



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
LUIS P. SALAVERIA, Director
Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON WATER & LAND

Wednesday, March 22, 2017
10:00 A.M.
State Capitol, Conference Room 325

in consideration of
SB 1201, SD2, HD1
RELATING TO TECHNOLOGY.

Chair Yamane, Vice Chair Kong, and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT)
strongly supports SB 1201, SD2, HD1.

DBEDT appreciates the amendments made by the House to ensure that state and county transportation, public safety and IT agencies have the ability to evaluate the impacts of small wireless installations and issue permits that protect their contracts and equipment.

DBEDT supports SB 1201, SD2, HD1, which allows state and county agencies with jurisdiction over poles, street lamps, structures and buildings to evaluate applications for small wireless installations on a geographic basis, subject to the 45-day shot clock. This bill creates a one-stop permit process for wireline and wireless carriers.

Expediting permits, not subject to conditional use or special use contested case 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 SB 1201, SD2, HD1.



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JI SOOK KIM
CABLE TELEVISION ADMINISTRATOR

TO THE HOUSE COMMITTEE ON
WATER & LAND

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Date: Wednesday, March 22, 2017
Time: 10:00 a.m.

TESTIMONY ON S.B. NO. 1201, S.D. 2, H.D. 1 – RELATING TO TECHNOLOGY.

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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 provide comment on S.B. No. 1201, S.D. 2, H.D. 1, 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 Committee 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.



HAWAII COUNCIL OF MAYORS
BEFORE THE COMMITTEE ON WATER AND LAND
WEDNESDAY, MARCH 22, 2017; 10:00 AM

TO: THE HONORABLE RYAN I. YAMANE, CHAIR
THE HONORABLE SAM SATORU KONG, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON WATER AND LAND

SUBJECT: OPPOSITION TO SB1201, SD2 RELATING TO TECHNOLOGY

The Hawaii Council of Mayors (HCOM) opposes SB1201 SD2, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The installation of small cell infrastructure should not adversely impact or compromise public safety. Thus, it is important to ensure that 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. HCOM also needs to ensure that the small wireless facilities are securely attached to the counties' 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, HCOM strongly opposes the language on page 6, lines 7 to 11 and on page 23, lines 13 to 19, 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.



Mayor Harry Kim
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720



Mayor Kirk Caldwell
City and County of Honolulu
530 South King Street, Rm. 306
Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.
County of Kauai
4444 Rice Street
Lihue, Hawaii 96766



Mayor Alan Arakawa
County of Maui
200 South High Street, 9th Floor
Wailuku, Hawaii 96793

Instead, this measure only allows the State or a county to (1) approve the permit; (2) approve the permit with specified modifications; or (3) return the application for resubmission with a list of specific questions seeking answers, clarification, or additional detailed information. Nowhere does this measure allow the State or county to deny an application outright even for public safety concerns.

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, and water tower. The State and the counties must be able to retain control over their structures. The wireless carriers should not be allowed to circumvent a county's processes to ensure public safety.

Equipment Placement Should Not Interfere with Existing Contracts

Coerced collocation of small wireless facilities could interfere with a county's existing or prospective contractual relations. Some county "structures" are on leased or licensed properties that do not allow collocation without the landowner's consent. Landowners may be hesitant to let a county place structures on their properties if doing so automatically allows any and all small wireless facilities or small wireless facilities networks to be placed on their properties, regardless of their consent.

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 County Uses of County Property May Be Precluded

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

Visual Blight is Not Addressed

This measure allows wireless companies to place up to 28 cubic feet of equipment on State- or county-owned poles and buildings. This is the size of a standard refrigerator. While the "small" wireless facilities are smaller than a macro-cell tower, the equipment can be quite large and obtrusive.

HCOM is also very concerned about adverse visual impacts resulting from the installation of the small cell equipment, especially in our most historic and picturesque

areas. **This measure does not address visual blight concerns at all.** While wireless carriers have presented photos depicting unobtrusive equipment installed on light standards and buildings, this measure does not require them to take any measures to conceal their equipment. Please see the attached photos that illustrate what could result if wireless carriers are not required to shroud or conceal the equipment to be installed on county and State poles.

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 county property is minimized. The equipment placed on county property will involve trenching in the public right-of-way. HCOM would like to ensure that trenching is minimized and that each wireless carrier that wishes to install equipment on county-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.

Fees Must be Fair to the State and Counties

This measure imposes a very complicated fee formula based on the Federal Communications Commission's administrative rules. A county may not have all of the information required to utilize the fee formula. Further, it appears that previous drafts of this measure or HB625 have attempted to minimize the amount the State or county may charge for collocation to \$20 per structure per year. This low amount does not reflect proper stewardship of the public trust, especially as the wireless carriers will profit substantially from the installation of equipment on public property. Other states, such as Washington, impose fees that reflect the fair market value of the space occupied. This seems like a much fairer means that will ensure that the State and counties are able to fulfill our duties to the public.

