DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
LUIS P. SALAVERIA
Director
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
before the
SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS AND ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY
Monday, March 20, 2017
1:45 PM
State Capitol, Conference Room 414
in consideration of
HB 625, HD3
RELATING TO INFRASTRUCTURE.

Chairs Nishihara and Wakai, Vice Chairs Wakai and Taniguchi and Members of the Committees.

The Department of Business, Economic Development and Tourism (DBEDT) **supports** HB 625, HD3, **with amendments**.

DBEDT supports the language in HB 625, HD3, with amendments to ensure that county public safety and IT agencies have the ability to evaluate the impacts of small wireless installations and issue permits that protect their equipment.

DBEDT urges the Committee to amend Chapter 46, in Section 3 of the bill, to incorporate the language in Section 2, amending Chapter 27, which allows state agencies to evaluate applications for small wireless installations on a geographic basis as follows:

§46 - Collocation permits; application, review, approval.

(a) A telecommunications carrier proposing to install broadband infrastructure shall submit an application for a permitted use permit to a county agency with jurisdiction over utility poles, light standards, buildings or structures. The application shall include:

(1) A geographic description of the project area;

(2) A listing and description of the utility poles, light standards, buildings, and structures included in the project for the installation, mounting, operation, and placement of broadband infrastructure, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures; and

(3) A description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure.

(b) The agency shall evaluate the impact of collocating the broadband infrastructure described in the application to insure that:

(1) The equipment installed on the poles, buildings, and structures are done in a manner to protect public health and safety, and safe travel in the public rights-of-way;

(2) The utility poles and light standards are able to bear the additional weight of the equipment and that the

equipment is not a hazard or obstruction to the public; and

(3) The project equipment and broadband infrastructure does not interfere with government systems for public safety communication operations, emergency services.

(c) The agency shall notify the applicant that:

(1) the permit is approved;

(2) the permit is approved with modifications; or

(3) the application is returned with a list of questions needing to be answered and information needed in more detail.

Expediting permits, not subject to conditional use or special use permit hearings, to install small wireless equipment on state and county poles and light standards by all carriers will help Hawaii residents keep up with the increased speed and capacity needed to remain economically competitive with the rest of the world.

Thank you for the opportunity to offer these comments on HB 625, HD3.

OFFICE OF PLANNING
STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS & ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY
Monday, March 20, 2017
1:45 PM
State Capitol, Conference Room 414

in consideration of
HB 625, HD3
RELATING TO INFRASTRUCTURE

Chairs Nishihara and Wakai, Vice Chairs Wakai and Taniguchi, and Members of the Senate Committees on Public Safety, Intergovernmental, and Military Affairs & Economic Development, Tourism, and Technology.

The Office of Planning (OP) strongly supports HB 625, HD3. Broadband technology is now a critical part of infrastructure and it is important to support efficient broadband opportunities and to facilitate the deployment of such high-speed broadband technology for the future global connectivity and economic viability of the State. Broadband technology is essential across multi-sector industries and among many benefits, provides opportunities for: enhanced educational opportunities, expansion of telehealth capacity, strengthening safety and civil defense communications, increasing economic competiveness, addressing consumer privileges, and providing tourism services.

HB 625, HD3 supports the development of critical infrastructure, establishing a siting process at State and county levels in order to facilitate the deployment of broadband technology by: amending Hawaii Revised Statutes (HRS) Chapter 27 to include a section describing the siting process of small wireless facilities and small wireless facility networks at the State level; amends HRS Section 27-41.1 to include eleven (11) new definitions; and amends HRS Chapter 46 to add the county siting process of small wireless facilities and small wireless facility networks at the County levels.

OP finds that HB 625, HD3 addresses issues such as public safety, private ownership of structures, poles, and light standards, a process for wireless services, and establishes a siting process that enables potential implementation addressing the State goal under the Hawaii State Planning Act (HRS Chapter 226) to achieve: A strong, viable economy, characterized by

stability, diversity, and growth, that enables the fulfillment of the needs and expectations of Hawaii's present and future generations (HRS Ch § 226-4).

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
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JI SOOK KIM
CABLE TELEVISION ADMINISTRATOR

TO THE SENATE COMMITTEE ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
AND
THE SENATE COMMITTEE ON
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Date: Monday, March 20, 2017
Time: 1:45 p.m.

TESTIMONY ON H.B. NO. 625, H.D. 3 – RELATING TO INFRASTRUCTURE.

TO THE HONORABLE CLARENCE K. NISHIHARA, AND THE HONORABLE GLENN WAKAI, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Ji Sook "Lisa" Kim, and I am the Cable Television Administrator at the Department of Commerce and Consumer Affairs (the "Department"). The Department appreciates the opportunity to comment on H.B. No. 625, H.D. 3, which establishes provisions relating to the siting of small wireless facilities and small wireless facilities networks.

The duties of the Department include supporting efforts and making recommendations to enhance and facilitate deployment of, and access to, competitively priced broadband services across the State. Thus, the Department strongly supports initiatives such as permit streamlining that may lead to faster deployment of both wireless and wireline facilities. The Department notes that state and federal laws currently exist to foster timely and nondiscriminatory access to rights of way for both wireline and wireless telecommunications providers. These include state and federal laws creating permitting "shot clocks;" federal law requiring nondiscriminatory access to poles, ducts, conduits, and rights of way; and federal law allowing for nondiscriminatory, fair and reasonable compensation for such access where publicly disclosed. The federal laws are intended to provide nondiscriminatory, streamlined access for all types

of technology, without overriding permitting and other approval processes designed to protect public health and safety and other public impacts, including interference with other government functions and visual impacts to our communities.

Rather than overriding existing approval processes designed to safeguard public health, safety, and welfare for one type of technology, the Department respectfully suggests that legislation that strengthens and provides enforcement of these existing rules and laws would be consistent with federal law and provide for expedited, non-discriminatory deployment for all telecommunications service providers. This may include provisions for "batch permitting" where appropriate; provisions for review on an expedited basis of state and county "shot-clock" laws, Hawaii Revised Statutes § 27-45 and § 46-89, respectively; or extensions of federal law to ensure application to all types of technology and enforcement. The Department has been working with stakeholders, including the Broadband Assistance Advisory Council ("BAAC"), to identify, establish, and/or adopt mechanisms that can support and enhance operation of existing laws and rules, as well as the coordination of government and private, transportation, utilities, and telecommunications projects. This includes the online utilities project notification system being developed by the City & County of Honolulu for management of projects in its rights-of-way, and an online statewide utility pole notification system, reviewed by the BAAC as a deployment best practice, that is currently under discussion by the joint pole owners in the State. These systems can improve communication, accountability, and documentation related to use of rights of way and utility pole attachments, respectively, and thereby increase efficiency and facilitate enforcement of timelines required by existing federal and state laws and pole attachment agreements.

Should your Committees choose to pass this bill, the Department, recognizing that permit streamlining must be balanced against appropriate review, defers to those agencies responsible for permitting and other approvals on how the current bill may impact the ability of those agencies to review attachments to infrastructure for health and safety considerations, as well as to minimize visual impacts to our communities. The Department further defers to those agencies that serve as the state and county asset owners and managers for comment on the bill's impact on their ability to manage, maintain, and preserve those assets and to perform government operations.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

Testimony by:

FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 20, 2017
1:25 p.m.
State Capitol, Room 414
.

H.B. 625, H.D. 3
RELATING TO INFRASTRUCTURE

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Economic Development, Tourism and Technology

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The Department of Transportation (DOT) – Airports Division **supports** the intent with comments on HB 625, H.D. 3 which establishes the siting process of infrastructure for small wireless facilities and small wireless facilities networks on state and county owned land.

The DOT is concerned the bill requirement to allow small wireless facilities and small wireless facilities networks in all public rights-of-way could adversely impact the WiFi System Concession at major state airports. Under the WiFi System Concession, the Concessionaire provides WiFi service to travelers and others in terminal buildings at all major State Airports. As the users of the airports are from many countries, the Concessionaire is required to provide multilingual service.

The DOT is also concerned that the requirement to allow small wireless facilities and small wireless facilities networks on utility poles in the airports could interfere not only with the WiFi concession service, but other existing wireless communication within the airports. To assure that there is no such interference, the DOT requests that the bill be amended to exempt rights of ways and property within the boundaries of the State Airports from the requirement to allow small wireless facilities and instead allow the DOT to determine whether such facilities can be accommodated on airport property, and if they can to what extent, without interfering with existing wireless communication.

Airports, unlike many other venues, have existing wireless communication activities that are essential to the operation and safety of the airports, users and aviation activity. Any potential interference with, or interruption of, such activities or systems could have significant adverse health and safety impacts. In order to avoid such potential impacts, the DOT requests the bill be amended to require that anyone seeking to install a small wireless facility or small wireless facilities networks receive written approval from the DOT prior to installing such a facility or network.

Thank you for the opportunity to provide testimony.

Harry Kim
Mayor

Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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March 17, 2017

Senator Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental
& Military Affairs
Hawai'i State Capitol
Honolulu, HI 96813

Senator Glenn Wakai, Chair
Committee on Economic Development, Tourism
& Technology
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Nishihara, Chair Wakai, and Committee members:

RE: HB 625, HD 3
Relating to Infrastructure

Thank you for this opportunity to testify against HB 625, HD 3.

Over the past weeks, there have been numerous drafts of legislation trying to facilitate the deployment of high-speed broadband infrastructure. We have raised objections to various aspects of those drafts, but each time we have suggested that the bills be kept alive for further discussion. It now is becoming more and more evident that the issues are simply too complex to expect them to be resolved this session. At this point, we would urge that no bill pass this session, and that the Legislature set up a mechanism (by Joint Resolution, study by the Auditor, or some other approach) for further discussion in the interim, with a consensus bill to be presented to next year's Legislature. The installation of telecommunication facilities on county-owned or State-owned property is complicated, far reaching in scope, and raises substantial questions related to fairness and public safety. Our concerns are mirrored by the State and the other counties, and with numerous private sector voices compounding the number of perspectives that must be accommodated, we trust that the legislative process will yield a satisfactory result, but only if given substantially more time.

Our main objection to these bills is that they do not protect radio towers/first responder communications. They may give the counties varying ability to regulate in the right of way, but those towers are still vulnerable (and probably prime targets for the telecommunications companies because they will get good coverage where we get good coverage).

Among numerous concerns we have is that, if this or any other bill were to pass in present form, we would be locked into a regime in which the County could not adequately protect against the overburdening of its equipment, which could cause interference with the County's existing system.

