SB 1609

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SB 1609

RELATING TO COMMUNICATIONS FRAUD

KEN HIRAKI
VICE PRESIDENT-GOVERNMENT AND COMMUNITY AFFAIRS

HAWAIIAN TELCOM

February 9, 2009

Chair Fukunaga and members of the Senate Economic Development and Technology Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 1609, Relating to Communications Fraud. Hawaiian Telcom supports this bill.

The stated purpose of SB 1609 is to update Section 708-800, Hawaii Revised Statutes, relating to cable television and telecommunications fraud to address a growing problem of service fraud involving modern communication services.

Hawaiian Telcom has recently heard of a growing number of instances, especially involving wireless internet use, where hackers are accessing communication services without authorization. We believe passage of this measure is necessary to help deter any future theft of service.

Based on the aforementioned, Hawaiian Telcom respectfully requests this measure be approved. Thank you for the opportunity to testify.

LATE

February 9, 2009

Senator Carol Fukunaga, Chair
Senator Rosalyn H. Baker, Vice Chair
Committee on Economic Development and Technology

Re: SB 1609 - RELATING TO COMMUNICATIONS FRAUD – Support
Conference Room 016, Hawaii State Capitol

Aloha Chair Fukunaga, Vice Chair Baker and members of the committee:

I appreciate the opportunity to speak on this bill today. I am Brian Allen, Sr. Director, Corporate Security for Time Warner Cable.

The following testimony outlines and describes various reasons why the proposed Communications Security Statute (the "Statute") is necessary.

THE PROPOSED LEGISLATION IS NECESSARY TO ADDRESS NEW COMMUNICATIONS SECURITY ISSUES ARISING FROM NEW TECHNOLOGIES AND SERVICES

Over the past several years, communications service providers have made more and more services and applications available over their networks. One result of these changes has been that most existing statutes have become obsolete, and no longer adequately protect communications service providers. Existing state and federal statutes leave substantial gaps that leave communications service providers without any statutory protection against an increasing number of threats to their signals, revenues, and physical assets. These statutes also provide for civil remedies or criminal penalties with respect to various acts that, in the judgment of industry members, are inadequate. A brief discussion of some of these areas, and the manner in which the new Statute addresses them, follows.

1. The Hawaii statutory provisions against theft of communications focus on specifying the means by which the communications are stolen. While such provisions often correctly identify the primary means by which communications were stolen at the time the statute was enacted, they almost invariably fall short due both to the variety of means by which communications could be stolen, as well as to evolving means by which new types of communications can be stolen today.

(i) attaching a cable to a communications provider's system to receive signals;
(ii) Cloning or 'modifying' a modem to connect to and steal bandwidth
(iii) using a digital signal filter to interfere with a cable company's addressable billing mechanisms;
(iv) receiving communications services without payment by creating a fraudulent account through identity theft or use of a phony identification;

(v) defrauding the communications provider of payment as part of a fraudulent scheme, i.e. 'call-sell operaion';
(vi) redistributing broadband services as part of an ongoing fraudulent scheme, i.e. wifi redistribution (pay-pal)
(vii) modem uncapping, the process by which a broadband customer modifies the capacity parameters on his or her cable modem so as to increase the bandwidth received up to the limits of the modem rather than lower limits placed on bandwidth receipt by a communications service company.

2. The new Statute will make it easier for communications companies to seek civil redress, and will also promote their efforts to secure criminal prosecution, as prosecutors will be able to work with statutes that unquestionably cover the conduct at issue rather than be forced to consume resources in making creative arguments that narrower statutes actually cover that conduct at issue.

3. With respect to civil remedies, the Statute provides for more specific forms of preliminary injunctive relief. This eliminates the problem of finding a basis for a court to order such relief when most statutes, following the lead of the Communications Act (47 U.S.C. §§ 553 (c)(2)(A) and 605 (e)(3)(B)(i)), merely provide that courts may grant temporary and final injunctions on such terms as they deem necessary to prevent or restrain future violations.

4. The Statute also attempts to make proving damages easier. To give just two examples, although many statutes provide for an award of actual damages, communications companies seldom avail themselves of them, because it is difficult to prove even by a mere preponderance of the evidence the precise quantity of communications stolen. This is particularly problematic as such theft usually occurs in a defendant's private residence.he Statute creates a de facto presumption that a defendant converted to his or her use all services to which he or she had access, and leaves the defendant (whether a seller or user of devices designed for this purpose), rather than the communications company, to prove otherwise.

5. Unrealized revenue to the state and local government through losses in franchise fees.

6. Honest consumers suffer through plant degradation (signal leakage) and increased costs.

This legislation:

DOES NOT mandate which type of software, technology or devices can be used to obtain communication services from a communication service provider.

DOES NOT prohibit the modification of computers or other home networking devices.

- The modification of a communication device is only penalized where it is done to commit an unlawful act with the intent to defraud a communication service provider of compensation.

DOES NOT make encryption and network security technology illegal.

DOES NOT criminalize the mere possession of communication devices.

- Simple possession of a communication device for a prohibited purpose is not a violation of the act. However, it does prohibit possession of such devices with the intent to distribute them for unlawful purposes.

DOES NOT criminalize the mere breach of a communication services contract.

- A breach of a service provider's contract by a consumer is not a criminal act unless it is done for the purpose of defrauding a communication service provider of compensation the provider charges for its service.

DOES NOT criminalize legitimate research.

- Because any violation requires a high degree of criminal intent, legitimate research activities are not affected at all.
- A person commits an offense with respect to plans or instructions for the making of any device only if they act with the intent to defraud a communication service provider in committing a violation to obtain services without payment of applicable charges, or knowingly assisting others in doing so.

DOES NOT contain disproportionate civil remedies for violations of the statute.

- The currently available civil remedies cannot adequately compensate communication service providers who are victimized by piracy, because today a single piece of illegal hardware or software can be used to steal several hundred thousand dollars worth of services, and can cause providers to incur substantial costs to remedy the damage.

DOES NOT outlaw the manufacture, sale or use of consumer products to lawfully receive communication services.

- To violate the act a person must knowingly commit any of the prohibited acts with the intent to defraud a communication service provider of any lawful compensation for providing a communication service.

DOES provide prosecutors and communication service providers with the critical tools they need to combat technologically sophisticated and costly theft of new communication services.

Sincerely,

Brian Allen
Sr. Director, Corporate Security
Time Warner Cable