.19, as well as in HAR 60. He also noted, however, that the PUC does not regulate rates for wireless services, except in cases where the project will exceed \$500,000. The cost would trigger a need for PUC approval.

Additionally, he informed your Subcommittee that the PUC has reviewed information relating to how Verizon would charge AT&T for use of its lines in Docket Number 7706. When your Subcommittee expressed interest in this topic, he noted that he would research the matter and provide your Subcommittee with further information.

Mr. Kageyama also noted that the PUC has little formal contact with the County, especially in regard to telecommunications issues. Your Subcommittee noted that this is an area that should be strengthened.

Your Subcommittee received an overview from the Information Systems (IS) Manager, Management Information Systems Division. Your Subcommittee also received a "Maui Island Connectivity diagram", dated March 4, 2002, submitted by the IS Manager.

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In his overview, the IS Manager explained that the diagram tracks the fiber optic infrastructure under development for the County as the result of Decision and Order 245 & 241 between the DCCA and Time Warner Cable Company. The fiber optic system is being implemented throughout much of the County, linking many County facilities in order to provide data connectivity to County offices.

Your Subcommittee noted that not all of the County's facilities were listed on the diagram, and wondered how that could be when Decision and Order 245 & 241 stated that dark fiber should be provided to all County facilities. The IS Manager stated that his office proposed a list of facilities that were top priority, and that is the list the cable company utilized in setting up the framework. The current framework alone is valued at \$400,000.

Your Subcommittee also expressed concern that the current framework is only being considered for data connectivity, and not for other uses such as delivery of live proceedings and/or potential interaction between the County building and remote communities. The IS Manager responded that interactivity would open up the system to security vulnerabilities.

Your Subcommittee also noted that wherever there are gaps, the County needs to be astute enough to have other providers fill those gaps when the opportunity arises.

Your Subcommittee deferred action on this matter pending further discussion.

By correspondence dated March 7, 2002, to the Chair and Members of the Human Services and Economic Development Committee, your Subcommittee Chair requested an extension of its term to May 31, 2002.



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By correspondence dated March 11, 2002, to the Members of the Subcommittee, your Subcommittee Chair confirmed the reduced membership of your Subcommittee to five members.

By correspondence dated March 11, 2002, to the Mayor, your Subcommittee Chair requested information relating to the franchise agreement between the DCCA and Oceanic/Time Warner/Hawaiian Cablevision.

By correspondence dated March 11, 2002, to the Department of the Corporation Counsel, your Subcommittee Chair requested a determination as to whether the labor and fiber optic lines installed by the cable company and subsequently given to the County should be considered a gift or donation, which would require Council approval by resolution.

By correspondence dated March 15, 2002, the Chair of the Human Services and Economic Development Committee stated that at its meeting of March 14, 2002, the term for your Subcommittee was extended to May 31, 2002.

By correspondence dated March 15, 2002, Kathy Yonamine, Site Development Manager, Sprint PCS, stated that she would be unable to attend your Subcommittee's meeting. However, she confirmed that the company has an existing PCS network on the island of Maui and planned to improve the capacity of the network in 2002.

At its meeting of March 19, 2002, your Subcommittee met with the Engineering Chief, Engineering Division, Department of Public Works and Waste Management; an Engineer, Land Use and Codes Division, Department of Public Works and Waste Management; the Planning Program Administrator, Long Range Planning Division, Department of Planning; an Executive Assistant, Office of the Mayor; the Information Systems Manager, Management Information Systems Division, Department of Management; a Captain, Department of Police; a Deputy Corporation Counsel; Rory Frampton, Chris Hart and Partners (on behalf of AT&T Wireless); Roy Irei, Site Development Manager, VoiceStream

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Wireless; Pete Jaeger, Technical Operations Manager, Nextel Communications; Steve Berkoff, Maui Sky Fiber; Norman Santos, Time Warner Entertainment Co., LP dba Hawaiian Cablevision; Rob Volker, President, Chief Operating Officer, Pacific LightNet, Inc.; and Chuck Bergson, President & CEO, Pacific Radio Group.