In addition, coerced co-location could interfere with the County's existing and prospective contractual relations, as some County "structures" are on leased or licensed properties that do not allow collocation without a landowner's consent, and landowners may be hesitant to let the County have a structure on their properties if doing so will allow any and all small wireless facilities or small wireless facilities networks to be placed on their properties without their consent. Co-location raises security concerns, concerns about existing equipment being damaged by allowing private entities to do installation and other work on County sites, and concerns about increased use and wear-and-tear on existing structures, equipment, and access routes to rural sites. We do not believe any of the bills a) grant counties immunity for private entities accessing and using county property, b) allow the counties to recoup costs due to a small wireless facility or network's use of counties' utilities, or c) expressly allow counties to require companies that are accessing or using a county's property to assume liability for any damages to existing equipment or structures and to defend and indemnify a county for any such damages.

If the final bill does not define "structure," it could be read to allow wireless equipment to be placed on any County owned or operated building.

An earlier draft totally exempted wireless equipment from any County permits. It required the wireless companies to provide notice prior to installation to the DCCA but not to an affected county. It allowed utilities to reject applications but did not provide counties that authority and did not have any process for applications. It required wireless companies to comply with "applicable safety and engineering requirements", but that would be difficult for us to check with no prior notice or permitting process. The present draft is much better, but initial drafts were extreme enough to raise questions as to whether the parties started out acting in good faith.

Another draft seemed to limit collocation charges to $20 annually—a giveaway that does not seem to reflect proper stewardship of the public trust. Staff did some brief research and did not see other states giving away public land so freely. Washington State, for instance, has a schedule of fees and regulations in place that looks like a better balance protecting public land. The fee formula in HD3 needs a thorough review.

At an absolute minimum, we would ask that any bill that passes provide that an entity proposing the installation, construction, development, or improvement of broadband networks must file a written request to do so with the State and affected county, and allow the counties to reject an application if the proposed installation might interfere with or overburden existing equipment.

The various parties will be meeting this week to see if a consensus can be achieved quickly, and we are happy to participate in that ongoing dialogue. But for a subject this big with so many long-term ramifications, it probably would be better to assure that these bills not become law without allowing time for further discussion and amendment. A very real danger to public safety could inadvertently result if, for instance, civil defense operations or emergency and first responder networks were compromised by the anticipated new installations.

Respectfully submitted,

Harry Kim
Mayor

Harry Kim
Mayor

Wil Okabe
Managing Director

Frank J. De Marco, P.E.
Director

Allan G. Simeon, P.E.
Deputy Director

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March 17, 2017

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair
COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY

NOTICE OF HEARING

DATE: Monday, March 20, 2017
TIME: 1:45 p.m.
PLACE: Conference Room 414
State Capitol
415 South Beretania Street

RE: TESTIMONY IN OPPOSITION OF HB 625, HD3, RELATING TO INFRASTRUCTURE

Dear Chairs Nishihara and Wakai and Committee Members:

Thank you for this opportunity to testify against HB 625 (telecommunications) in its present form, but to urge further consideration.

HB 625, HD3 deals with the installation of telecommunication facilities on government-owned property. It is complicated, far reaching in scope, and raises substantial questions related to fairness and public safety. Fortunately, our concerns are mirrored by the State and the other counties, and we trust that the legislative process will yield a satisfactory result.

While we are not well positioned to negotiate the details of these bills, it is our understanding that the City and County of Honolulu is working with the telecommunications companies to find common ground. We may not be in complete agreement with City and County, but we look forward to the outcome of those discussions.

A number of telecommunication bills have been heard this session. As stated in the committee report on HB 625 HD3, primary among the numerous concerns raised by these bills is that, if any of them were to pass in their present form, the State and counties could not adequately protect against the overburdening of their equipment, which could cause interference with the governments' existing equipment or system. We do not think that concern has been adequately addressed in HD3, and there are other issues as well.

The bills have, of course, varying provisions. Some raise concerns because they say actions relating to the installation, construction, development, or improvement of broadband networks will be exempt from County permitting requirements. Some bills do not state that an entity seeking to install or construct equipment for a broadband network must apply with the State or an affected utility or county, but instead provide that an entity proposing such an action must post notice of this intent on the Department of Commerce and Consumer Affair's website. Some bills also allow "utilities" (but not the State or counties) to reject an application to co-locate if collocation is going to overburden existing equipment.

Separately, coerced co-location could interfere with a county's existing and prospective contractual relations, as some county "structures" are on leased or licensed properties that do not allow collocation without a landowner's consent, and landowners may be hesitant to let a county have a structure on their properties if doing so will allow any and all small wireless facilities or small wireless facilities networks to be placed on their properties without their consent. Co-location raises security concerns, concerns about existing equipment being damaged by allowing private entities to do installation and other work on county sites, and concerns about increased use and wear-and-tear on existing structures, equipment, and access routes to rural sites. Some bills do not a) grant counties immunity for private entities accessing and using county property, b) allow the counties to recoup costs due to a small wireless facility or network's use of counties' utilities, or c) expressly allow counties to require companies that are accessing or using a county's property to assume liability for any damages to existing equipment or structures and to defend and indemnify a county for any such damages.

If the final bill doesn't define "structure," it could be read to allow wireless equipment to be placed on any county owned or operated building.

One version totally exempts wireless equipment from any county permits. It requires the wireless companies to provide notice prior to installation to the DCCA but not to an affected county. It allows utilities to reject applications but doesn't provide counties that authority and doesn't have any process for applications. It requires wireless companies to comply with "applicable safety and engineering requirements", but that would be difficult for us to check with no prior notice or permitting process.

Limiting collocation charges may not reflect proper stewardship of the public trust. Staff did some brief research and did not see other states giving away public land so freely. Washington State, for instance, has a schedule of fees and regulations in place that looks like a better balance protecting public land.

For the above reasons, we cannot support the current draft.

At an absolute minimum, we would ask that any bill that passes provide that an entity proposing the installation, construction, development, or improvement of broadband networks must file a written request to do so with the State and affected county, and allow the counties to reject an application if the proposed installation might interfere with or overburden existing equipment.

Please assure that HB 625, HD3 does not become law without a good deal of further discussion and amendment. A very real danger to public safety could inadvertently result if, for instance, civil defense operations or emergency and first responder networks were compromised by the anticipated new installations.

Respectfully submitted,

Frank J. De Marco, P.E.
Director

OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR

CITY AND COUNTY OF HONOLULU
BEFORE THE COMMITTEES ON PUBLIC SAFETY, MILITARY, AND INTERGOVERNMENTAL AFFAIRS
AND ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY
MONDAY, MARCH 20, 2017; 1:45 PM

TO: THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
THE HONORABLE GLENN WAKAI, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON PUBLIC SAFETY, MILITARY, AND INTERGOVERNMENTAL AFFAIRS

THE HONORABLE GLENN WAKAI, CHAIR
THE HONORABLE BRIAN T. TANIGUCHI, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

FROM: ROY K. AMEMIYA, JR., MANAGING DIRECTOR
CITY AND COUNTY OF HONOLULU

SUBJECT: OPPOSITION TO HB625, HD3 RELATING TO INFRASTRUCTURE

The City supports the widespread deployment of 4G and 5G technology on City-owned poles; but opposes HB625, HD3, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The City must emphasize that the installation of small cell infrastructure should not adversely impact or compromise public safety operations and security. Thus, it is important to ensure that City light standards and utility poles are able to bear the weight of additional broadband equipment, particularly because the added equipment was not likely included in the original design, sizing, and selection of the light standards and utility poles. The City also needs to ensure that the small wireless facilities are securely attached to the City's light standards, structures, and utility poles.

It is equally important to ensure that the installed equipment does not pose a hazard or obstruction to pedestrians, bicyclists, motorists, and people maintaining or repairing other pole mounted equipment, components, or lines. Finally, the equipment must not be placed in sensitive locations that compromise the provision of emergency services or otherwise impact homeland security. Accordingly, the City strongly opposes the language on page 6, lines 7 to 10 and on page 11, lines 9 to 12, which give wireless providers the **right** to place equipment on our poles, structures, and light standards.

This measure does not ensure that a county has sufficient room to deny the placement of equipment on its property due to safety concerns, and/or interference with present or future operations, particularly in the event of an emergency or disaster.

Equipment can be Placed on Any County Structure

This measure allows small wireless facilities and small wireless facilities networks to be placed on **any** State or county-owned building, utility pole, light standard, telecommunication antenna/tower and water tower. The State and the counties must be able to retain control over their structures and public safety facilities. The wireless carriers should not be allowed to circumvent the City's processes to ensure public safety and network security.

Liability for Injuries and Damages is not Described

The State and the counties should be held harmless for any injuries or damage that result from the installation of small wireless facilities or small wireless facilities networks on State or county-owned property. Language should be added that specifically places any resulting liability on the wireless carriers who have created injury or damage.

Future City Uses of City Property May Be Precluded

The current bill does not limit the wireless providers' pole capacity load. This greatly limits future City use of its own property for public safety or other unforeseen enhancements that may be needed.

Minimize Adverse Impact on Public Use of the Right of Way

This bill currently does not ensure that adverse impact to the public from the installation, repair, and maintenance of any equipment installed on City property is minimized. The equipment placed on City property will involve trenching in the public right-of-way. The City would like to ensure that trenching is minimized and that each wireless carrier that wishes to install equipment on City-owned property does not require trenching and re-trenching of the same area. Similarly, the installation, repair,

and maintenance of the equipment should be done at times of the day that minimize adverse impacts to vehicular and pedestrian traffic.

Conclusion

The City has been actively working with the industry and stakeholders to come up with language that addresses the City's concerns. The City looks forward to continuing to collaborate with all interested parties. Thank you for your consideration of this testimony in opposition to HB625, HD3 as drafted.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the Senate Committee on Public Safety, Intergovernmental and Military Affairs, and the Senate Committee on Economic Development, Tourism and Technology
Monday, March 20, 2017 at 1:45 P.M.
Conference Room 414, State Capitol

RE: HOUSE BILL 625 HD3 RELATING TO INFRASTRUCTURE

Chairs Nishihara and Wakai, Vice Chairs Wakai and Taniguchi, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of HB 625 HD3, which establishes a collocation permitting, application, review and approval process for telecommunications companies proposing to install broadband infrastructure on State or County structures, utility poles, light standards, or buildings; establishes the siting process.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

This legislation will not only establish a faster and more reliable small wireless or wireline facilities network, but will also fuel our workforce and put more money into the pockets of local consumers and businesses. Telecom operators are expected to invest approximately $275 billion in infrastructure, which would create three million jobs and pump $500 billion into the GDP. At a local level, 5G has proven its impact of stimulating our economy by creating nearly 3,500 jobs and is estimated to generate over $216 million in Smart City benefits for Hawaii, such as reduced commute times and improved public safety. In fact, small wireless and wireline facilities jobs offer better wages for local workers, paying 46 percent more on average than other jobs in Hawaii.