Decommissioning is Not Addressed

As currently drafted, this measure allows a wireless carrier to leave all equipment attached to a county's infrastructure after the equipment is no longer used because it does not require removal. This endangers public safety because the small wireless facilities may corrode and cause injury and contributes to visual blight. Decommissioning language similar to what is required for solar energy facilities installed under section 205-4.5(a)(21), Hawaii Revised Statutes, should be added to require that wireless carriers present proof of ability to decommission and to decommission all attached equipment after it is no longer used.

Conclusion

This issue is very complex and has many long-term ramifications. HCOM believes it is better to ensure that these bills do not become law without further

meaningful discussion. HCOM supports an amendment to this measure that creates a task force with representatives from the counties, State, industry, and public to look into ways to address the many issues that are not addressed in the current language.

"Small Cells"



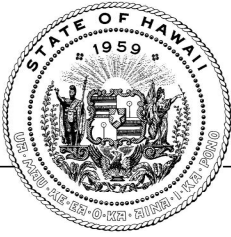
Without collaborative City input:
"Small Cell" at
4471 Moraga Ave
Oakland →
(bulky boxes, tacky bundles of wiring below unpainted antennas and noisy cooling fans)



← **With collaborative City input:**
Verizon at 1367 Jones Street
in San Francisco
(unobtrusive and noiseless)



Other examples of existing Small Cell installations on utility poles.



OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON WATER AND LAND
Wednesday, March 22, 2017
10:00 AM
State Capitol, Conference Room 325

in consideration of
SB 1201, SD2, HD1
RELATING TO TECHNOLOGY

Chair Yamane, Vice Chair Kon, and Members of the House Committee on Water and Land.

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 competitiveness, addressing consumer privileges, and providing tourism services. The Office of Planning (OP) supports the intent of SB1201, SD2, HD1 and offers the following comments.

SB 1201, SD2, HD1 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 prohibiting the State from prohibiting, regulating, or charging for the co-location of small wireless and wireline facilities or small wireless and wireline facilities networks except as provided in Section 2; as proposed; amends HRS Chapter 46-4 establishing a process for county rules and classifications regarding co-location of small wireless and wireline facilities and small wireless and wireline facilities networks; and restores sections of Act 151, Session Laws of Hawaii (SLH) 2011, previously repealed in previous drafts.

The intent of SB1201, SD2, HD1 supports implementation of Hawaii Revised Statutes (HRS) Chapter 226-103 Economic Priority Guidelines (g) (7) encourage the location of co-location of telecommunications or wireless information relay facilities in the community, including public areas, where scientific evidence indicates that the public health, safety, and welfare would not be adversely affected. The amendments proposed in SB1201, SD2, HD1

relating to HRS Chapter 27 “Co-location permits; application; review; approval” provide opportunity to agencies to evaluate public health, safety, and welfare.

Thank you for the opportunity to testify on this measure.

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 22, 2017 8:49 AM
To: waltestimony
Cc: david.j.rodriguez@hawaii.gov
Subject: *Submitted testimony for SB1201 on Mar 22, 2017 10:00AM*



Follow Up Flag: Follow up
Flag Status: Flagged

SB1201

Submitted on: 3/22/2017

Testimony for WAL on Mar 22, 2017 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
David Rodriguez	Department of Transportation	Support	No

Comments:

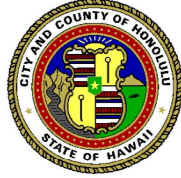
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**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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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 COMMITTEE ON WATER AND LAND
WEDNESDAY, MARCH 22, 2017; 10:00 AM

TO: THE HONORABLE RYAN I. YAMANE, CHAIR
THE HONORABLE SAM SATORU KONG, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON WATER AND LAND

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

SUBJECT: OPPOSITION TO SB1201, HD1 RELATING TO TECHNOLOGY

The City and County of Honolulu (City) supports the widespread deployment of 4G and 5G technology on City-owned poles; but opposes SB1201 HD1, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The installation of small cell infrastructure should not adversely impact or compromise public safety. 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 our 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 11 and on page 23, lines 13 to 19, 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. Instead, this measure only allows the State or a county to (1) approve the permit; (2) approve the permit with specified modifications; or (3) return the application for resubmission with a list of specific questions seeking answers, clarification, or additional detailed information. Nowhere does this measure allow the State or county to deny an application outright even for public safety concerns.

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, and water tank. The State and the counties must be able to retain control over their structures. The wireless carriers should not be allowed to circumvent the City's processes to ensure public safety and preserve the integrity and continuity of operations.

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 and conceivably allows a carrier to install equipment up to the maximum capacity of a pole or structure. This prohibits the City from adding new equipment of its own that may be necessary for public safety or other operational enhancements made possible through the introduction of new technologies.

An example of this is the City's practice of temporarily installing video security cameras on streetlight and traffic signal standards for public safety and law enforcement purposes at major events such as the Honolulu Marathon, the International Union for Conservation of Nature World Congress, etc. Without sufficient capacity reserved for incidental and/or future City use, the City may be required to upgrade its own pole at its own expense due to small cell carrier equipment taking all of the remaining existing pole capacity.

