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TO THE HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Date: March 15, 2011
Time: 8:00 a.m.

TESTIMONY ON S.B. No. 1161, S.D. 1 -- RELATING TO TELECOMMUNICATIONS

TO THE HONORABLE ANGUS MCKELVEY, CHAIR, AND MEMBERS OF THE
COMMITTEES:

My name is Glen Chock, and I am the Acting Cable Television Administrator, Department of Commerce and Consumer Affairs (the "**Department**"). The Department appreciates the opportunity to provide written testimony in support of the intent of S.B. 1161, S.D. 1.

Under Act 199, Session Laws of Hawai'i 2010, the Department's Cable Television Division ("**CATV**") was required to convene a work group to discuss and develop procedures to streamline the State and County permitting process for broadband services. By inviting private wired and wireless broadband providers to share their experiences, the work group gained an overview appreciation of the many permitting and approval obstacles at the State and County levels that impede the expeditious deployment of broadband infrastructure. The work group then turned more specifically to the challenges faced by telecommunications providers when they attempt to attach new fiber cables to existing utility poles.

On March 4, 2011, the Department reconvened a meeting of the permitting work group to discuss S.B. 1161. Attendees at the meeting included Hawaiian Electric, University of Hawai'i, Oceanic Time Warner, Hawaiian Telcom, tw telecom, County of Maui, City and County of Honolulu, DOT and DLNR. Various issues were discussed including possible revisions to S.B. 1161. The Department offered to coordinate any

such revisions into a new draft but has not received any proposed revisions from the participants at this time.

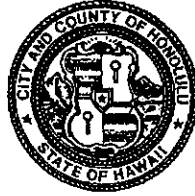
The Department plans to convene future meetings to continue the discussion on issues impacting pole attachments and exemptions from permitting requirements.

Thank you for the opportunity to provide written testimony on S.B. No. 1161, S.D.
1.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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March 15, 2011

The Honorable Angus L. K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization & Business
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair McKelvey and Members:

**Subject: Senate Bill No. 1161, SD1
Relating to Telecommunications**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1161, SD1.

In our view, this bill might lead to accidental destruction of broadband lines, since their presence in the public right-of-way will not be public knowledge in terms of permits and corresponding records.

In general, while we recognize the intent of what the bill is trying to achieve, the permitting process provides a very essential function to ensure efficient and safe construction when broadband lines, as well as other utility lines, are installed. Bypassing this essential function in the interest of expediting deployment of broadband telecommunications places other interests at potential risk.

Similar to our recent testimony, we respectfully request that our concerns and suggested amendments, as stated below, be considered.

County ministerial permitting requirements include entitlement for permittees. In our view, ministerial permitting is a vital process, as it:

1. Supports public safety, convenience, and general interest by:
 - a. Establishing accountability and responsibility. Permittees are held accountable and responsible for their work. This is especially important when permit inspections reveal substandard work or damages. Without permits, there would be no means to pursue enforcement.

The Honorable Angus L. K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization & Business
House of Representatives
Re: Senate Bill No. 1161, SD1
March 15, 2011
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- b. Enabling proper maintenance and restoration of affected infrastructure. Regular inspections of permitted work by the county are critical not only to final restoration of infrastructure, but also to daily, temporary repairs on streets and sidewalks. Without permits, immediate attention to potentially hazardous situations by the responsible parties would be hampered.
 - c. Providing documentation and records. If broadband companies were to proceed without county permits, there would be no record of their presence in city rights-of-way. Permitting records are usually utilized as a source of information about existing site conditions, including existing lines, on Construction Plans (CP). The absence of this information would increase the chances that the broadband companies' lines would be disturbed or damaged by construction in a city right-of-way.
2. Protects public facilities. In addition to permit inspections, permit procedures include engineering reviews of potential impacts and appropriate remedies to affected roadways, sidewalks, and other improvements on the surface, as well as to underground utilities. Public facilities would be exposed to problems such as open and sunken trenches, leaking pipelines, and unknown damages should permits not be required.
 3. Enhances coordination among users. Users include the county, utility companies, contractors, and the general public. Without permits, there would be no notices of upcoming work, no conflict checks, no way to address complaints or inquiries, and no traffic control.