This proposed legislation will give today's businessperson or entrepreneur the tools they need to succeed in our local economy while ensuring Hawaii businesses maintain their competitive edge in the long-term. To ensure that local consumers and businesses may benefit from 5G as soon as possible, we must have a framework in place to streamline the process quickly and efficiently. By deploying a more robust small wireless or wireline facilities network, Hawaii will be able to offer businesses and start-ups a promising future in a world that is interconnected and rapidly changing.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

TO THE SENATE COMMITTEES ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
and
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

TESTIMONY REGARDING
HB 625 HD3 RELATING TO INFRASTRUCTURE

MARK BROWN
VICE PRESIDENT – STATE REGULATORY AFFAIRS
CHARTER COMMUNICATIONS, INC.

March 20, 2017
1:45 PM

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR, THE HONORABLE GLENN WAKAI, CHAIR AND MEMBERS OF THE COMMITTEES:

I appreciate the opportunity to submit testimony on behalf of Charter Communications, the overall corporate parent of Oceanic Time Warner Cable, regarding both our company and pending legislation concerning small cell deployment.

At the outset, I want to highlight Oceanic's commitment to robust broadband deployment in Hawaii. Oceanic is the single largest provider of high-speed broadband and video throughout the state. We currently have deployed over 2,900 Wi-Fi hotspots throughout the Islands, with a commitment to provide an additional 1,000 hotspots by 2020. Oceanic has also committed to raise our base or floor-level broadband speed to 60 MBs by May of this year. Additionally, Oceanic is also planning to introduce by May Spectrum Internet Assist, our low-cost broadband program for low-income families and seniors, which at 30MBs, will be the fastest program of its kind offered by any broadband provider, and we believe will have a tremendous positive impact on the communities we serve in Hawaii.

We are concerned that HB 625 HD3 would create an uneven playing field between cable and telecommunications providers in the state by crafting special rules for the placement of small wireless facilities in the public rights-of-way. Access to public rights-of-way should be equitable for all occupiers. HB 625 HD3 would do nothing to spur wireless broadband deployment, which is already advancing in the current regulatory environment. There is no evidence that this legislation is needed or that it will advance a legitimate public policy goal.

In order to access the public rights-of-way Charter, as a cable operator, is required to obtain a franchise, which involves a lengthy vetting process with DCCA. We are also subject to stringent safety and other obligations, including the requirement to pay franchise fees in Hawaii of 5% of gross revenue for occupancy and use. This equates to millions of dollars each year in payments.

This legislation is intended largely to allow unfranchised entities to circumvent the right-of-way authorization process, bypassing the procedure applicable to cable providers.

Cable operators should not be treated discriminatorily simply because we use the public rights-of-way to offer video/cable service, and our customers should not have to pay for us to use the public rights-of-way when others do not. Direct Broadcast Satellite companies like Dish Network and DirecTV already enjoy an advantage because they are not subject to any state or local regulation applicable to cable operators. This legislation would go one step further, allowing companies that are building a series of ***wireline*** networks to circumvent the processes applicable to cable providers simply because they deliver content to customers over a wireless device like a mobile phone.

The expedited process contemplated by this legislation does not apply only to the antennas themselves. The definition of "small wireless facilities" in HB 625 HD3, for example, appears to include all "associated equipment", which seems to encompass "cable runs for the connection of power and other services." Use of the term "associated equipment" for the provision of "other services" is a clear example of the bills' effort to broaden its application beyond the stated purpose of wireless facility deployment and cover all uses of the public rights-of-way, including a series of wireline connections between wireless antenna sites.

This bill also gives wireless providers the right to place or co-locate their wireless or wireline facilities on State and county utility poles, structures, buildings, and light standards (including street light poles), bypassing the procedures and conditions currently imposed on cable providers.

The bill is also unfair with regard to payment for the use of the public rights-of-way. The expedited wireless process severely limits fees while cable operators pay millions of dollars in franchise fees each year (not to mention cable's provision of valuable public, educational and government programming and other obligations that flow from our cable authorization). We think reduced fees for wireless services would be appropriate but only if the Legislature were willing to consider a comprehensive reform of all fees and obligations required of cable and telecommunications providers for access to the public rights-of-way.

Finally, it is important to note that requiring underlying right-of-way authority also ensures better coordination among the entities within the public rights-of-way (electric, telephone, cable) when plant and network are installed, repaired or replaced. Entities that are allowed to place equipment in the public rights-of-way without such authority can easily jeopardize the network and services of other providers.

HB 625 HD3 makes significant changes to the current process for public right-of-way access and creates an uneven playing field. We ask the Committees to hold consideration of the bill until it and all interested stakeholders have had an opportunity to study and review the implications of this bill and provide stakeholders, like Charter, an opportunity to more fully detail issues and concerns. Any effort to consider this issue should be the subject of much deeper consideration and broader study rather than moving quickly to pass unnecessary legislation that could result in unintended consequences.

However, in the event the Committees decide to pass this measure, we ask that the Committees consider and incorporate the amendments included in the attached proposed amendments to HB 625 HD3. The attached draft contains Charter's proposed amendments, which seek to address fundamental concerns of disparate treatment among providers of like services, as described in greater detail above. The attached draft also repeals Section 2 of Act 151, as amended, as it is unnecessary and is somewhat inconsistent with portions of HRS Chapters 27 and 46.

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

H.B. NO. 625 H.D. 3

A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE.

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

SECTION 1. The legislature finds that the efficient deployment of broadband infrastructure and technology is important for Hawaii's future global connectivity and economic viability. Among the benefits afforded by an advanced broadband infrastructure system are increased and enhanced educational opportunities, telehealth capacity, safety and civil defense communications, economic competitiveness, consumer privileges, and tourism services.

To ensure that consumers throughout the State may benefit from these services as soon as possible, and to provide wireless and wireline providers with a fair and predictable process for the deployment of small wireless facilities, the legislature finds that it is important to regulate the deployment of small wireless facilities and small wireless facilities networks.

The purpose of this Act is to facilitate the deployment of high-speed broadband infrastructure, including small wireless facilities and small wireless facilities networks in a way that encourages new technology and ensures a level playing field for competitive communications service providers. A collocation permit application, review, and application process is established by the Act for telecommunications companies proposing to install broadband infrastructure on utility poles, buildings, structures, or light standards owned jointly by the State or county and private investor-owned utilities. This Act, however, does not relieve wireless infrastructure providers from existing requirements attached to private investor-owned

utility poles including compliance with applicable provisions of Hawaii Administrative Rules 6-73.

This Act also repeals those sections of Act 151, Session Laws of Hawaii 2011, relating to certain exemptions for broadband service and broadband technology from state and county permitting requirements.

SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended by adding two new sections to part VII to be appropriately designated and to read as follows:

"§27- **Collocation permits; application; review; approval**.

(a) Except as otherwise provided in this chapter, a~~A~~ telecommunications carrier proposing to ~~install broadband infrastructure~~collocate a small wireless facility on a wireless support structure in the public right-of-way shall submit an application for a permitted use permit to a State or county agency with jurisdiction over utility poles, light standards, buildings, or structures. The application shall include:

(1) A geographic description of the project area;

(2) A listing and description of the utility pole, light standard, building, or structure included in the project for the installation, mounting, operation, and placement of broadband infrastructure, including an assessment of the identifying information, location, and ownership of the listed utility pole, light standard, building, or structure; and

(3) A description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and

weight of the equipment to be installed on each utility pole, light standard, building, or structure.

(b) The agency shall evaluate the impact of collocating the ~~broadband infrastructure~~small wireless facility described in the application to insure that:

(1) The equipment installed on the pole, light standard, building, or structure is done in a manner to protect public health and safety, and safe travel in the public rights-of-way;

(2) The utility pole or light standard is able to bear the additional weight of the equipment and that the equipment is not a hazard or obstruction to the public; and

(3) The project equipment and ~~broadband infrastructure~~small wireless facility does not interfere with government systems for public safety communication operations and emergency services.

(c) The agency shall notify the applicant that:

(1) The permit is approved;

(2) The permit is approved with specified modifications; or

(3) The application is returned with a list of specific questions seeking answers, clarification, or additional detailed information and resubmission of the application with answers to the questions shall be required.

§27- **Siting of small wireless facilities and small wireless facilities networks.** The State ~~may~~ shall permit, as a permitted use not subject to zoning review but subject only to clear and objective building permit standards, the collocation of small wireless facilities or small wireless facilities networks on state structures, state utility poles, and state light standards~~,~~ for the

deployment of high speed wireless or wireless broadband infrastructure, and provided that nothing set forth in this section shall be construed to authorize any person to (1) offer communications service, or (2) install, place, maintain, or operate communications facilities, other than small wireless facilities, in the public rights of way as follows:

(1) Small wireless facilities and small wireless facilities networks shall not be subject to the standards of a special or conditional use permit in:

(A) All public rights-of-way and property;

(B) All land designated as rural or agriculture in accordance with chapter 205; and

(C) All land designated as urban; provided that permissible uses within the agricultural district conform to the definition of "wireless communication antenna" in accordance with section 205-4.5(a)(18);

(2) Small wireless facilities and small wireless facilities networks may be processed for a special or conditional use permit when the small wireless facilities and small wireless facilities networks are located on land designated as conservation, in accordance with chapter 205;

(3) Wireless providers shall have the right to place small wireless facilities on state utility poles, state structures, state buildings, and state light standards. The State may require building permits or other non-discretionary permits and approvals for the collocation of small wireless facilities and small wireless facilities networks; provided that the permits and approvals are of general applicability. The State shall receive applications for, and process

and issue the permits and approvals in accordance with applicable laws, including section 27-45 and subject to the following requirements:

(A) An applicant shall not be required to perform any services, including restoration work not directly related to the collocation, to obtain approval of an application;

(B) An application may be denied if it does not meet applicable laws or rules regarding construction in the public rights-of-way and building or electrical codes or standards; provided that the codes and standards are of general applicability. The State shall document the basis for any denial, including the specific code provisions or standards on which the denial was based; and

(C) An applicant for a small wireless facilities network involving no more than twenty-five individual small wireless facilities of a substantially similar design may request and shall be permitted to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of the small wireless facilities network instead of filing separate applications for each individual small wireless facility;

(4) A wireless provider may collocate small wireless facilities and small wireless facilities networks on state structures, state utility poles, state buildings, and state light standards within the state's designated space, located within the land identified in paragraph (1)(A), (B), and (C), subject to rates, terms, and conditions if such rates, terms, and conditions are

required by the state for similar types of commercial use. The annual recurring rate to collocate a small wireless facility or small wireless facility network on a state structure, state utility pole, state building, or state light standard within the state's designated space shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission for ~~telecommunications~~ pole attachments pursuant to 47 U.S.C. § 224(d)~~in 47 C.F.R. §1.1409(e)(2)~~; provided that, if the Federal Communications Commission adopts a rate formula for small wireless facility or small wireless facility network attachments, that rate formula shall apply; and

(5) The State shall not require an application, nor any permits or fees, for (i) ~~a permit for a wireless provider or wireless provider's licensed contractor to~~routine maintenance;~~ain, repair, or~~(ii) the replacement of ~~the providers'~~ small wireless facilities with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities, except as necessary to protect the public safety; or (iii) the installation, placement, maintenance, operation or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with national safety codes;

(6) Except as provided in this chapter or specifically authorized by Section 440G-8 or federal law, the state may not (1) adopt or enforce any regulations on the placement or operation of communications facilities in the right-of-way by any provider authorized by law, other than as granted

in this chapter, to operate in the right-of-way or (2) regulate any communications services or impose or collect any taxes, fees, or charges not specifically authorized under applicable law.