Visual Blight is Not Addressed

This measure allows wireless companies to place up to 28 cubic feet of equipment on State- or county-owned poles and buildings. This is the size of a standard refrigerator. While the "small" wireless facilities are smaller than a macro-cell tower, the equipment can be quite large and obtrusive.

The City is also very concerned about adverse visual impacts resulting from the installation of the small cell equipment, especially in our most historic and picturesque areas. **As drafted, this measure does not address visual blight.** While wireless carriers have presented photos depicting unobtrusive equipment installed on light standards and buildings, this measure does not require them to take any action to conceal or reduce the visual impact of their equipment. Please see the attached photos that illustrate what could result if wireless carriers are not required to shroud or conceal the equipment to be installed on county and State poles.

Minimize Adverse Impact on Public Use of the Right of Way

This bill currently does not address adverse impact to the public from the installation, repair, and maintenance of any equipment installed on county property. Equipment placed on county property will likely involve trenching in the public right-of-way. The City must ensure that trenching is minimized to preserve the integrity of recently repaved roads and that each wireless carrier that wishes to install equipment on county-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.

Fees Must be Fair to the State and Counties

This measure imposes a very complicated fee formula based on the Federal Communications Commission's (FCC) administrative rules. The City does not have all of the information required to utilize the FCC fee formula. Further, it appears that previous drafts of this measure or HB625 have attempted to minimize the amount the State or county may charge for collocation to \$20 per structure per year. This low amount does not reflect proper stewardship of the public trust, especially as the wireless carriers will profit substantially from the installation of equipment on public property. Other states, such as Washington, impose fees that reflect the fair market value of the space occupied. This is a more equitable means of protecting the interests of the people of the State and counties that will otherwise bear a disproportionate share of the cost of operating, maintaining, repairing and/or replacing poles that carry small cell

equipment..

Decommissioning is Not Addressed

As currently drafted, this measure allows a wireless carrier to leave all equipment attached to the City's infrastructure after the equipment is no longer used because it does not require removal. This endangers public safety because the small wireless facilities may corrode and cause injury and contributes to visual blight. Decommissioning language similar to what is required for solar energy facilities installed under section 205-4.5(a)(21), Hawaii Revised Statutes, should be added to require that wireless carriers present proof of ability to decommission and to decommission all attached equipment after it is no longer used.

Conclusion

This issue is very complex and has many long-term ramifications. The City has been actively working with the industry and stakeholders to come up with language that addresses the City's concerns. The City supports amending this measure to create a task force with representatives from the counties, State, industry, and public to look into ways to address the many issues that are not addressed in the current language and looks forward to continuing to collaborate with all interested parties. Thank you for your consideration of this testimony in opposition to SB1201 HD1 as drafted.

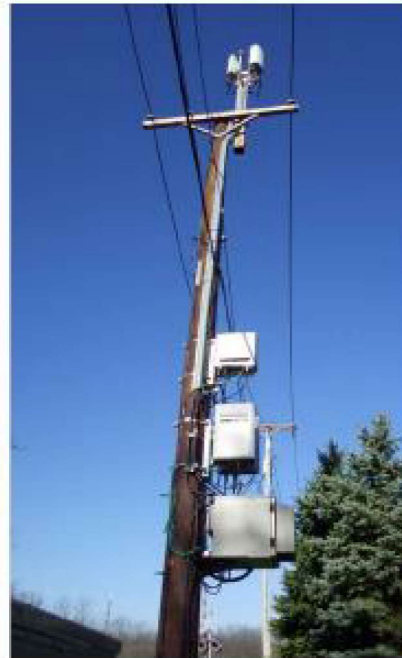
"Small Cells"



**Without collaborative City input:
"Small Cell" at
4471 Moraga Ave
Oakland** →
*(bulky boxes, tacky
bundles of wiring below
unpainted antennas and
noisy cooling fans)*



← **With collaborative City input:
Verizon at 1367 Jones Street
in San Francisco**
(unobtrusive and noiseless)



Other examples of existing Small Cell installations on utility poles.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Water & Land
Wednesday, March 22, 2017 at 10:00 A.M.
Conference Room 325, State Capitol**

RE: SENATE BILL 1201 SD2 HD1 RELATING TO TECHNOLOGY

Chair Yamane, Vice Chair Kong, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of SB 1201 SD2 HD1, which clarifies the State and counties authority to prohibit, regulate, or charge for the co-location of small wireless or wireline facilities or small wireless or wireline facilities networks; provides state and county zoning rules and classifications regarding the co-location of small wireless or wireline facilities and small wireless or wireline facilities networks; describes the application process and rates for co-location.

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.

We respectfully request more parity between wireline and wireless systems, providing an effective and comprehensive solution improving broadband deployment throughout the State that will allow providers to meet an ever increasing public demand for high-speed services. By accelerating the deployment, this legislation will further Hawaii's ability to compete globally.