Your Subcommittee is in receipt of a correspondence dated March 18, 2002, from Mark Harmer, President, Harmer Radio and Electronics, Inc., stating that he would be unable to attend the meeting. However, he provided an overview of the company, its infrastructure, new projects and challenges for the industry and the government in the future.

Your Subcommittee is in receipt of a correspondence dated March 18, 2002, from a Deputy Corporation Counsel, responding to your Subcommittee's February 26, 2002 request for information relating to its ability to utilize subpoena powers. In the correspondence, the Deputy Corporation Counsel stated that the power to subpoena witnesses is limited to the Maui County Council's ability to conduct investigations.

Your Subcommittee is in receipt of correspondence dated March 18, 2002, from an Executive Assistant to the Mayor, listing the County's fiber optic connection facilities. Your Subcommittee notes that the document provides details of County facilities, the address for each facility and a priority ranking according to need.

Your Subcommittee received an overview of AT&T Wireless Services from Mr. Frampton of Chris Hart and Partners. He stated that AT&T currently has 15 wireless sites that are either up and running or close to it. He does not anticipate that any additional sites will be needed on Maui in the near future.

He did outline one situation in which the company relocated one of its sites due to concerns expressed by the community regarding radio frequency (RF) emissions. He noted that the company heard the community's concerns

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and subsequently relocated. However, he did note that the site's emissions were 891 times lower than Federal standards. Further, he noted that under the 1996 Telecommunications Act, local municipalities such as County government, are prohibited from basing decisions on RF emissions.

In crafting telecommunications ordinances, Mr. Frampton suggested that your Subcommittee seek to increase the efficiency of the permit process. He also urged your Subcommittee to formulate its ordinance with the knowledge that technology moves at a very rapid pace, and the ordinance needs to either keep up with that progress, or be all-encompassing from the start. He also urged incentive-based participation.

Mr. Irei provided your Subcommittee with a written and oral overview of VoiceStream Wireless. VoiceStream currently has 150 sites statewide, 19 sites serving Maui. The basic configuration is four flat panel antennas on each sector, and three sectors per site. In addition, there are two to three base transceiver stations measuring 5 feet tall by 5 feet wide by 2 feet deep that transmits and receives signals between 1850 to 1950 megahertz. There are also miscellaneous equipment such as global positioning satellite (GPS) antennas, radios, cables, electric meter and power boxes. Additionally, if there is no land line, a microwave dish is utilized. Typically, sites will provide three to seven miles of coverage. Trees, buildings and other structures may limit coverage areas.

As far as future development, VoiceStream only plans to build in Kihei later this year. He also noted that customer demand drives the development of sites.

As for any possible telecommunications ordinance, he recommended against height limits along tree line heights because the signals would be unable to penetrate the trees. In urban areas, VoiceStream tries to find the tallest man-made structure such as building tops or rooftops or other existing towers or monopoles before constructing one of their own. He also recommended that the

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permitting process for co-locating telecommunications facilities be simpler than the permitting process for building a new facility from scratch. He further noted that the City and County of Honolulu has a permit template for wireless carriers, which expedites the process for co-locating on City and County property. He also noted that on the Big Island, a special use permit and a SMA permit can be filed simultaneously. He encouraged a similar process in Maui County.

VoiceStream tries to contact the affected community that will be impacted by the construction of a facility by mailing notices to all residents within a 500-foot radius of the proposed site's property lines. If there was substantial interest or concern, a meeting would be held to further discuss the project plans. Even if no one contacted VoiceStream directly, the company would still attempt to contact the affected neighbors by phone.

Your Subcommittee also discussed the feasibility of finding out where the antenna sites for private companies are located throughout the County. The Department of Planning noted that it is currently conducting an inventory of all these types of facilities for a GIS layer.

Your Subcommittee received a written and oral overview from Peter Jaeger, Technical Operations Manager for Nextel Communications. He stated that Nextel uses I-net technology for its two-way and cellular communications, operating in the 850 to 870 megahertz band for downlink signals and 815 to 825 mg for uplink signals (for mobile radios).

Nextel operates 12 cell sites on Maui, 2 on Lanai, and 1 on Molokai. The number of sites on Maui may increase to 14 by the end of 2002. Lanai will also have an additional site. Each cell site costs approximately \$200,000 to \$350,000. He reviewed the various dimensions for raw land buildings, interior room builds within existing structures, rooftop rooms, tower construction (approximately 40 feet), and antennas.