(7) Nothing in section shall be construed to:

(A) Provide state-based access rights to poles or structures solely-owned by an investor-owned electric utility or telephone utility;

(B) Impair access rights provided under title 47 United States Code section 224 or its implementing regulations; or

(C) Relieve a wireless provider from complying with existing lawful joint-pole committee processes for attaching to jointly-owned poles, including compliance with the applicable provisions of Hawaii Administrative Rules 6-73."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

"§46- **Siting of small wireless facilities and small wireless facilities networks**. The county ~~may~~ shall permit, as a permitted use not subject to zoning review but subject only to clear and objective building permit standards, the collocation of small wireless facilities or small wireless facilities networks on county structures, county utility poles, county buildings, and county light standards for the deployment of high speed broadband infrastructure, and provided that nothing set forth in this section shall be construed to authorize any person to (1) offer communications service, or (2) install, place, maintain, or operate

communications facilities, other than small wireless facilities, in the public rights of way, as follows:

(1) Small wireless facilities and small wireless facilities networks shall not be subject to the standards of a special or conditional use permit in:

(A) All public rights-of-way and property;

(B) All land designated as rural or agriculture in accordance with chapter 205; and

(C) All land designated as urban; provided that, for the purposes of this paragraph, permissible uses within the agricultural district conforms to the definition of "wireless communication antenna" in accordance with section 205-4.5(a)(18);

(2) Small wireless facilities and small wireless facilities networks may be processed for a special or conditional use permit when the small wireless facilities and small wireless facilities networks are located on land designated as conservation, in accordance with chapter 205;

(3) Wireless providers shall have the right to place small wireless facilities on county-owned poles, county structures, county buildings, and county light standards. The county may require building permits or other non-discretionary permits for the collocation of small wireless facilities and small wireless facilities networks, provided that the permits ~~and approvals~~ are of general applicability. The county shall receive applications for, and process and issue the permits and approvals in accordance with applicable laws, including section 46-89 and subject to the following requirements:

(A) An applicant shall not be required to perform any services, including restoration work not directly related to the collocation, to obtain approval of applications;

(B) An application may be denied if it does not meet applicable laws or rules regarding construction in the public rights-of-way and building or electrical codes or standards; provided that the codes and standards are of general applicability. The county shall document the basis for any denial, including the specific code provisions or standards on which the denial was based;

(C) An applicant for a small wireless facilities network involving no more than twenty-five individual small wireless facilities of a substantially similar design may request and shall be permitted to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of the small wireless facilities network instead of filing separate applications for each individual small wireless facility; and

(D) Applications for permits for the collocation of small wireless facilities and small wireless facilities networks shall be deemed applications for broadband-related permits, as defined in section 46-89(h).

(4) A wireless provider may collocate small wireless facilities and small wireless facilities networks on county structures, county-buildings, county utility poles, and county light standards within the county's designated

space and located within the land identified in paragraph (1)(A), (B), and (C), subject to rates, terms, and conditions if such rates, terms, and conditions are required by the county for similar types of commercial use. The annual recurring rate to collocate a small wireless facility or small wireless facility network on a county structure~~, county building~~, county utility pole, or county light standard within the county's designated space shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission for ~~telecommunications~~ pole attachments in~~.~~ 47 U.S.C. § 224(d)~~47 C.F.R. §1.1409(e)(2)~~; provided that, if the Federal Communications Commission adopts a rate formula for small wireless facility or small wireless facility network attachments, that rate formula shall apply;

(5) The counties shall not require an application, nor any permits or fees, for (i) ~~permit~~ routine ~~for a wireless provider or wireless provider's licensed contractor to~~ maintenance~~ain~~;~~, repair, or~~(ii) the replacement of ~~the providers'~~ small wireless facilities and small wireless facilities networks with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities, except as necessary to protect public safety; or (iii) the installation, placement, maintenance, operation or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with national safety codes; and

(6) Except as provided in this chapter or specifically authorized by Section 440G-8 or federal law, a county may not (1) adopt or enforce any regulations on the placement or operation of communications facilities in the right-of-way by any provider authorized by law, other than as granted in this chapter, to operate in the right-of-way or (2) regulate any communications services or impose or collect any taxes, fees, or changes not specifically authorized under applicable law.

(7) Nothing in section shall be construed to:

(A) Provide county-based access rights to poles or structures solely-owned by an investor-owned electric utility or telephone utility;

(B) Impair access rights provided under title 47 United States Code section 224 or its implementing regulations; or

(C) Relieve a wireless provider from complying with existing lawful joint-pole committee processes for attaching to jointly-owned poles, including compliance with the applicable provisions of Hawaii Administrative Rules 6-73."

SECTION 4. Section 27-41.1, Hawaii Revised Statutes, is amended by adding ~~eleven~~ fifteen new definitions to be appropriately inserted and to read as follows:

""Collocation" means the installation, mounting, maintenance, modification, operation, or replacement of ~~wireless or~~ wireless ~~broadband service equipment~~facilities on a tower, utility pole, light standard~~,~~ building, or other ~~existing~~ structure existing on the date of this Act for the purpose of transmitting or receiving radio frequency signals for communications purposes. ~~For purposes of this definition, "wireless or wireless broadband service equipment":~~

~~(1) Includes small wireless or wireline facilities, transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and~~

~~(2) Does not include the structure or improvements on, under, or within which the equipment is collocated.~~

"General applicability" refers to laws, regulations, or processes that apply to objective requirements to all persons or services in a nondiscriminatory manner and do not ~~favor the~~ apply exclusively to small wireless facilities.

"Light standard" means a street light, light pole, lamp post, street lamp, lamp standard, or other raised source of light located inside the right-of-way of a public road or highway, or utility easement.

"Micro wireless facility" means a small wireless facility that is no larger in dimension than twenty-four inches in length, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.

"Public property" means property owned or controlled by the State, state agencies, or a county and includes buildings, water tanks, decorative poles, and light standards.

"Rights-of-way" means the areas on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property.

"Small wireless facilities" means wireless facilities that meet the following qualifications:

(1) If applicable, each individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume; ~~and~~

(2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:

(A) Twenty-eight cubic feet for collocations on all non-pole structures including buildings and water tanks, that can support fewer than three providers;

(B) Twenty-one cubic feet for collocations on all pole structures including light poles, traffic signal poles, and utility poles, that can support fewer than three providers;

(C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers; and

(3) Minimizes, to the greatest extent possible, visual blight.

"Small wireless facilities network" means a group of interrelated small wireless facilities designed to deliver wireless communications service, but does not include wires or cables used for wireline backhaul or coaxial or fiber-optic cable between utility poles, or that is otherwise not immediately adjacent to and directly associated with a particular antenna.

"Telecommunications service" or "telecommunications" shall have the same meaning as defined in section 269-1.

"Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

"Wireless communications service" means any services using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided using wireless facilities.

"Wireless facilities" means equipment at a fixed location that enables the provision of wireless communications service between user equipment and a communications network, including radio transceivers, antennas, regular and backup power supplies, and comparable equipment, regardless of technical configuration. The term includes small wireless facilities, but does not include wireline backhaul facilities, or coaxial or fiber-optic cable between utility poles, or that otherwise is not immediately adjacent to and directly associated with a particular antenna.

"Wireless provider" means a person or entity that is:

(1) A provider as defined in section 440J-1;

(2) A provider of wireless ~~tele~~communications service; or

(3) Authorized in accordance with chapter 269 to provide facilities-based telecommunications services in the State and builds, installs, operates, or maintains facilities and equipment used to provide fixed or mobile services through small wireless facilities.

"Wireline" means wire or wires used for transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium.

"Wireline backhaul" means the transport of communications data or other electronic information by wire from wireless facilities to a network."

SECTION 5. Section 46-15.6, Hawaii Revised Statutes, is amended by adding nine new definitions to be appropriately inserted and to read as follows:

""Collocation" means the installation, mounting, maintenance, modification, operation, or replacement of wireless or wireless ~~broadband service equipment~~facilities on a tower, utility pole, light standard, building, or other ~~existing~~ structure existing on the date of this Act for the purpose of transmitting or receiving radio frequency signals for communications purposes. ~~For purposes of this definition, "wireless", or "wireless broadband service equipment":~~

~~(1) Includes small wireless facilities, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and~~

~~(2) Does not include the structure or improvements on, under, or within which the equipment is collocated.~~

"General applicability" refers to laws, regulations, or processes that apply to objective requirements to all persons or services in a nondiscriminatory manner and do not apply exclusively to small wireless facilities.

"Light standard" means a street light, light pole, lamp post, street lamp, lamp standard, or other raised source of light located inside the right-of-way of a public road or highway, or utility easement.

"Micro wireless facility" means a small wireless facility that is no larger in dimension than twenty-four inches in length, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.

"Public property" means property owned or controlled by the State, state agencies, or a county and includes buildings, water tanks, decorative poles, and light standards.

"Rights-of-way" means the areas on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property.

"Small wireless facilities" means wireless facilities that meet the following qualifications:

(1) Each individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume;

(2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:

(A) Twenty-eight cubic feet for collocations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;

(B) Twenty-one cubic feet for collocations on all pole structures, including but not limited to light poles, traffic signal poles, and utility poles, that can support fewer than three providers;

(C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers;

(3) Part of a small wireless facilities network; and

(4) Minimizes, to the greatest extent possible, visual blight.

"Small wireless facilities network" means a group of interrelated small wireless facilities designed to deliver wireless communications service.

"Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

"Wireless communications service" means any services using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided using wireless facilities.

"Wireless facilities" means equipment at a fixed location that enables the provision of wireless communications service between user equipment and a communications network, including radio transceivers, antennas, regular and backup power supplies, and comparable equipment, regardless of technical configuration. The term includes small wireless facilities, but does not include wireline backhaul facilities, or coaxial or fiber-optic cable between utility poles, or that otherwise is not immediately adjacent to and directly associated with a particular antenna.

"Wireless provider" means a person or entity that is:

(1) A provider as defined in section 440J-1;

(2) A provider of wireless ~~tele~~communications service; or

(3) Authorized in accordance with chapter 269 to provide facilities-based telecommunications services in the State and builds, installs, operates, or maintains facilities and equipment used to provide fixed or mobile services through small wireless facilities."

"Wireline" means wire or wires used for transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium."

"Wireline backhaul" means the transport of communications data or other electronic information by wire from wireless facilities to a network.

SECTION 6. Act 151, Session Laws of Hawaii 2011, section 2, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, as amended by section 1 of Act 193, Session Laws of Hawaii 2016, is repealed.

~~["SECTION 2. Beginning January 1, 2012, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:~~

~~(1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:~~

~~(A) On existing or replacement utility poles and conduits; and~~

~~(B) Using existing infrastructure and facilities;~~

~~(2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and~~

~~(3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.~~

~~An applicant shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.~~

~~A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure."]~~

SECTION 7~~6~~. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural

subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet.

Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, and wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses."

SECTION 8~~7~~. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in

connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(5) Public institutions and buildings that are necessary for agricultural practices;

(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Agricultural-based commercial operations as described in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the

agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;

(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

(C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with

surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph: "Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

(17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural- energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural- energy facilities;

(18) Construction and operation of wireless communication antennas[~~;~~], including small wireless facilities or small wireless facilities networks; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection; provided further that "small wireless facilities" shall have the same meaning as set forth in sections 27-41.1 and 46-15.6;

(19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this paragraph, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural

activities and practices conducted on a farming operation as defined in section 165-2;

(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

(A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;

(B) Placed in a manner that still allows vehicular traffic to use the road; and

(C) Granted a special use permit by the commission pursuant to section 205-6;

(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:

(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is

at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or

(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

(A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:

(i) Impoundment facilities using a dam to store water in a reservoir;

(ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower elevation to be released to turn a turbine to generate electricity;

(B) Comply with the state water code, chapter 174C;

(C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and

(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered."

SECTION 9~~8~~. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10~~9~~. This Act shall take effect on July 1, 2050; provided that this Act shall apply to permit applications filed with the State or county after January 1, 2018.

Report Title:

Broadband; Small Wireless Facilities; Siting Process; State and County Land; Permits

Description:

Establishes a collocation permitting, application, review and approval process for telecommunications companies proposing to install broadband infrastructure on State or County structures, utility poles, light standards, or buildings. Establishes the siting process. (HB625 HD3)

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

March 17, 2017

Honorable Clarence K. Nishihara
Chair, Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii State Capitol
Room 214
Honolulu, HI 96813

Honorable Glenn Wakai
Chair, Senate Committee on Economic Development, Tourism, and Technology
Hawaii State Capitol
Room 216
Honolulu, HI 96813

Honorable Glenn Wakai
Vice Chair, Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Hawaii State Capitol
Room 216
Honolulu, HI 96813

Honorable Brian T. Taniguchi
Vice Chair, Senate Committee on Economic Development, Tourism, and Technology
Hawaii State Capitol
Room 219
Honolulu, HI 96813

RE: Support House Bill 625 HD3 – Small Wireless Facility Deployment

Dear Chairs Nishihara and Wakai and Vice Chairs Wakai and Taniguchi:

On behalf of CTIA, the trade association for the wireless communications industry, I am writing in support of House Bill 625 HD3, related to the deployment of small wireless facilities. The people of Hawaii continue to demand – at skyrocketing levels – access to wireless products and services. This is demonstrated by the fact that, according to the Federal Communications Commission (FCC), there are more wireless connections than there are people in Hawaii, representing a wireless penetration rate of over 100%.[1] The number of wireless subscribers in Hawaii has grown nearly 16% since 2010 amounting to over 1.4 million subscribers and 99.5% of Hawaiians have

[1] U.S. Census, Population Estimates, at http://www.census.gov/data/tables/2016/demo/popest/state-total.html, last accessed 3/17/2017.

access to mobile broadband service.[2,3] These demands from the wireless industry's customers – your constituents – require that wireless networks be updated today and readied for the next generation of wireless networks. House Bill 625 HD3 is a needed mechanism accommodate consumer demands and help to realize the future.

Small wireless facilities – also known as small cells – are being widely deployed to accommodate this increased demand. Small cells are wireless antennas, typically no more than six cubic feet in volume, and associated equipment generally less than twenty-eight cubic feet, that are being installed on existing structures like utility poles, street lights and traffic signal poles. This global trend is sweeping the country. More than 250,000 small cells are expected to be installed over the next few years in the United States, about the number of traditional "macro" cell sites built over the last 30 years.

Small cells enhance capacity on existing 4G LTE wireless networks by efficiently using scarce spectrum, and they will be required for the higher-frequency spectrum 5G networks will depend on. The benefits provided by 5G are astounding. 5G networks will provide increased capacity to accommodate growing consumer demands and will connect 100 times more devices. Imagine a future where nearly everything is connected to ubiquitous wireless networks at speeds up to 100 times faster than today. Imagine communities that are smarter and more connected. Entire industries, from public safety to transportation, will be transformed.

In fact, Accenture recently published a study noting that 5G wireless networks could create as many as three million jobs and boost the U.S. GDP by nearly $500 billion over the next seven years.[4] More specifically, Hawaii communities – from small towns to big cities – that embrace the next-generation of wireless connectivity will realize significant economic benefits. For instance, 5G deployment in a community like North Kona may create over 300 jobs and increase GDP by $50 million and a community like Honolulu may see the creation of nearly 3,500 jobs and increase GDP by $570 million.[5] That's the promise of the next-generation of wireless technology. America needs to lead in its deployment.

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[2] FCC, Voice Telephone Services Report: Status as of June 2015, August 2016, at https://www.fcc.gov/wireline-competition/voice-telephone-services-report, last accessed 3/17/2017.
[3] Broadband Now, Broadband Internet in Hawaii, at: http://broadbandnow.com/hawaii, last accessed 3/17/2017.

[4] "How 5G Can Help Municipalities Become Vibrant Smart Cities," Accenture Strategy, Jan 12, 2017. These estimates are based on expected benefits for the United States from next generation wireless networks and some smart city technologies. They are based on per capita application of the estimated national benefits to individual cities (e.g., the number of construction jobs are national averages assigned on a per-capita basis), and may vary depending on the individual city.

[5] *Ibid.*

House Bill 625 HD3 helps to remove barriers to efficient deployment of small cell wireless infrastructure by streamlining processes and imposing reasonable rates and fees. Furthermore, the legislation places no limitations on localities' ability to deny permits based on building, safety or electrical codes or standards. There is no removal of localities' jurisdiction in these areas.

In closing, since 2010, wireless providers have invested more than $177 billion to improve their coverage and capacity to better serve Americans, with $32 billion invested in 2015 alone.[6] As stated above, more than 250,000 small cells are expected to be installed over the next few years in the United States. The regulatory and land use environment must allow for capital to be efficiently spent as capital tends to flow to places that are ready for investment. House Bill 625 HD3 would send such a signal that Hawaii is ready for investment.

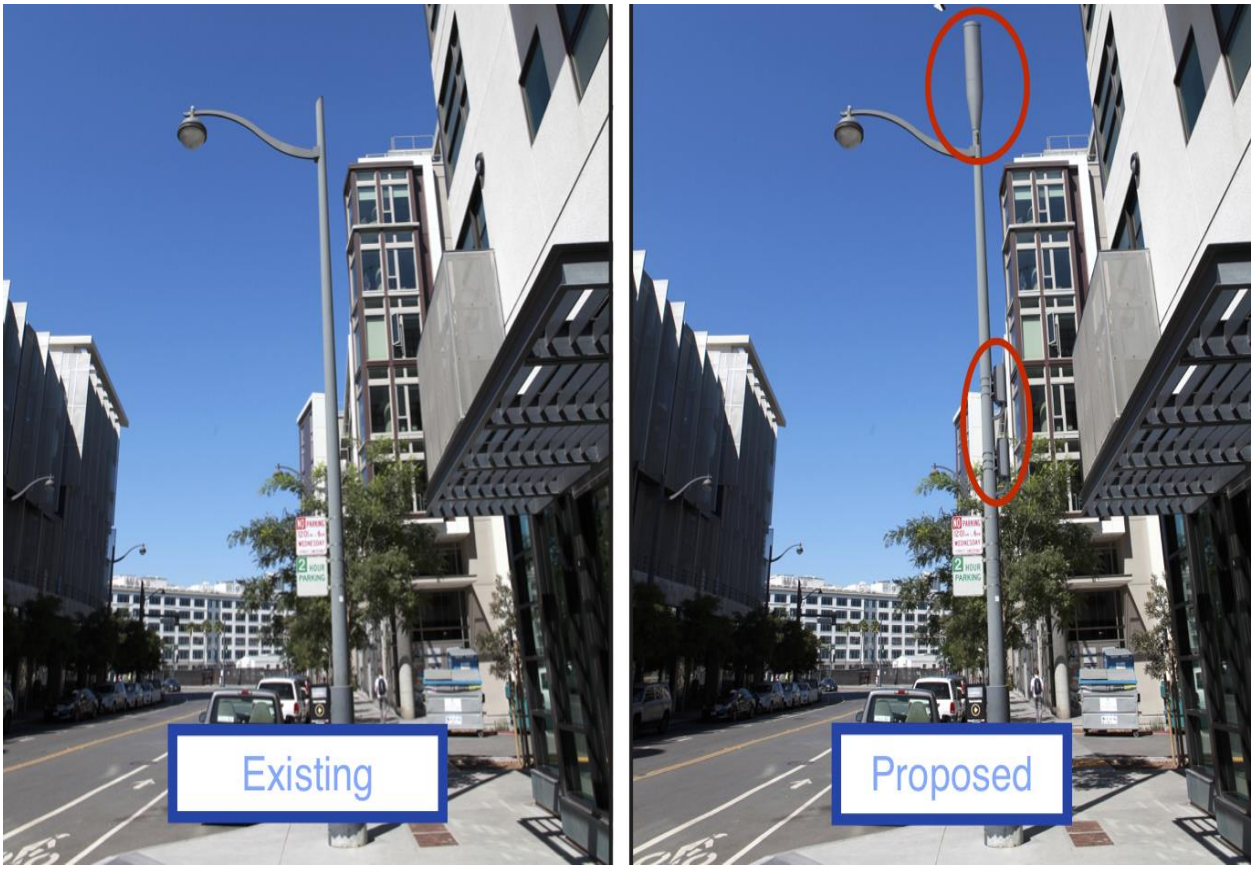
Thank you for the opportunity to submit testimony in support of House Bill 625 HD3 and we strongly urge its approval.