Thank you for the opportunity to testify.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON WATER & LAND
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
WEDNESDAY, MARCH 22, 2017 AT 10:00 A.M.**

To The Honorable Ryan I. Yamane, Chair;
The Honorable Sam Satoru Kong, Vice Chair; and
Members of the Committee on Water & Land

TESTIMONY IN SUPPORT FOR SB 1201 RELATING TO TECHNOLOGY

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce representing approximately 600 businesses and 16,000 employees. I am writing share our support of SB 1201.

We support this bill that clarifies the state and counties authority to prohibit, regulate, or change for the co-location of small wireless or wireline facilities or small wireless or wireline facilities networks and provides state and county zoning rules and classifications regarding the co-location of small wireless or wireline facilities and small wireless or wireline facilities networks.

We believe this bill will be beneficial to our community as it can bring forth faster, more reliable wireless networks. Having reliable, faster networking is essential for businesses in our community, our residents, and visitor industry.

We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed.

Mahalo for your consideration of our testimony and we hope you will move this bill forward.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



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

March 21, 2017

Honorable Ryan I. Yamane, Chair
House Committee on Water & Land
Hawaii State Capitol, Rooms 420
Honolulu, HI 96813

Honorable Sam Satoru Kong, Vice Chair
House Committee on Water & Land
Hawaii State Capitol, Rooms 313
Honolulu, HI 96813

RE: SENATE BILL 1201, SD2, HD1 – Relating to Technology-SUPPORT
Hearing date: March 22, 2017 at 10:00 am

Dear Chair Yamane, Vice Chair Kong and Committee Members:

On behalf of Verizon, I submit this testimony in STRONG SUPPORT of Senate Bill 1201, SD2, HD1 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 SB 1201, Verizon has proactively drafted a proposed set of amendments that includes language we understand these stakeholders would like to see in the bill. Verizon will be present at the hearing to explain amendment as desired.

Modernizing the Legal Framework for Small Wireless Facilities

This legislation seeks to create the legal framework necessary to expedite the deployment of small wireless facilities in order to meet the current demands of mobile users and to deploy 5G technologies, next generation wireless network.

There are approximately 1,450,000 wireless subscribers in the state of Hawaii and 95% of Hawaii residents have access to mobile broadband. Explosive growth in the demand for mobile data presents a network capacity challenge for wireless providers. Throughout the state of Hawaii growing demand is reducing available capacity across existing wireless infrastructure, leading to network congestion. The end result is slower broadband speeds, shrinking cellular footprints and increased coverage problems evidenced by an increase in dropped calls. Wireless infrastructure providers are addressing these capacity issues by deploying small wireless facilities, in addition to using existing macro sites.¹

¹ Small wireless facilities are relatively new and much smaller than macro towers. Small wireless facilities normally consist of a small antenna, radios (that process the spectrum) and certain support equipment mounted

Because small wireless facilities are relatively new, most county or state existing legal frameworks require obtaining the same time-consuming discretionary permits as with a macro tower installation. SB 1201, SD2, HD1 would address this problem by creating a legal framework that streamlines the permitting process for small wireless facilities and provides for access to government 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, SB 1201, SD2, HD1 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 SB 1201, SD2, HD1

The speedy deployment of wireless service and broadband through small wireless facilities is critical to meet current mobile user's data demands as well as the deployment of next generation wireless network: 5G. This new 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, 4G, 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).

SB 1201, SD2, HD1 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.

Mahalo for your consideration.

on utility poles, street lights, signs, bus shelters traffic signals or other host structures. Although the designs may vary slightly as required to support the network in a particular area, small cells typically consist of a 40" tall by 12" diameter canister antenna; cables down the pole to 1 or 2 radio heads; an electrical disconnect switch in the junction box that will power down the antenna if crews will be working on or near the antenna; and unless the electric utility allows a flat fee arrangement, a power meter. For most installations, small cell are connected to the wireless network by fiber, which may be installed aerially or underground as required in the area. These deployments are designed to blend into the existing environment as much as possible. Indeed, due to their small size and unobtrusive design, they are aesthetically pleasing compared to traditional “macro” cell towers.

A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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 to the future global connectivity and economic viability of our island state. 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 ~~or wireline~~ facilities, the legislature finds that laws are needed to specify the extent and way in which the deployment of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks are regulated in the State.

The purpose of this Act is to facilitate the deployment of high-speed broadband infrastructure in Hawaii, including small wireless ~~or wireline~~ facilities, in a way that encourages new technology and seeks to ~~ensures~~ a level playing field for competitive communications service providers by:

- (1) Establishing limits on the State's and counties' authority to prohibit, regulate, or charge for the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~ facilities networks;
- (2) Specifying certain sites where small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~ facilities networks may be located, including conditions and maximum fees for location and co-location; and
- (3) Establishing a streamlined ~~n~~ application process for co-location.