The bill, if amended, should include language stating that the city shall not be responsible or held liable for unapproved improvements placed in city rights-of-way or unauthorized modifications to our rights-of-way by the broadband companies.

The bill, if amended, should also include language requiring broadband companies to indemnify, hold harmless, and defend the counties against any claims arising from any and all work or negligence without permits for their work and facilities in the public rights-of-way.

Having gone through several streamlining efforts at reducing the time required to permit public and private construction projects, our experience is that there are other areas in the development process that have extra "fat" that could be cut to speed up project delivery. We will be happy to work with the telecommunications companies to expedite their projects through the permitting process, but exempting broadband projects from obtaining various permits would jeopardize public safety and could add extra costs to projects.

Testimony to the House Committee on Economic Revitalization & Business
Tuesday, March 15, 2011
8:00 a.m.
State Capitol - Conference Room 312

RE: SENATE BILL NO. 1161 SD1 RELATING TO TELECOMMUNICATIONS

Chair McKelvey, Vice Chair Choy, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") supports SB 1161 SD1 relating to Telecommunications.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The measure exempts broadband infrastructure improvements from state or county permitting requirements for five years. The bill also exempts telecommunications companies from replacing existing utility poles when installing new or improving existing telecommunications cables.

Broadband applications and services are essential to spurring investment and innovation in business, education, health care, entertainment, government, and almost every other sector in Hawaii's economy, and the demand is constantly growing. The State of Hawaii, however, is among the slowest in the nation in broadband speeds. Therefore, it is critical that investments are made in broadband infrastructure so that Hawaii can become more competitive in the national and global marketplace. This measure is the first step in the right direction in achieving this goal.

Thank you for the opportunity to provide testimony.

SB 1161 SD1

RELATING TO TELECOMMUNICATIONS

HAWAIIAN TELCOM

March 15, 2011

Chair McKelvey and members of the House Committee
on Economic Revitalization & Business:

Hawaiian Telcom supports SB 1161 SD1 - "RELATING TO
TELECOMMUNICATIONS."

Hawaiian Telcom appreciates the work of the Legislature and the Permits Work Group for spearheading efforts to advance the deployment of our state's broadband infrastructure by streamlining the governmental permit process. Our company wholeheartedly supports exempting broadband infrastructure improvements from state or county permit requirements for five years and encourages the committee to consider making such a change permanent.

However, Hawaiian Telcom requests your Committee's consideration of amending SB1161 with the inclusion of "the Hawaii public utilities commission" to page two, line 22 in regards to utility pole safe weight capacities. This same amendment was previously included by your Committee in SB1161's companion bill (HB 1342 HD1):

Page Two, Line 22:

"(2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the Hawaii public utilities commission; and

Advanced broadband services are essential infrastructure for an innovation economy and a knowledge society in the 21st century. As we are all aware, broadband

deployment drives opportunities for business, education, and healthcare. One national study estimated the positive economic impact of advanced broadband in Hawaii at \$578 million per year. Passage of this aggressive and forward-looking measure will be a positive step in aligning Hawaii's policy objectives with governmental regulations that encourage rather than discourage greater investment in broadband infrastructure.

For all of the reasons set forth above, Hawaiian Telcom supports SB 1161 SD1.

Thank you for the opportunity to provide comments.



March 15, 2011

Honorable Angus McKelvey, Chair
Honorable Isaac Choy, Vice Chair
House Committee on Economic Revitalization and Business

RE: SB 1161 SD1 – Relating to Telecommunications
ERB Committee – March 15, 2011, Conference Room 312, 8:00 AM

Aloha Chair McKelvey, Vice Chair Choy, and Members of the Committee:

I am Lyndall Nipps, Vice President of Regulatory Affairs for tw telecom (“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 1161 SD1.