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He also noted that in order for multiple carriers to collocate on a particular tower, especially carriers operating in the 800 megahertz range, there needs to be about 20 feet of separation in order to avoid interference.

When it comes to constructing additional telecommunications facilities, he noted that collocation is Nextel's first preference, the second preference is utilizing an antenna farm, and the third is to use existing permitted zoned areas for a small tower. He further noted that his business must follow an annual budget process; therefore, money that is allocated for a specific project in January must be spent by December. For these reasons, he urged your Subcommittee to develop expedited permitting processes for the development of telecommunications facilities, especially if they are co-locating.

Your Subcommittee also received an oral and written overview from Mr. Berkhoff of Maui Sky Fiber. He explained that the company is the first in the nation to offer 3G portable modem system technology. The technology allows them to offer a portable high-speed Internet connection for computer and data use which requires no external antennas. It is based on cell site technology; therefore, it is similar to cellular phone technology. The first site that they are developing will be at the Maui Research and Technology Park in Kihei. In all, there will probably be 11 to 13 sites on Maui. The system should be ready by summer 2002.

Mr. Berkhoff described the purchase and installation process as being relatively simple. Customers would buy the hand-sized modem at a retail outlet, take it home, access the web, and sign up. No longer would customers have to wait at home for technicians to come and hook up equipment. Collocation is highly attractive as the company is small and cannot afford to be building towers everywhere.

Your Subcommittee received an overview from Mr. Santos of Hawaiian Cablevision. He noted that the parent company is Time Warner Cable, operating in Hawaii as Oceanic Time Warner of Hawaii, and operating on Maui as

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Hawaiian Cablevision. He noted that Hawaiian Cablevision is a land-based, fiber network for cable television, which differs from the services explained by other presenters at the meeting.

Mr. Santos noted that there are cable transmit/receive sites on the “head end” of Molokai, in Lanai City, on Haleakala, and in West Maui. He did note, however, that the company is in negotiations with Amfac to relocate its West Maui site as a subdivision is to be built there. Aside from relocating the West Maui site, he stated that the company has no other plans for future build out at this time.

Although some would endorse locating telecommunications facilities on private as opposed to public property, he related that his experience in working with a private landowner on Molokai was less than favorable, and locating facilities of private land does not necessarily provide communications providers with an advantage.

Your Subcommittee received a written and oral overview from Mr. Volker, of Pacific LightNet. Pacific LightNet was formed in 2001, and has acquired the assets of GST Telecom in Hawaii through a bankruptcy proceeding. As part of the acquisition, it acquired the land and undersea fiber optic facilities of GST Hawaii. The undersea cable comes ashore in Wailea, travels underground to the hub site in the Maui Research and Technology Park, before linking with Verizon to service customers island-wide. On Molokai, the cable comes ashore at Kaunakakai at the facility hub on the beach, then the cable travels 35 miles to Maunaloa town and stops at the wireless facility hub in Puunana. On Lanai, the undersea cable comes ashore at Manele Bay, then connects with a hub site near the harbor, then travels to Manele Bay hotel where it connects with Verizon and provides services to the hotel.

As far as providing wireless service to customers, Pacific LightNet plans to phase out wireless facilities currently in inventory and replace that system with fiber. He hopes to upgrade the undersea cable in order to increase capacity, but

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other than that, there are no immediate plans to build additional telecommunications facilities in Maui County. He suggested that the County encourage interconnectivity so that more services are available to more customers.

Your Subcommittee received an overview from Mr. Bergson of the Pacific Radio Group and Island Air Waves. He noted that the necessity of his business has required him to develop tower sites, bearing in mind future growth opportunities that would be emerging. They built the antenna farm at Ulupalakua Ranch with the thought of overbuilding specifically for collocation. There are currently six or seven clients at the ranch site. Other telecommunications facilities locations include a 500-foot tower near *The Maui News* in Wailuku, a 250-foot tower on Mokulele Highway near the entrance of Kihei, a 150-foot tower in Keokea, and a few monopoles at their offices at 311 Ano Street in Kahului. Mr. Bergson does not predict any future development needs, aside from adding an additional monopole at the office site.