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- Co-location permits; application; review; approval. (a) A telecommunications carrier proposing to install broadband infrastructure shall submit an application for a permitted use permit to the state 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, or 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, or structures [and information about any ground disturbance](#); 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, [volume](#) 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 co-locating the broadband infrastructure described in the application to ensure that:

- (1) The equipment installed on the poles, light standards, buildings, or structures are done in a manner to

protect public health and safety, and to not obstruct safe travel in the public rights-of-way;

(2) The utility poles or 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's use of the right of way; and

(3) Consistent with Federal Communications Commission regulations, the ~~The~~ project equipment and broadband infrastructure does not interfere with the operability of government systems for public safety communications or traffic signals operations and emergency services.

-- A state or county 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.

-- No provider may exclude other providers from utilizing state or county-owned utility poles, light standards, buildings or structures.

-- Providers shall avoid obtaining approvals to attach to utility poles, structures, or light standards they cannot or will not use within 24 months. Once a provider has obtained necessary approvals, if construction is not commenced within 24

months, attachment approvals may be rescinded. Nothing in this section restricts a provider from re-applying for approvals.

(c) Pursuant to the provisions in and within the time allowed by Section 27-45(a) for a state agency and 46-89(a) for a county agency, 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 for resubmission with a list of specific questions seeking answers, clarification, or additional detailed information.

(4) The application is denied and the basis for the denial.

(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 to the cause of such inoperability, provided that such solution is consistent with Federal Communications Commission rules.

SECTION 3. 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- ~~Siting of small wireless or wireline facilities and small wireless or wireline facilities networks.~~ (a) The State shall not prohibit, regulate, or charge for the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~ facilities networks, except as provided in this section; 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. Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks shall be deemed permitted uses not subject to zoning review, and no special use or conditional use permit shall be required, for their location on:

- (1) All public rights-of-way and property;
- (2) All land in the rural or agricultural districts pursuant to chapter 205; and
- (3) All land in the urban district pursuant to chapter 205.

(b) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks may require special use or conditional use permits where such facilities are located on land in the conservation district pursuant to chapter 205.

(c) Wireless providers shall have the right to co-locate small wireless ~~or wireline~~ facilities on state utility poles, state structures, and light standards; provided such utility poles, structures, and light standards are not owned solely or jointly by an investor-owned electric utility ~~unless federal law obligates an investor-owned electric utility to allow wireless providers to attach to investor-owned electric utility utility poles, structures, and light standards.~~ The State may require ~~building permits or other nondiscretionary~~ permits for the co-location of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks; provided that permits are of general applicability. The State shall receive applications to process and issue permits and approvals in accordance with applicable law, including section 27-45 and chapter 269, and subject to the following requirements:

- (1) Applicants shall not be required to perform any services, including restoration work not directly related to the co-location, to obtain approval for applications;

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

(3) 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 or wireline facilities network involving no greater than twenty-five individual small wireless or wireline facilities of a substantially similar design 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 or wireline facilities network instead of filing separate applications for each individual small wireless or wireline facility.

(d) A wireless provider or a wireless provider's licensed contractor may co-locate small wireless or wireline facilities and small wireless or wireline facilities networks on state structures, state utility poles, and light standards located within the land identified in subsection (a) (1) to (3), subject to reasonable rates, terms, and conditions and cost-based rates if such rates, terms, and conditions are required by the State

for similar types of commercial use; provided such structures, utility poles, and light standards are not owned solely or jointly by an investor-owned electric utility. The annual recurring rate to co-locate a small wireless or wireline facility on state structures, utility poles, and light standards shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission pursuant to title 47 United States Code section 224(d), provided that when using the formula in title 47 Code of Federal Regulations section 1.1409(e) (2), the state may use as the net cost of a bare pole either \$100 or the actual net cost of the bare pole; provided that if the Federal Communications Commission adopts a rate formula for small wireless or wireline facility attachments, that rate formula shall apply.

If the state utility pole, light standard, building, or structure is unable to support any of the additional equipment sought to be installed, and the wireless provider would like to collocate small wireless facilities or small wireless facilities networks on the state-owned utility pole, light standard, building, or structure, the wireless provider, at its sole cost, may install an upgraded utility pole, light standard, building, or structure subject to approval by the state agency; provided that the wireless

provider shall be responsible for the maintenance and repairs to its facilities on the utility pole, light standard, building, or structure until all of the equipment is removed; provided that the State shall continue to own the upgraded utility pole, light standard, building, or structure;

-- The state may reserve space for up to 12 months on its light standards and utility poles where: (i) prior to a request for access having been made, it had a bona fide development plan in place and that the specific reservation of attachment capacity is reasonably and specifically needed for its planned use within one year of the request, (ii) there is no available technological means of increasing the capacity of the light standard or utility pole for additional attachments, and (iii) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party seeking the attachment;

-- Micro-wireless facilities, small wireless facilities and small wireless facilities networks installed on any state-owned utility pole, light standard, building, or structure shall be decommissioned if no longer in use. Providers shall remove from state utility poles, structures or light standards such

micro-wireless facilities, small wireless facilities that are no longer used to provide service. The owner of the micro-wireless facilities, small wireless facilities or small wireless facilities network shall bear the costs of such removals.