Section 3 of the bill addresses issues relating to when a person or entity that wishes to install or replace telecommunications cables on a utility pole is required to replace or upgrade a pole. TWTC appreciates the efforts to address this issue, as TWTC frequently encounters delays in deploying its facilities while a determination is made as to whether the pole owner will allow us to install or replace cables. However, the biggest issue that TWTC faces in installing or replacing cables is the length of time it takes to receive a response for a request to attach to a pole. We typically must first contact Hawaiian Telcom, the party with whom we have a contractual relationship to access such facilities, who in turn must interface with the electric utility. The bill provides that a pole owner cannot require a person to upgrade or replace a pole if, among other things, the overall weight load on the utility pole does not exceed maximum utility pole safe weights. However, it does not address the issue of the length of time it typically takes for the pole owner to make this determination. TWTC respectfully requests that this committee consider addressing that issue in this bill.

Current FCC regulations require a utility that owns a pole, duct, conduit or right of way to respond to a request for access to such facilities within 45 days. The FCC rules also require that any denial of access provide specific information supporting the denial. Although TWTC would like to propose tighter guidelines, pole attachment requirements that conflict with FCC requirements could be subject to challenge.

Therefore, TWTC respectfully proposes the following amendments, which mirrors the FCC regulations for your committee’s consideration:

Amendment # 1:

That Section 1 of the bill is amended to reflect the intent to streamline applications to attach to utility poles, as follows:

SECTION 1. Act 199, Session Laws of Hawaii 2010, established a broadband working group to develop procedures for streamlining permitting functions that are applicable to the

development of broadband services and broadband technology. One of the discussion items of the working group is to exempt from many of the permitting requirements the installation of new or upgraded broadband infrastructure along existing conduits that are already used for telecommunications. Another discussion item of the working group is to streamline the processing of pole and duct applications.

The purpose of this Act is to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements, and to reduce the time and costs associated with applications to attach to utility poles.

Amendment #2:

That Section 3 of the bill is amended to include procedures that are consistent with current FCC regulations, with one addition. The addition would require the pole owner to inform the requesting party if alternative poles or conduits are available with sufficient capacity for the telecommunications cable. We also note that it's not clear what state agency would be responsible for administration and enforcement of the new provisions.

SECTION 3. No person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new or improve existing telecommunication cables; provided that:

- (1) The overall weight load on the utility pole following the installation or improvement is not greater than the weight load prior to the installation or improvement;
- (2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the Hawaii public utilities commission; and
- (3) The utility pole is not damaged due to the installation or improvement of telecommunications cable.

If access to a utility pole is not granted within 45 days of a written request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be

specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of capacity, safety, reliability, or engineering standards. In addition, the pole owner shall inform the requesting party if alternative poles or conduits are available that have sufficient capacity to accommodate the telecommunications cable.

As always, we appreciate your consideration of our request.

Sincerely,

/s/

Lyndall Nipps

Vice President, Regulatory Affairs-Western Region

tw telecom

(AZ, CA, CO, HI, ID, NM, OR, UT, WA)

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Testimony before the House Committee on Economic Revitalization & Business

**By Paul A. Nakagawa
Superintendent, Planning Division
Construction and Maintenance Department
Hawaiian Electric Company, Inc.**

March 15, 2011

**Senate Bill 1161, S.D. 1
Relating to Telecommunications**

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is Paul Nakagawa and I am testifying on behalf of the Hawaiian Electric Company and its subsidiaries, Hawaii Electric Light Company and Maui Electric Company.

SB 1161, SD 1 seeks to expedite the deployment of high-speed broadband technology in Hawaii by exempting construction of broadband infrastructure from certain permitting requirements.

While we appreciate and support the intent of this bill, we prefer the language in HB 1342, HD 1 that this committee passed. We have concerns with this bill as it is currently written as it may affect engineering and safety standards that HECO currently complies with when adding facilities to existing poles.

We therefore suggest an amendment to page 2, line 19, paragraph (2) to read: "The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communication Commission and the Hawaii Public Utilities Commission."

Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2011 11:40 AM
To: ERBtestimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SB1161 on 3/15/2011 8:00:00 AM

Testimony for ERB 3/15/2011 8:00:00 AM SB1161

Conference room: 312
Testifier position: comments only
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
E-mail: swartzg001@hawaii.rr.com
Submitted on: 3/13/2011

Comments:

The limitation in Section 3(1) does not appear practicable or useful given the other limitations in this section.
Adding facilities usually increases weight load.