Sincerely,

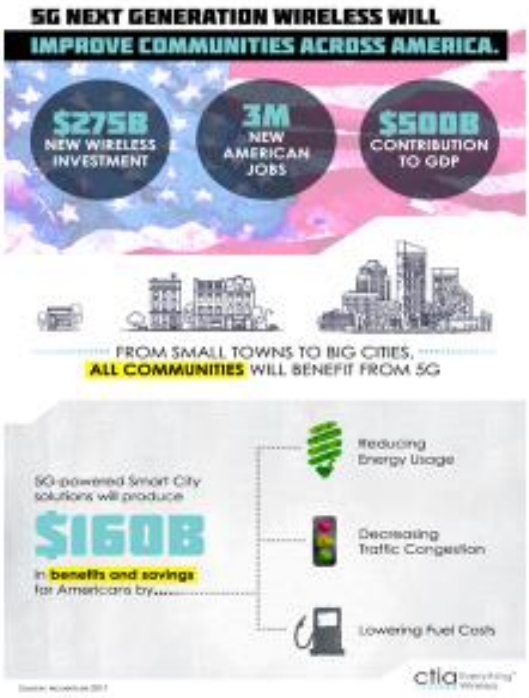
Bethanne Cooley
Director, State Legislative Affairs
CTIA

[6] CTIA's Wireless Industry Summary Report, Year-End 2015 Results, 2015, http://www.ctia.org/industry-data/ctia-annual-wireless-industry-survey, last accessed 3/17/2017.

Example of a Small Cell



5G Benefits: Hawaii



- **Honolulu**
  - nearly 3,500 jobs created
  - over $216 million in Smart City benefits
  - $571 million in estimated GDP growth
- **Ewa**
  - over 2,600 jobs created
  - over $166 million in Smart City benefits
  - $426 million in estimated GDP growth
- **North Kona**
  - over 300 jobs created
  - Nearly $10 million in Smart City benefits
  - $50 million in estimated GDP growth

Source

HB 625 HD3

RELATING TO INFRASTRUCTURE

KEN HIRAKI
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM

March 20, 2017

Chairs Nishihara, Wakai and Members of the Committees:

Hawaiian Telcom supports the intent of HB 625 HD3 to promote the deployment of advanced broadband services throughout the state.

While we support the intent of this measure, we believe that benefits afforded to small wireless facilities under HB 625 HD3 should apply equally to wireline broadband as well.

In order to maintain a level playing field in the statewide rollout of advanced broadband services, Hawaiian Telcom respectfully requests that HB 625 HD3 be amended to also include "wireline" services and facilities.

Measures designed to encourage and promote both wireline and wireless services will help speed up the build-out of Hawaii's broadband network and provide consumers with the services that they need at the competitive prices that they deserve.

Based on the aforementioned, Hawaiian Telcom requests that the committee look favorably upon our suggested amendments.

Thank you for the opportunity to testify.

verizon

Jesús G. Román
Assistant General Counsel
Pacific & North Central Market
15505 Sand Canyon Avenue
Irvine, CA 92618

March 17, 2017

Honorable Clarence K. Nishihara, Chair
Honorable Glenn Wakai, Vice Chair
Senate Committee on Public Safety, Intergovernmental,
and Military Affairs
Hawaii State Capitol, Rooms 214 and 216
Honolulu, HI 96813

Honorable Glenn Wakai, Chair
Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Economic Development,
Tourism, and Technology
Hawaii State Capitol, Rooms 216 and 219
Honolulu, HI 96813

RE: HOUSE BILL 625, HD3 – Relating to Infrastructure-SUPPORT
Hearing date: March 20, 2017 at 1:45 pm

Dear Chairs Nishihara and Wakai, Vice Chairs Wakai and Taniguchi and Committee Members:

On behalf of Verizon, I submit this testimony in STRONG SUPPORT of House Bill 625, HD3 and offer a set of amendments as attached. Verizon has a keen interest in the deployment of small wireless facilities which will help densify the current network throughout Hawaii and set the platform for 5G. In order to take advantage of this nascent technology Hawaii needs a statewide legal framework that modernizes the current permitting process.

Based on numerous meetings with stakeholders including county departments and opponents of HB 625, HD3, Verizon has proactively drafted a proposed set of amendments that includes language we understand these stakeholders would like to see in the bill. First, a concern was raised that this legislation would grant wireless infrastructure providers the ability to deploy a wireline network including backhaul facilities and cables from pole to pole. That has never been the purpose of the legislation and the revisions in the proposed amendments address that concern. Second, stakeholders have expressed the desire to deploy micro-wireless facilities on messenger wires. The proposed amendments include language to meet that desire. Third, Verizon's proposed amendments include revisions that require wireless carriers to comply with the rules set forth in HAR 6-73. Finally, Verizon's proposed amendments address concerns municipalities may have with a consolidated or "batched" application. Additional revisions address other concerns raised during these meetings and in previous hearings, though Verizon understands that there may be other concerns raised and discussions continue to find appropriate language to address them.

The Problem HB 625, HD3 Addresses

HB 625, HD3 is a critical and timely piece of legislation. It will modernize Hawaii's legal and policy framework to facilitate the expeditious deployment of small cells. This is necessary to meet the exponential growth and demand for data by wireless users today. Traffic across wireless networks has exploded and keeping ahead of this demand with current infrastructure is becoming increasingly challenging. Small cells technology is the essential form of wireless infrastructure needed to deliver improved 4G LTE service. But the challenge becomes even more critical if the people of Hawaii are to benefit from the next generation of wireless technology, 5G. Simply stated, 5G will revolutionize the wireless experience, delivering ultrafast speeds, super low latency and enormously more bandwidth. Although existing processes for macro tower facilities is inadequate, requiring long timelines that delay the deployment an average of 2 years, towers at least have the potential to cover an approximately 10-mile radius. But few welcome these large structures in their neighborhoods. Such timelines are not acceptable for small wireless facilities because this new technology propagates only very short distances, so more sites are needed, requiring more permits. If each permit takes the approximately 2 years, the full benefits of 5G technology may be delayed for many years. Now is the time to act.

HB 625, HD3 would address this problem by creating a legal framework that streamlines the permitting process for small wireless facilities and provides for access to government structures, utility and light poles. This legislation preserves state and local government authority to deny an application that does not meet building, electrical, health, safety and public right of way use permit requirements. Finally, HB 625, HD3 fairly compensates the state and local government through reasonable and nondiscriminatory cost-based fees consistent with federal pricing standards. Such policy encourages wireless providers to invest in wireless broadband technology in order to bring its benefits to the people of Hawaii.

The 5G Benefits of HB 625, HD3

5G technology—spawned by the release of new "millimeter wave" spectrum—will be truly a game changer. 5G will be 100x faster than the current technology and the spectrum has 1/10 the latency of 4G, making response time from a command nearly imperceptible to humans. Together, ultra-fast speed and super low latency will power telemedicine, remote surgery, remote equipment operation, public safety communications, and enhance safety on the roads by allowing much better pre-crash sensing, enabling vehicles to sense imminent collisions and mitigate or even avoid adverse impacts of a collision. 5G technology will enable simultaneous connections from billions of independent devices and embedded sensors, from cellphones to home appliances to clothing, creating the internet of things (IoT) and enabling "smart city" solutions (such as intelligent lighting, intelligent traffic and smart meters).

HB 625, HD3 seeks to deliver a state policy framework that strikes the right balance in encouraging ongoing investment in wireless broadband data technology that consumers, business and government increasingly demand, while maintaining the state's and local governments' oversight of the public rights-of-way.

Although in support of the legislation, Verizon recommends that HB 625, HD3 be amended as proposed in the attached proposed SD1.

Mahalo for your consideration.

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017
STATE OF HAWAII

H.B. NO. 625 S.D. 1 (proposed)

A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE.

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

SECTION 1. The legislature finds that the efficient deployment of broadband infrastructure and technology is important for Hawaii's future global connectivity and economic viability. Among the benefits afforded by an advanced broadband infrastructure system are increased and enhanced educational opportunities, telehealth capacity, safety and civil defense communications, economic competitiveness, consumer privileges, and tourism services.

To ensure that consumers throughout the State may benefit from these services as soon as possible, and to provide ~~wireless and wireline providers with~~ a fair and predictable process for the deployment of small wireless facilities, the legislature finds that it is important to regulate the processes for the deployment of small wireless facilities and small wireless facilities networks.

The purpose of this Act is to facilitate the deployment of high-speed broadband infrastructure, including small wireless facilities and small wireless facilities networks. A collocation permit application, review, and application process is established by the Act for telecommunications companies proposing to install broadband infrastructure on utility poles, buildings, structures, or light standards owned jointly by the State or county and private investor-owned utilities. This Act, however, does not relieve wireless infrastructure providers from existing requirements attached to private investor-owned utility poles including compliance with applicable provisions of Hawaii Administrative Rules 6-73.

SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended by adding two new sections to part VII to be appropriately designated and to read as follows:

"**§27- Collocation permits; application; review; approval.** (a) A telecommunications carrier proposing to install broadband infrastructure shall submit an application for a permitted use permit to a State or county agency with jurisdiction over utility poles, light standards, buildings, or structures. The application shall include:

(1) A geographic description of the project area;

(2) A listing and description of the utility pole, light standard, building, or structure included in the

project for the installation, mounting, operation, and placement of broadband infrastructure, including an assessment of the identifying information, location, and ownership of the listed utility pole, light standard, building, or structure; and

(3) A description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each utility pole, light standard, building, or structure.

(b) The agency shall evaluate the impact of collocating the broadband infrastructure described in the application to insure that:

(1) The equipment installed on the pole, light standard, building, or structure is done in a manner to protect public health and safety, and safe travel in the public rights-of-way;

(2) The utility pole or light standard is able to bear the additional weight of the equipment and that the equipment is not a hazard or obstruction to the public; and

(3) The project equipment and broadband infrastructure does not interfere with the operability of ~~government systems for~~ public safety communications ~~operations and emergency services~~.