(e) Except as necessary to protect the public safety, the State shall authorize but shall not require a wireless or wireline provider or wireless or wireline provider's licensed contractor to apply for or obtain a permit to:

- (1) Maintain, repair, or replace the provider's small wireless or wireline facilities and small wireless or wireline facilities networks with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities; or
- (2) Install, place, maintain, operate, or replace micro wireless or wireline facilities that are suspended on messenger cables that are strung between existing utility poles in compliance with national safety codes.

(f) Except as provided in this chapter or as required by section 440G-8 or federal law, the State shall not adopt or enforce any regulations on the placement or operation of wireless or wireline facilities in the right-of-way where the

entity is already authorized by a franchise or other authorization to operate throughout the right-of-way, and shall not regulate wireless ~~or wireline~~ communications services or impose or collect fees on wireless ~~or wireline~~ communications services unless expressly required by state or federal statute."

(g) Nothing in section shall be construed to:

- (1) Impair access rights provided under title 47 United States Code section 224 or its implementing regulations; or
- (2) Limit the right of the state to require an indemnification agreement as a condition of a provider's facilities attaching to a state-owned utility pole, light standard, or building.

SECTION 34. 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- Co-location permits; application; review; approval. (a) A telecommunications carrier proposing to install broadband infrastructure shall submit an application for a permitted use permit to the 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, or 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, or structures and information about any ground disturbance; 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, volume 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 co-locating the broadband infrastructure described in the application to ensure that:

(1) The equipment installed on the utility poles, light standards, buildings, or 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 or 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's use of the right-of-way; and

- (3) Consistent with Federal Communications Commission regulations, the ~~The~~ project equipment and broadband infrastructure does not interfere with the operability of government systems for public safety communications or traffic signals operations and emergency services.

-- A county 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.

-- No provider may exclude other providers from utilizing state or county-owned utility poles, light standards, buildings or structures.

-- Providers shall avoid obtaining approvals to attach to utility poles, structures, or light standards they cannot or will not use within 24 months. Once a provider has obtained necessary approvals, if construction is not commenced within 24 months, attachment approvals may be rescinded. Nothing in this section restricts a provider from re-applying for approvals.

(c) Pursuant to the provisions in and within the time allowed by Section 46-89(a), theThe 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 for resubmission with a list of specific questions seeking answers, clarification, or additional detailed information."

(4) The application is denied and the basis for the denial.

(d) The 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 to the cause of such inoperability, provided that such solution is consistent with Federal Communications Commission rules.

SECTION 4. Section 27-41.1, Hawaii Revised Statutes, is amended by adding 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.

"Co-location" means the installation, mounting, maintenance, modification, operation, or replacement of wireless ~~or wireline~~ facilities on a tower, utility pole, light standard, or other ~~existing~~ structure ~~existing on the effective date of Act _____, Session Laws of Hawaii 2017, for the purpose of transmitting or receiving radio frequency signals for communications purposes.~~ Collocating is the act of causing a co-location.

"General applicability" means 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 or wireline 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 ~~or wireline~~ facilities" means small wireless ~~or wireline~~ 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.

"Small wireless ~~or wireline~~ facilities" means wireless ~~or wireline~~ 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; and
- (2) All other wireless ~~or wireline~~ 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 co-locations 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 co-locations 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 co-locations that can support at least three providers; or
 - (D) Twenty-eight cubic feet for pole co-locations that can support at least three providers.

"Small wireless ~~or wireline~~ facilities network" means a collection of interrelated small wireless ~~or wireline~~ facilities designed to deliver wireless ~~or wireline~~ communications service. "Small wireless ~~or wireline~~ 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 ~~immediately~~ adjacent to ~~and 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 ~~or wireline~~ communications service" means any wireless ~~or wireline~~ service using licensed or unlicensed spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided using wireless ~~or wireline~~ facilities. "Wireless ~~or wireline~~ communications service" does not include wireline backhaul service.

"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. ~~Wireless or wireline facilities~~" means the set of equipment and network components, including but not limited to antennas, accessory equipment, transmitters, receivers, power supplies, and other associated equipment necessary to provide wireless or wireline communications service. "Wireless or wireline facilities" shall not include:

- (1) The structure or improvements on, under, or within which the equipment is co-located;
- (2) Wireline backhaul facilities; or
- (3) Coaxial or fiber-optic cable between utility poles or that is otherwise not ~~immediately~~ adjacent to ~~and or~~ directly associated with a particular antenna.

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

- (1) A provider of wireless ~~or wireline~~ communications service;
- (2) A wireless ~~or wireline~~ telecommunications service provider, as defined in section 269-16.93(d); 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 wireless ~~or~~ wireline service.

