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KEALI`I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE

Regular Session of 2012

Date: March 16, 2012

Time: 1:15 p.m.

TESTIMONY ON HB 2526 HD2 - RELATING TO REPORTING REQUIREMENTS FOR
TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDERS

TO THE HONORABLE CAROL FUKUNAGA AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

I am Keali`i Lopez, Director of the Department of Commerce and Consumer Affairs (DCCA). The DCCA appreciates the opportunity to express its continued support of this bill.

Development of world-class communications infrastructure is vital to the future of our State's economy and to the health, welfare and quality of life of all our residents. To ensure development of 21st century communications infrastructure and statewide access to advanced information services, the State must have data to understand and adapt its policies to a swiftly changing communications industry. Under the DCCA's broadband development ARRA grant, Act 199 (SLH 2010), and the Governor's Hawaii

Broadband Initiative, the DCCA has been charged with tasks to encourage and expedite broadband infrastructure development. Access to accurate and current information on the State's communications infrastructure and broadband service availability is key to effective policies and programs to advance broadband access, lobbying for federal funds for broadband infrastructure, and identifying the best strategies to leverage government resources and future projects to foster infrastructure deployment, especially in unserved and underserved areas of the State.

This bill will provide the State with data that it has for the most part been unable to obtain from providers. Telecommunications carriers and cable television providers would be required to provide basic information on broadband access availability and pricing, detailed as a percentage of households, addresses or tax map key parcels. To date, most (but not all) providers have been unwilling to provide this data for the DCCA's State Broadband Mapping ARRA project, contending that this information is confidential and proprietary and instead providing information at the census block level of detail. As stated in the bill, reporting at this level results in an overstatement of the State's broadband availability. This is of particular significance on the rural neighbor islands where census blocks are large, costs are the highest, and need is the greatest.

This overstatement is especially critical at this time because of the current reforms being made to the Federal Communications Commission's (FCC) Universal Service Fund (USF) program. In its participation in the FCC's USF reform proceedings to secure access to funds for broadband infrastructure development for Hawaii's rural areas, the DCCA understood that the FCC used the Map in quantifying Hawaii's need or

lack thereof for federal financial support. The DCCA was unable to counter the overstatement of service shown on the State Map lacking reliable data to document the gaps in service in the unserved and underserved areas of the State.

The FCC is now developing the framework and rules for its very high cost USF program, and the DCCA has been informed that the FCC has tentatively concluded that the National Broadband Map, which includes our State Broadband Map, should be used to determine eligibility for very high cost USF support. Thus, the State's current inability to accurately document its unserved and underserved areas has been, and is, a huge impediment to seeking federal funds for our largely rural State.

The ability to seek such funds is likely critical to reaching the ambitious goals of the Governor and the Legislature to propel this State into a leading position for broadband speeds and availability in the very near future, and therefore accurate data is needed, and it is needed now. The information required under this bill would provide a more accurate picture of broadband availability in this State. Concerns raised in previous hearings on the bill have been addressed by (1) narrowing the information to be provided; (2) providing qualifying language that the data be reported "without any other personal or private information"; and (3) providing a blanket confidentiality provision to protect all information reported under section 2 of the bill, except for "mapping information." The DCCA strongly recommends that disclosure also be allowed of aggregated data that may be used to support federal funding requests.

The DCCA notes that, because no customer lists will be reported, the blanket confidentiality afforded to the required information appears to be unwarranted. The

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DCCA believes that confidential business information provided, if any, may be protected under HRS Chapter 92F, the Uniform Information Practices Act (Modified).

The Department strongly urges passage of this bill.

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

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

**RE: HB 2526 HD2– Relating to Reporting Requirements for
Telecommunications and Cable Television Providers – CONCERNS and
AMENDMENT REQUESTED**
March 16, 2012 – 1:15 PM, Hawaii State Capitol Room 016

Aloha Chairs Fukunaga and Baker and members of the committees,

On behalf of Oceanic Time Warner Cable (Oceanic), which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to express our concerns on HB 2526 HD2 – Relating to reporting requirements for telecommunications and cable television providers.