(4) An agency may adopt regulations that concern objective design standards for decorative poles or reasonable, feasible and objective aesthetic requirements, provided that such standards and requirements do not prevent the collocation of small wireless facilities.

(c) The agency shall notify the applicant that:

(1) The permit is approved;

(2) The permit is approved with specified modifications; ~~or~~

(3) The application is returned with a list of specific questions seeking answers, clarification, or additional detailed information and resubmission of the application with answers to the questions shall be required.

(d) The state or county may require by regulation or within a building or other safety code that if, after proper engineering analysis and supporting field tests, it is determined that project equipment and broadband infrastructure is connected to the cause of inoperability of public safety communications or traffic signals, the

provider shall work with the state or county to determine a solution, consistent with Federal Communications Commission rules, to the cause of such inoperability.

§27- Siting of small wireless facilities and small wireless facilities networks. The State's treatment of and ~~may~~ permitting process for ~~, as a permitted use not subject to zoning review but subject only to clear and objective building permit standards,~~ the collocation of small wireless facilities or small wireless facilities networks on state structures, state utility poles, and state light standards for the deployment of high speed wireless or wireless broadband infrastructure shall be subject to the ~~as~~ following provisions:

(1) Small wireless facilities and small wireless facilities networks shall be a permitted use not subject to zoning review or ~~not be subject to~~ the standards of a special or conditional use permit in:

(A) All public rights-of-way and property;

(B) All land designated as rural or agriculture in accordance with chapter 205; and

(C) All land designated as urban;

provided that permissible uses within the agricultural district conform to the definition of "wireless communication antenna" in accordance with section 205-4.5(a)(18);

(2) Small wireless facilities and small wireless facilities networks may be processed for a special or conditional use permit when the small wireless facilities and small wireless facilities networks are located on land designated as conservation, in accordance with chapter 205;

(3) Wireless providers shall have the right to place small wireless facilities on state utility poles, state structures, state buildings, and state light standards; provided that this section shall not be construed to obviate or otherwise waive the right of the State to require a license, franchise, or other agreement to access the right of way more broadly to install wireline broadband backhaul facilities, or to attach coaxial or fiber-optic cable between poles. The State may require building permits or other non-discretionary permits and approvals for the collocation of small wireless facilities and small wireless facilities networks; provided that the permits and approvals are of general applicability. The State shall receive applications for, and process and issue the permits and approvals in accordance with applicable laws, including section 27-45 and subject to the following requirements:

(A) An applicant shall not be required to perform any services, including restoration work not directly related to the collocation, to obtain approval of an application;

(B) An application may be denied if it does not meet applicable laws or rules regarding health and public safety, construction in the public rights-of-way and building or electrical codes or standards; provided that the codes and standards are of general applicability. The State shall document the basis for any denial, including the specific code provisions or standards on which the denial was based; and

(C) An applicant for a small wireless facilities network of individual facilities that are of substantially similar design being collocated on the same or materially the same type of utility pole, light standard or structure shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of a small wireless facilities network instead of filing separate applications for each individual small wireless

facility. The state shall accept either one of the following types of consolidated applications, at the discretion of the applicant: (i) for multiple small wireless facilities in a 3-square mile geographic area or (ii) based upon a project. In rendering a decision on an application for multiple small wireless facilities, the state may approve the application as to certain individual small wireless facilities while denying it as to others. A state's denial of any individual small wireless facility or subset of small wireless facilities within an application is not a basis to deny the application as a whole~~An applicant for a small wireless facilities network involving no more than twenty-five individual small wireless facilities of a substantially similar design may request and shall be permitted to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of the small wireless facilities network instead of filing separate applications for each individual small wireless facility~~;

(4) ~~A wireless provider may~~The collocations of ~~collocate~~ small wireless facilities and small wireless facilities networks on state structures, state utility poles, state buildings, and state light standards ~~within the state's designated space~~, located within the land identified in paragraph (1)(A), (B), and (C), may be subject to reasonable~~rates,~~ terms~~, and~~ conditions, and cost-based annual recurring rates. ~~The~~ Any annual recurring rate to collocate a small wireless facility or small wireless facility network on a state structure, state utility pole, state building, or state light standard ~~within the state's designated space~~ shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications pole attachments in 47 C.F.R. §1.1409(e)(2); provided that, if the Federal Communications Commission adopts a rate formula for small wireless facility or small wireless facility network attachments, that rate formula shall apply; and

(5) Except as necessary to protect the public safety, ~~I~~the State shall not require a permit ~~for a wireless provider or wireless provider's licensed contractor~~ to

(a) maintain, repair, or replace the providers' small wireless facilities with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities, or (b) install, place, maintain, operate, or replace micro wireless facilities that are suspended on messenger cables that are strung between existing utility poles in compliance with national safety codes. ~~except as necessary to protect the public safety~~;

(6) Nothing in section shall be construed to:

(A) Provide state-based access rights to poles or structures solely-owned by an investor-owned electric utility or telephone utility;

(B) Impair access rights provided under title 47 United States Code section 224 or its implementing regulations; or

(C) Relieve wireless infrastructure providers from existing requirements attached to private investor-owned utility poles, including but not limited to compliance with the applicable provisions of H.A.R. 6-73. ~~Relieve a wireless provider from complying with existing lawful joint-pole committee processes for attaching to jointly-owned poles, including compliance with~~

~~the applicable provisions of Hawaii Administrative Rules 6-73~~."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

"**§46- Siting of small wireless facilities and small wireless facilities networks.** The county~~'s treatment of and processing of - may permit, subject only to clear and objective building permit standards,~~ the collocation of small wireless facilities or small wireless facilities networks on county structures, county utility poles, county buildings, and county light standards for the deployment of high speed broadband infrastructure shall be subject to the following provisions~~as follows~~:

(1) Small wireless facilities and small wireless facilities networks shall be a permitted use not subject to zoning review or ~~not be subject~~ to the standards of a special or conditional use permit in:

(A) All public rights-of-way and property;

(B) All land designated as rural or agriculture in accordance with chapter 205; and

(C) All land designated as urban;

provided that, for the purposes of this paragraph, permissible uses within the agricultural district

conforms to the definition of "wireless communication antenna" in accordance with section 205-4.5(a)(18);

(2) Small wireless facilities and small wireless facilities networks may be processed for a special or conditional use permit when the small wireless facilities and small wireless facilities networks are located on land designated as conservation, in accordance with chapter 205;

(3) Wireless providers shall have the right to place small wireless facilities on county-owned poles, county structures, county buildings, and county light standards, provided that this section shall not be construed to obviate or otherwise waive the right of the county to require a license, franchise, or other agreement to access the right of way more broadly to install wireline broadband backhaul facilities, or to attach coaxial or fiber-optic cable between poles. The county may require building permits or other non-discretionary permits for the collocation of small wireless facilities and small wireless facilities networks, provided that the permits and approvals are of general applicability. The county shall receive applications for, and process and issue the permits and approvals in accordance with

applicable laws, including section 46-89 and subject to the following requirements:

(A) An applicant shall not be required to perform any services, including restoration work not directly related to the collocation, to obtain approval of applications;

(B) An application may be denied if it does not meet applicable laws or rules regarding health and public safety, construction in the public rights-of-way and building or electrical codes or standards; provided that the codes and standards are of general applicability. The county shall document the basis for any denial, including the specific code provisions or standards on which the denial was based;

(C) An applicant for a small wireless facilities network of individual facilities that are of substantially similar design being collocated on the same or materially the same type of utility pole, light standard or structure shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of a small wireless

facilities network instead of filing separate applications for each individual small wireless facility. The county shall accept either one of the following types of consolidated applications, at the discretion of the applicant: (i) for multiple small wireless facilities in a 3-square mile geographic area or (ii) based upon a project. In rendering a decision on an application for multiple small wireless facilities, the county may approve the application as to certain individual small wireless facilities while denying it as to others. A county's denial of any individual small wireless facility or subset of small wireless facilities within an application is not a basis to deny the application as a whole~~An applicant for a small wireless facilities network involving no more than twenty-five individual small wireless facilities of a substantially similar design may request and shall be permitted to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of the small wireless facilities network instead of filing separate~~

~~applications for each individual small wireless facility~~; and

(D) Applications for permits for the collocation of small wireless facilities and small wireless facilities networks shall be deemed applications for broadband-related permits, as defined in section 46-89(h).

(4) ~~A wireless provider may~~The ~~collocate~~ collocation of small wireless facilities and small wireless facilities networks on county structures, county buildings, county utility poles, and county light standards ~~within the county's designated space~~ and located within the land identified in paragraph (1)(A), (B), and (C), may be subject to ~~rates,~~reasonable terms~~,~~ ~~and~~ conditions and cost-based annual recurring rates. Any~~The~~ annual recurring rate to collocate a small wireless facility or small wireless facility network on a county structure, county building, county utility pole, or county light standard ~~within the county's designated space~~ shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications pole attachments in 47 C.F.R. §1.1409(e)(2); provided that, if the Federal

Communications Commission adopts a rate formula for small wireless facility or small wireless facility network attachments, that rate formula shall apply;

(5) Except as necessary to protect public safety, ~~I~~the counties shall not require a permit ~~for a wireless provider or wireless provider's licensed contractor~~ to (a) maintain, repair, or replace the providers' small wireless facilities and small wireless facilities networks with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities, or (b) install, place, maintain, operate, or replace micro wireless facilities that are suspended on messenger cables that are strung between existing utility poles in compliance with national safety codes; ~~except as necessary to protect public safety; and~~

(6) Nothing in section shall be construed to:

(A) Provide county-based access rights to poles or structures solely-owned by an investor-owned electric utility or telephone utility;

(B) Impair access rights provided under title 47 United States Code section 224 or its implementing regulations; or

(C) Relieve wireless infrastructure providers from existing requirements attached to private investor-owned utility poles, including but not limited to compliance with the applicable provisions of H.A.R. 6-73. ~~Relieve a wireless provider from complying with existing lawful joint-pole committee processes for attaching to jointly-owned poles, including compliance with the applicable provisions of Hawaii Administrative Rules 6-73~~."

SECTION 4. Section 27-41.1, Hawaii Revised Statutes, is amended by adding ~~eleven~~ thirteen new definitions to be appropriately inserted and to read as follows:

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services. ""Collocation" means the installation, mounting, maintenance, modification, operation, or replacement of wireless or wireless broadband service equipment on a tower, utility pole, light standard, building, or other existing structure. ~~for the purpose of transmitting or receiving radio frequency signals for communications purposes. For purposes of this definition, "wireless or wireless broadband service equipment":~~

~~(1) Includes small wireless facilities, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and~~

~~(2) Does not include the structure or improvements on, under, or within which the equipment is collocated.~~

"General applicability" refers to laws, regulations, or processes that apply ~~to~~ objective requirements to all persons or services in a nondiscriminatory manner ~~and do not favor the small wireless facilities~~.