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

SECTION 5. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

"§46-4 County zoning. (a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power

granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
- (2) The areas in which residential uses may be regulated or prohibited;
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;
- (4) The areas in which particular uses may be subjected to special restrictions;
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
- (6) The location, height, bulk, number of stories, and size of buildings and other structures;
- (7) The location of roads, schools, and recreation areas;
- (8) Building setback lines and future street lines;
- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and

(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general

plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit

in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents for purposes or functions that are licensed, certified, registered, or monitored by the State; provided that a resident manager or a resident supervisor and the resident manager's or resident supervisor's family shall not be included in this resident count. These group living facilities shall meet all applicable county requirements not inconsistent with the intent of this subsection, including but not limited to building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition, no zoning ordinance shall provide for the elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.

(f) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for medical marijuana production centers or medical marijuana dispensaries established and licensed pursuant to chapter 329D; provided that the land is otherwise zoned for agriculture, manufacturing, or retail purposes.

(g) Neither this section nor any other county law, ordinance, or rule shall prohibit, regulate or charge for the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~ facilities networks, as defined in section 27-41.1, except as provided in this section; provided that this section shall not be construed to obviate or otherwise waive the right of the county ~~or State~~ to require a license, franchise, or other agreement to access the right-of-way more broadly to install wireline backhaul facilities, or to attach coaxial or fiber-optic cable between utility poles, or that is otherwise not ~~immediately~~ adjacent to ~~and or~~ directly associated with a particular antenna:

(1) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks shall be deemed permitted uses ~~not subject to zoning review~~, and no special use or conditional use permit shall be required, for their location on:

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

- (B) All land in the rural or agricultural districts pursuant to chapter 205; and
- (C) All land in the urban district pursuant to chapter 205;

- (2) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks may require special use or conditional use permits where such facilities are located in the conservation district pursuant to chapter 205;
- (3) Wireless ~~or wireline~~ providers shall have the right to co-locate small wireless ~~or wireline~~ facilities on county-owned utility poles, structures, and light standards, as defined in section 27-41.1; provided that the poles, structures, and light standards are not owned solely or jointly by an investor-owned electric utility unless federal law obligates an investor-owned electric utility to allow wireless providers to attach to investor-owned electric utility utility poles, structures, and light standards. Any county may require ~~building permits or other~~ nondiscretionary permits for the co-location of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks; provided that permits are of general applicability. A county shall receive

applications to process and issue permits and approvals in accordance with applicable law, including section 46-89 and chapter 269, and subject to the following requirements:

(A) Applicants shall not be required to perform any services, including restoration work not directly related to the co-location, to obtain approval for applications;

(B) Applications may be denied if the application does not meet applicable laws or rules regarding health and public safety, construction in the public rights-of-way or building or electrical codes or standards; provided that codes and standards are of general applicability. A county shall document the basis for any application 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 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 or wireline facilities network involving no greater than twenty-five individual small wireless or wireline facilities of a substantially similar design 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 or wireline facilities network instead of filing separate applications for each individual small wireless or wireline facility;~~

- (4) A wireless ~~or wireline~~ provider or a wireless ~~or wireline~~ provider's licensed contractor may co-locate small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks on county structures, utility poles, and light standards located within the land identified in paragraph (1)(A) to (C) subject to reasonable ~~rates, terms, and conditions~~ and cost-based rates, if such rates, terms, and conditions are required by the county ~~for similar types of commercial use; provided that the structures, utility poles, and light standards are not owned solely or jointly by an investor owned electric utility.~~ County utility pole co-location requests shall be processed in the same manner as permit applications under paragraph (3). The annual recurring rate to co-locate a small wireless ~~or wireline~~ facility on county structures, utility poles, and light standards shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission

pursuant to title 47 United States Code section 224(d), provided that when using the formula in title 47 Code of Federal Regulations section 1.1409(e)(2), the county may use as the net cost of a bare pole either \$100 or the actual net cost of the bare pole; provided that if the Federal Communications Commission adopts a rate formula for small wireless ~~or wireline~~ facility attachments, that rate formula shall apply;

If the county utility pole, light standard, building, or structure is unable to support any of the additional equipment sought to be installed, and the wireless provider would like to collocate small wireless facilities or small wireless facilities networks on the county-owned utility pole, light standard, building, or structure, the wireless provider, at its sole cost, may install an upgraded utility pole, light standard, building, or structure subject to approval by the county agency; provided that the wireless provider shall be responsible for the maintenance and repairs to its facilities on the utility pole, light standard, building, or structure until all of the equipment is removed; provided that

the county shall continue to own the upgraded utility pole, light standard, building, or structure;

-- The county may reserve space for up to 12 months on its light standards and utility poles where: (i) prior to a request for access having been made, it had a bona fide development plan in place and that the specific reservation of attachment capacity is reasonably and specifically needed for its planned use within one year of the request, (ii) there is no available technological means of increasing the capacity of the light standard or utility pole for additional attachments, and (iii) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party seeking the attachment;

-- Micro-wireless facilities, small wireless facilities and small wireless facilities networks installed on any state-owned utility pole, light standard, building, or structure shall be decommissioned if no longer in use. Providers shall remove from state utility poles, structures or light standards such micro-wireless facilities, small wireless facilities that are no longer used to provide service. The owner of the micro-wireless facilities, small wireless

facilities or small wireless facilities network shall bear the costs of such removals.