Your Subcommittee received an overview from an Executive Assistant and the IS Manager. Specifically, they were responding to your Subcommittee's correspondence dated March 11, 2002.

The Executive Assistant stated that a complete comprehensive list of County-owned facilities could not be obtained from the Department of Finance. Further, the initial list included 90 facilities, which was later trimmed to 51 because some of the facilities were restrooms or were otherwise non-work related which would not have benefited from being connected to the I-net. Further, he noted that the I-net would connect not only the County points, but also State agencies, allowing for greater communication. He noted that some facilities, such as the Haiku Community Center, were not included in the network because it did not receive much use by County agencies.

Further, despite the cost-savings of having to install the fiber network at taxpayer cost, there is still a substantial cost of \$10,000 to \$15,000 per site that

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the County pays for installation of switches, hubs and routers for each facility to ensure that it works with the network. He also noted that the primary goal is to get the system operational, and then add on other features such as video interactivity and backup systems for the emergency radio network later.

Your Subcommittee deferred action on this matter pending further discussion.

By correspondence dated March 21, 2002 Jamie Hartnett, Executive Director, Hawaii Association of Broadcasters, Inc. (HAB), stated it would be more appropriate for your Subcommittee to contact individual stations directly, rather than asking for Association representation at an upcoming meeting.

At its meeting of March 25, 2002, your Subcommittee met with the Planning Program Administrator, Long Range Planning Division, Department of Planning; an Engineer, Land Use and Codes Division, Department of Public Works and Waste Management; a Captain, Department of Police; the Administrator, Civil Defense Agency; and a Deputy Corporation Counsel.

Your Subcommittee is in receipt of a copy of correspondence dated March 21, 2002, from Senator Jan Yagi Buen, to Kathryn Matayoshi, Director, DCCA, dated March 21, 2002, relating to a follow-up request for information including accounting for all cable-related franchise fees created by DCCA decisions and orders, including allocations of those funds over the past seven years; and a summary of channels, network connections, and other public service communications infrastructure reflected by service area statewide. Senator Yagi Buen further noted that a DCCA response dated May 1, 2001, stated that the DCCA would be unable to disclose the record without further description or clarification of the requested record. Senator Yagi Buen attached a worksheet to provide specific context for the requested information and asked that the completed worksheet be submitted by April 19, 2002.



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Your Subcommittee received a copy of "Communication Opinion and Order in PRB-1" and oral testimony from Dennis Niles, President, Maui Amateur Radio Club, Inc. Mr. Niles stated that the amateur radio community requests that any proposed ordinance include a provision that would exempt amateur antennas. He noted that amateur radio operators are licensed by the FCC to engage in wireless communication with other amateurs across the State, nation and world. Technologies used include analog and digital formats. Due to their licensing, they are required to certify to the FCC that their antenna systems have been developed and designed in accordance with their regulations. As such, he feels that amateur radio operators are protected from local regulations. The only area in which they would be subject to regulation would be the placement of their antennas and height limits.

He further pointed out that amateur radio operators provide a resource that is available to the community, especially in the times of crisis or disaster. One member conducts weekly tests with other amateurs around the State on Monday nights at 7:00 p.m. The amateurs also participate in Disaster Medical Assistance Team field exercises.

Your Subcommittee is in receipt of a copy of "TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS, CHAPTER 5 - WIRE OR RADIO COMMUNICATION, SUBCHAPTER II - COMMON CARRIERS, Part II - Development of Competitive Markets", Sections 253 (Removal of barriers to entry), 254 (Universal service), and 332 (mobile services), submitted by Subcommittee member Sabas.

Your Subcommittee is in receipt of a form entitled "NON-EXCLUSIVE COMMUNICATION UTILITIES EASEMENT AGREEMENT" used by the City and County of Honolulu for the lease of City and County property to telecommunications providers.

Your Subcommittee received an overview from the Civil Defense Administrator. He explained that the Civil Defense system is multi-tiered at each

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level of government, County, State and Federal. As such, there are different levels of communications systems for each, including the ham radio operator system and the emergency 800 megahertz system discussed earlier. If there is a major disaster, where it looked like communications would be down for weeks or months, the military has backup communications equipment for use, but only as a last resort.