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

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

Among our concerns regarding HB2526 HD2:

1. Reporting requirements would be costly to administer.
 - Disruptive to Oceanic's current business processes – substantial time and manpower would be diverted from actual building of broadband network to provide the immense amount of detailed reports being requested;
 - Would require additional staffing just to keep up with reporting requirements;
 - Increases overall burden and cost of doing business and ultimately would increase cost of services to consumers; and
 - Likely to slow down future deployment of upgrades and expansion.
2. Onerous requirements for providers to submit reports on highly proprietary information. Our concerns include but are not limited to:
 - The provision allowing the DCCA director to request additional information not stipulated in this legislation:
 - Inclusive of WiFi into broadband so we would have to report on those as well;
 - The Director still specifies the format for reporting information.
3. Subjects Oceanic's proprietary and competitive information to be shared publicly.
 - Use of information could be used to give advantage to providers without sharing of investment made by existing broadband providers:
 - Any employee of the DCCA, DBEDT, Attorney General offices can access the data; and
 - We're concerned that our customers and Oceanic may be impacted if data is inadvertently released to our competitors or to the public.
4. No other states subject telecommunications and cable television providers to similar reporting requirements – this would have a chilling effect on broadband deployment in the state.
 - Broadband providers could stop investing in the network if they are subject to these requirements; and
 - This also would be a disincentive to other carriers from entering the Hawaii market.

For these reasons, we respectfully ask the committee to carefully consider our concerns regarding HB2526 HD2. We offer the attached amendments for the committee's consideration.

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

Sincerely,

Bob Barlow
President of Oceanic Time Warner Cable

Attachment

A BILL FOR AN ACT

RELATING TO REPORTING REQUIREMENTS FOR TELECOMMUNICATIONS AND
CABLE TELEVISION PROVIDERS.

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

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

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

expansion and enhancement of broadband infrastructure and services.

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

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

The legislature recognizes, however, that requiring reporting of broadband data on a more granular level requires the disclosure of information that broadband providers consider highly confidential and proprietary, and such detailed reporting will impose significant and unreasonable regulatory costs and burdens upon these providers. Moreover, the legislature finds that the relevant metric for purposes of the federal grant is the availability of broadband service

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in various areas. Accordingly, the legislature finds that reporting broadband data by the percentage of households within a census block that have broadband service available to them will provide increased and sufficient detail of broadband penetration and availability, and will more accurately depict the locations and the status of broadband access in Hawaii while alleviating some of the concerns regarding the confidential and proprietary nature of this information.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

TELECOMMUNICATIONS AND CABLE INDUSTRY INFORMATION REPORTING

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

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

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

"Broadband speed threshold" means the same as defined or established by the Federal Communications Commission.

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

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

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

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

§ -2 Informational reports. (a) Beginning on July 31, 2012, July 31 thereafter, every provider shall file with the department, in a form agreed to by the director and providers, separate reports for each county that include broadband access availability and pricing over the most recent thirty-day period, detailed by the percentage of households within each census block who have broadband service available to them through that provider, and without the disclosure of any other personal or private information.

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(1) Broadband access availability aggregated at the census-block level and detailed as a percentage of households, addresses, or tax map keys that can be serviced in a census-block at the broadband speed threshold; and¶

(2) The monthly price charged for the broadband service if purchased individually without any discounts.

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Deleted: (b) The department may request that a provider submit additional information to the department.¶

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

(b) Information and data collected by the department may be shared only with the attorney general; the consumer advocate; and the director of business, economic development, and tourism, and their authorized representatives and employees, on a need to know basis, provided that the information and data are necessary

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for the performance of the agency's or other department's duties and functions and are compatible with the purpose for which the information was collected or obtained.

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

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

(2) Making any publication whereby the data furnished by any person can be identified; and

(3) Allowing any person other than the director, the attorney general, the consumer advocate, the director of business, economic development, and tourism, and their authorized representatives and employees, to examine the individual reports or statements provided.

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(d) The department and any other department or agency permitted access under subsection (b) shall implement and train its staff on a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of the information and data. The information security program shall be designed to:

(1) Ensure the security and confidentiality of the information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the
information that could result in personal or
competitive harm to individuals or providers."

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SECTION 3. This Act shall take effect on January 1, 3000.

Report Title:

Telecommunications and Cable Television Providers; Reporting Requirements

Description:

Requires reporting by telecommunications and cable television providers to the Department of Commerce and Consumer Affairs and provides confidentiality for certain information and reports submitted. Effective January 1, 3000. (HB2526 HD2)

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