"Light standard" means a street light, light pole, lamp post, street lamp, lamp standard, or other raised source of light located inside the right-of-way of a public road or highway, or utility easement.

"Micro wireless facilities" means small wireless facilities that are no larger in dimension than twenty-four inches long, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.

"Public property" means property owned or controlled by the State, state agencies, or a county and includes buildings, water tanks, decorative poles, and light standards.

"Rights-of-way" means the areas on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property.

"Small wireless facilities" means a wireless facility~~ies~~ that meet~~s~~ the following qualifications:

(1) ~~If applicable, e~~Each individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume;

(2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:

(A) Twenty-eight cubic feet for collocations on all non-pole structures including buildings and water tanks, that can support fewer than three providers;

(B) Twenty-one cubic feet for collocations on all pole structures including light poles, traffic signal poles, and utility poles, that can support fewer than three providers;

(C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers~~;~~. ~~and~~

(3) ~~Minimizes, to the greatest extent possible, visual blight.~~

"Small wireless facilities network" means a group of interrelated small wireless facilities designed to deliver wireless communications service. "Small wireless facilities network" does not include wires or cables used for wireline backhaul or coaxial or fiber-optic cable between utility poles, or that is otherwise not adjacent to or directly associated with a particular antenna.

"Telecommunications service" or "telecommunications" shall have the same meaning as defined in section 269-1.

"Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

"Wireless provider" means a person or entity that is:

(1) A provider as defined in section 440J-1;

(2) A provider of wireless telecommunications service; or

(3) Authorized in accordance with chapter 269 to provide facilities-based telecommunications services in the State and builds, installs, operates, or maintains facilities and equipment used to provide fixed or mobile services through small wireless facilities.

“Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term does not include

(1) the structure or improvements on, under, or within which the equipment is collocated.

(2) Wireline backhaul facilities; or

(3) Coaxial or fiber-optic cable between utility poles or that is otherwise not adjacent to or directly associated with a particular antenna.

"Wireline backhaul" means the transport of communications or information by wire from small wireless facilities to a network."

SECTION 5. Section 46-15.6, Hawaii Revised Statutes, is amended by adding ~~nine~~ eleven new definitions to be appropriately inserted and to read as follows:

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

""Collocation" means the installation, mounting, maintenance, modification, operation, or replacement of wireless or wireless broadband service equipment on a tower, utility

pole, light standard, building, or other existing structure ~~for the purpose of transmitting or receiving radio frequency signals for communications purposes. For purposes of this definition, "wireless", or "wireless broadband service equipment":~~

~~(1) Includes small wireless facilities, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and~~

~~(2) Does not include the structure or improvements on, under, or within which the equipment is collocated~~.

"General applicability" refers to laws, regulations, or processes that apply ~~to~~ objective requirements to all persons or services in a nondiscriminatory manner ~~and do not apply exclusively to small wireless facilities~~.

"Light standard" means a street light, light pole, lamp post, street lamp, lamp standard, or other raised source of light located inside the right-of-way of a public road or highway, or utility easement.

"Public property" means property owned or controlled by the State, state agencies, or a county and includes buildings, water tanks, decorative poles, and light standards.

"Rights-of-way" means the areas on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property.

"Small wireless facilities" means a wireless facility ~~facilities~~ that meet the following qualifications:

(1) Each individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume;

(2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:

(A) Twenty-eight cubic feet for collocations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;

(B) Twenty-one cubic feet for collocations on all pole structures, including but not limited to light poles, traffic signal poles, and utility poles, that can support fewer than three providers;

(C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers;

(3) ~~Part of a small wireless facilities network; and~~

(4) ~~Minimizes, to the greatest extent possible, visual blight.~~

"Small wireless facilities network" means a group of interrelated small wireless facilities designed to deliver wireless communications service. "Small wireless facilities network" does not include wires or cables used for wireline backhaul or coaxial or fiber-optic cable between utility poles, or that is otherwise not adjacent to or directly associated with a particular antenna.

"Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

“Wireless Facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term does not include

(1) the structure or improvements on, under, or within which the equipment is collocated.

(2) Wireline backhaul facilities; or

(3) Coaxial or fiber-optic cable between utility poles or that is otherwise not adjacent to or directly associated with a particular antenna.

"Wireless provider" means a person or entity that is:

(1) A provider as defined in section 440J-1;

(2) A provider of wireless telecommunications service; or

(3) Authorized in accordance with chapter 269 to provide facilities-based telecommunications services in the State and builds, installs, operates, or maintains facilities and equipment used to provide fixed or mobile services through small wireless facilities."

"Wireline backhaul" means the transport of communications or information by wire from small wireless facilities to a network."

SECTION 6. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an

equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, and wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses."

SECTION 7. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(5) Public institutions and buildings that are necessary for agricultural practices;

(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Agricultural-based commercial operations as described in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;

(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

(C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural

use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(16) Biofuel processing facilities, including the appurtenances associated with the production and

refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

(17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an

agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment,

feedstock, fuels, and other products of agricultural-energy facilities;

(18) Construction and operation of wireless communication antennas[~~:~~], <u>, including small wireless facilities or small wireless facilities networks;</u> provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection; <u>provided further that "small wireless facilities" shall have the same meaning as set forth in sections 27-41.1 and 46-15.6;</u>

(19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere

with surrounding farm operations. For the purposes of this paragraph, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2;

(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

(A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;

(B) Placed in a manner that still allows vehicular traffic to use the road; and

(C) Granted a special use permit by the commission pursuant to section 205-6;

(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:

(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as

existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or

(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

(A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:

(i) Impoundment facilities using a dam to store water in a reservoir;

(ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower

elevation to be released to turn a turbine to generate electricity;

(B) Comply with the state water code, chapter 174C;

(C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and

(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served by the ground water sources or streams for which hydroelectric facilities are considered."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2050; provided that this Act shall apply to permit applications filed with the State or county after January 1, 2018.

Report Title:
Broadband; Small Wireless Facilities; Siting Process; State and County Land; Permits

Description:
Establishes a collocation permitting, application, review and approval process for telecommunications companies proposing to install broadband infrastructure on State or County structures, utility poles, light standards, or buildings. Establishes the siting process. (HB625 HD3)

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

Sabrina M. Lake Address: Ewa Beach Hi, 96706 Contact: 808-220-6729

February 14, 2017

TO: Chair Ohno, Vice Chair Choy, and Members of the House Committee on Intrastate Commerce

FROM: Sabrina M. Lake, University of Hawai'i student at the Myron B. Thompson school of Social Work

SUBJECT: HB 625 Relating to: Infrastructure

TESTIMONY IN SUPPORT

I Sabrina Lake am in support of bill HB 625. In reviewing this bill, I find that it recognizes the need for broadband technology, by implementing a telecommunications infrastructure plan for Hawaii's future. It also recognizes the importance of global connectivity; economic viability; and the many educational opportunities. On a macro level, through this proposed opportunity, our communities will thrive toward a smarter and sustainable tomorrow. I ask that you please take in consideration my testimony, and the many benefits this bill presents. Thank you for the opportunity to testify.

LATE

AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Clarence Nishihara, Chair
Committee on Public Safety, Intergovernmental
and Military Affairs – Hawaii State Senate

LATE TESTIMONY

Honorable Glenn Waikai, Chair
Committee on Economic Development, Tourism
and Technology Hearing: Monday, March 20, 2017, 145p.m., Room 414

Re: HB 625, HD3 – Relating to Infrastructure

Dear Chair Nishihara, Chair Wakai and Honorable Joint Committee Members:

My name is Peter Fithian and I am the Chair of the Legislative Committee for the Airport Concessionaires Committee (ACC). Airport concessions have historically provided more than 50% of our public airports operating revenues.

ACC opposes this bill unless our public airports are exempted from this legislation. This bill will have a negative impact on revenues supporting "free wifi/internet and related services including 5G and more" at our public airports for which a concession operator is required to invest over $8 million dollars in infrastructure costs.

Pursuant to legislation and ACC's efforts, Hawaii's Airport Division recently awarded a contract that "requires" a period of "free wifi/internet and related services" that should be up and running by about October 2017.

This "requirement of free wifi/internet" is with the understanding that the concession operator will be allowed to generate revenues from advertising as well as a DAS system that "all cellular providers and interested/qualified parties" will be able to connect into to provide services at the public airports at 5G and even faster speeds for phone use, internet and downloading and streaming of content to the thousands of customers that may be at our public airports at any given time .

Nothing is for free and the Airport Division to its credit was able to require: 1) free-wifi/internet services in exchange for the use and access to its facilities; and 2) also payment of concession fees to help support our airport system. Such prudence by the Airports division was to the benefit of both our local residents and Hawaii's tourists.

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Testimony before the Senate Committees on
Public Safety, Intergovernmental, and Military Affairs
and
Economic Development, Tourism, and Technology

LATE

By Paul A. Nakagawa
Superintendent, T&D Infrastructure
Construction and Maintenance Department
Hawaiian Electric Company, Inc.

Monday, March 20, 2017
1:45p.m., Conference Room 414

House Bill 625 HD3
Relating to Infrastructure

Chairs Nishihara & Wakai, Vice Chairs Wakai & Taniguchi, and Members of the Committees:

My name is Paul Nakagawa, and I am testifying on behalf of the Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively, the "Hawaiian Electric Companies") in support of the intent of HB 625 HD3.

While we support and encourage the deployment of high-speed broadband infrastructure in Hawaii, and, as an active participant, the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the State's broadband initiative, we have concerns with HB 625 HD3 as written, specifically in reference to solely and jointly owned utility poles and light standards. In our recent discussions with several different stakeholders of this measure, the consensus appears to be that utility poles solely owned by or jointly owned with the Hawaiian Electric Companies were not intended to be included in this measure (HB 625 HD3). Therefore, while we previously provided amendments clarifying our concerns on solely and jointly owned utility poles and light standards in this measure, we prefer the language in SB 1201 SD2 HD1 when referencing solely or jointly owned poles and light standards. SB1201 SD2 HD1 specifically clarifies that utility poles, structures, and light standards solely or jointly owned by an investor-owned electric utility are not subject to the provisions of this measure (SB 1201 SD2 HD1).

We appreciate the support of the Legislature in hearing and understanding our concerns as we continue to work together with the stakeholders to clarify the intent of this measure and ensure consistency in the reference and exclusion of solely or jointly owned poles and light standards in related broadband measures.

Thank you for the opportunity to testify on this matter.