Although the systems are set up as back ups, there is some vulnerability in relying on antennas and repeater sites that are exposed to the elements in the event of a natural disaster. On the other hand, there is no such thing as a system that is completely infallible, he said. In terms of collocation, he would caution against allowing collocation at all County facilities since there are security issues involved.

Mr. Makii also noted that MECO has its own list of priorities in the event of a disaster, and has its own communications system to use if phone systems should be disabled by the disaster. When asked about other concerns or suggestions for the ordinance, he noted that he would like to work with others in collocation or cost sharing. He would also favor any changes that would expedite the County process to get facilities established. One antenna, he noted, took over a year to be approved, and that discourages the carriers from using MECO poles for antennas.

Your Subcommittee worked on developing a County vision statement relating to communications infrastructure. The vision statement reads as follows: "Recognizing the unique political and geographical aspects of the County of Maui, our vision shall encourage and facilitate communication services through a comprehensive, environmentally sensitive, coordinated information infrastructure. It shall be accessible, affordable and shall be constructed using a process that best informs and seeks to serve the public interest."

Your Subcommittee also created a list of concerns that need to be addressed in any forthcoming policy or draft ordinance. They are: (1) to protect

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and, where possible, enhance emergency communications systems; (2) to ensure timely community input prior to site location approval; (3) to ensure community is educated on the issues and opportunities relating to the implementation of benefits derived from franchise agreements; (4) to designate County liaison (possibly the Director of Public Works and Waste Management) to represent the County's position on communications infrastructure issues before other bodies (public agencies as well as private sector agencies); (5) for use and/or permit approvals by the Council or other appropriate body; (6) to encourage collocation (provide incentives); (7) to encourage location in County rights-of-way or on County facilities as a means to generate revenue (provide incentives, namely, rental rates, in-kind gifts); (8) to consider eliminating Maui County Code zoning language that currently permits towers/antennas, etc., to be approved without Council review; and (9) to consider the policy statement in the General Plan regarding communications infrastructure in the County.

Your Subcommittee deferred action on this matter, pending further discussion.

By correspondence dated March 26, 2002, a Deputy Corporation Counsel stated that the County was a beneficiary of two DCCA Decision and Orders, Nos. 241 and 245; therefore, the fiber optic network as well as the labor and materials that went into its installation, are not considered a gift and would not require acceptance of the Council by resolution.

By correspondence dated May 22, 2002, a Deputy Corporation Counsel provided a written response detailing franchise agreements and rights-of-way management and telecommunications facilities - siting issues. The Deputy Corporation Counsel also transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26 AND TITLE 19, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES". The purposes of the proposed bill are to amend Chapter 16.26 and Title 19 of the Maui County Code to: (1) minimize the number of transmission towers throughout the County; (2) encourage the collocation of telecommunication facilities; (3) encourage the

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use of existing buildings, light or utility poles or water towers as opposed to construction of new telecommunication towers; (4) recognize the need of telecommunication providers to build out their systems over time; and (5) ensure that all telecommunication facilities, including towers, antennas, and ancillary facilities are located and designed to minimize the visual impact on the immediate surroundings and throughout the County, and minimize public inconvenience and disruption.

The Deputy Corporation Counsel also stated that State law preempts the County in all areas of communication services except wireless communications. Further, the 1996 Telecommunications Act states that no local statute may prohibit the ability of any entity to provide any interstate or intrastate telecommunications service.

At its meeting of May 31, 2002, your Subcommittee met with an Engineer, Land Use and Codes Administration Division, Department of Public Works and Waste Management; an Engineer, Engineering Division, Department of Public Works and Waste Management; the Planning Program Administrator, Long Range Planning Division, Department of Planning; a Captain, Department of Police; and a Deputy Corporation Counsel.

Your Subcommittee is in receipt of an article entitled "Groups File Suit Against FCC's Cable Modem Ruling" by Shane Walter, posted at National League of Cities Website on May 20, 2002, submitted by the Deputy Corporation Counsel.

Your Subcommittee is in receipt of a press release entitled "FCC CLASSIFIES CABLE MODEM SERVICE AS 'INFORMATION SERVICE'", dated March 14, 2002, submitted by the Deputy Corporation Counsel.

Your Subcommittee is in receipt of the following from your Subcommittee Chair: (1) an excerpt from "Annual Report Fiscal Year 1999-00", PUC,

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December 2000; (2) PUC contact information; and (3) "Frequently Asked Questions of the Division of Consumer Advocacy", DCCA.

Your Subcommittee reviewed the draft bill transmitted by the Deputy Corporation Counsel and noted that it was very pleased with the draft because it addressed many of the core issues that your Subcommittee was concerned about.

Your Subcommittee further noted that the draft bill included some areas that needed further work, such as suggesting height limitations according to zoning category and view planes that needed protection. However, your Subcommittee agreed that this type of detail would be best dealt with by the Human Services and Economic Development Committee who would work with members of the community, administration and others.

Your Subcommittee on Communications Infrastructure **RECOMMENDS** the following:

1. That the draft bill attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26 AND TITLE 19, MAUI COUNTY CODE, RELATING TO TELECOMMUNICATIONS FACILITIES" be REFERRED to the Human Services and Economic Development Committee;
2. That the Human Services and Economic Development Committee CONSIDER the following when reviewing the above-referenced draft bill:
  - a. SPECIFY view planes in the County that should be protected (see Section 19.\_\_\_\_.080 Subsection D).
  - b. CONSIDER limiting tower siting in agricultural subdivisions;

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- c. CONSIDER utilizing a permit process and language that would encourage siting at public facilities;
- d. CONSIDER maximizing County participation in State decisions that affect the County;
- e. CONSIDER establishing an incentive for collocation on public property that includes compensation to the County. (For example, higher fees for expedited processing);
- f. CONSIDER utilizing a competitive bid process to select providers who wish to collocate on public property for a set period of time (five years, etc.);
- g. ESTABLISH methods or processes to safeguard public safety radio systems and a process for recourse;
- h. REQUEST that the Corporation Counsel research the County's role relating to siting towers on Conservation land and State-owned land;
- i. REQUEST that the Corporation Counsel draft an interim provision to address telecommunication matters while the Council considers the above-referenced draft bill; and
- j. REQUEST that the Real Property Division of the Department of Finance provide information on the effect of tower siting on real property valuations; and

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3. That the Human Services and Economic Development Committee CONSIDER recommending adoption of a resolution that would urge the Administration to adopt the following vision statement and policy goals:
  - a. Vision Statement: “Recognizing the unique political and geographical aspects of the County of Maui, our vision shall encourage and facilitate communication services through a comprehensive, environmentally sensitive, coordinated communications infrastructure. It shall be accessible, affordable and shall be constructed using a process that best informs and seeks to serve and safeguard the public interest.”;
  - b. Policy Goals:
    1. To protect and, where possible, enhance public safety communications systems;
    2. To ensure timely notification to the community to allow for input prior to development of communications infrastructure, including site location of telecommunications towers;
    3. To ensure that the community is educated on the issues and available opportunities, and involved with the implementation of benefits derived from development of communications infrastructure;
    4. To designate a County liaison (such as the Director of Public Works and Waste Management or the Planning Director) to proactively represent the County’s position on communications infrastructure

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issues before other bodies (public agencies, such as the DCCA, PUC, and State Board of Land and Natural Resources, as well as private sector agencies);

5. To maximize public benefits and minimize negative impacts from development of communications infrastructure (for example, by encouraging location in County rights-of-way or on County facilities);
  6. To encourage collocation (provide incentives);
  7. To incorporate communications infrastructure in the General Plan process; and
  8. To continually update and review County policies and procedures in relation to emerging telecommunications technologies; and
4. That the Human Services and Economic Development Committee ENCOURAGE the Council to continue participating with the National Association of Counties (NACo), the Hawaii State Association of Counties (HSAC), and other bodies that are involved with communication policy issues.

Adoption of this report is respectfully requested.



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**MICHAEL J. MOLINA** **Chair**

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**JOCELYN PERREIRA** **Member**

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**JEANNE UNEMORI SKOG** **Vice-Chair**

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**JENNIFER SABAS** **Member**

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**SEAN McLAUGHLIN** **Member**