(5) Except as necessary to protect public safety, counties shall authorize but shall not require a wireless ~~or wireline~~ provider or wireless ~~or wireline~~ provider's licensed contractor to apply for or obtain a permit to:

(A) Maintain, repair, or replace the provider's small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks with facilities that are substantially the same, or smaller, in size, weight, volume, 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; and

(6) Except as provided in this chapter or as required by section 440G-8 or federal law, a county shall not adopt or enforce any regulations on the placement or operation of wireless ~~or wireline~~ facilities in the right-of-way where the entity is already authorized by a franchise or other authorization to operate

throughout the right-of-way, and shall not regulate wireless ~~or wireline~~ communications services or impose or collect fees on wireless ~~or wireline~~ communications services unless expressly required by state or federal statute.

~~(7) Limit the right of the county to require an indemnification agreement as a condition of a provider's facilities attaching to a county-owned utility pole, light standard, or building.~~

For the purposes of this subsection, "antenna", "co-location", "general applicability", "light standard", "micro wireless ~~or wireline~~ facilities", "small wireless ~~or wireline~~ facilities", "small wireless ~~or wireline~~ facilities network", "utility pole", "wireless ~~or wireline~~ facilityies", "wireless ~~or wireline~~ provider", "wireless ~~or wireline~~ communications service", and "wireline backhaul" shall have the same meanings as in section 27-41.1."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2090; provided that this Act shall be repealed on July 1, 2019.

Report Title:

Technology; Broadband; Wireless ~~or Wireline~~ Facilities Networks; Zoning; Counties; State Functions and Responsibilities

Description:

Clarifies the State and counties authority to prohibit, regulate, or charge for the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~ facilities networks. Provides state and county zoning rules and classifications regarding the co-location of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities networks. Describes the application process and rates for co-location. (SB1201 HD1)

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

Testimony before the House Committee on Water & Land

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

**Wednesday, March 22, 2017
10:00 a.m., Conference Room 325**

**Senate Bill 1201 SD2 HD1
Relating to Technology**

Chair Yamane, Vice Chair Kong, and Members of the Committee:

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 SB 1201 SD2 HD1. We appreciate the House Committee on Intrastate Commerce in considering and incorporating our proposed amendments to SB 1201 SD2.

We support and encourage the deployment of high-speed broadband infrastructure in Hawaii, and, as an active participant in, 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 continue to work with the stakeholders to clarify the intent of this measure and to ensure consistency in the reference and exclusion of solely or jointly owned utility poles and light standards by the Hawaiian Electric Companies on other broadband measures with a similar intent.

Thank you for the opportunity to testify on this matter.

SB 1201 SD2 HD1

RELATING TO TECHNOLOGY

**KEN HIRAKI
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM**

March 22, 2017

Chair Yamane and Members of the Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 1201 SD2 HD1- Relating to Technology.

The purpose of this bill is to facilitate the deployment of high-speed broadband infrastructure in Hawaii. Although Hawaiian Telcom supports the general intent of SB 1201 SD2 HD1, we believe that the benefits afforded to small wireless facilities under this measure should apply equally to wireline broadband infrastructure as well.

In order to maintain a fair and level regulatory playing field and facilitate the statewide rollout of advanced broadband services, Hawaiian Telcom respectfully requests that the bill be amended to add the term “wireline” to coincide with the term wireless services and facilities where applicable.

We also request that the bill be amended on page 6, line 14 and page 8, line 12 by adding the term “*within the state’s designated space*” and page 23, line 16 and page 26, line 5 “*within the county’s designated space*” after the word “standards” to clarify that state and county collocation pole fees shall be limited to the use of the state or county’s designated poles and collocation space.

Measures designed to encourage and promote both wireline and wireless services provide Hawaii’s consumers with the best opportunity to receive both the advanced broadband services that they need, and at competitive prices.

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

Thank you for the opportunity to testify.



March 21, 2017

Honorable Ryan I. Yamane
Chair, House Committee on Water & Land
Hawaii State Capitol
Room 420
Honolulu, HI 96813

Honorable Sam Satoru Kong
Vice Chair, House Committee on Water & Land
Hawaii State Capitol
Room 313
Honolulu, HI 96813

RE: Support Senate Bill 1201 SD2 HD1 – Small Wireless Facility Deployment

Dear Chair Yamane and Vice Chair Kong:

On behalf of CTIA, the trade association for the wireless communications industry, I am writing in support of Senate Bill 1201 SD2 HD1, 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 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. Senate Bill 1201 SD2 HD1 is a needed mechanism to 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 will be required for higher-frequency 5G spectrum. The benefits provided by 5G

¹ U.S. Census, Population Estimates, at <http://www.census.gov/data/tables/2016/demo/popest/state-total.html>, last accessed 3/21/2017.

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 3/21/2017.

³ Broadband Now, Broadband Internet in Hawaii, at: <http://broadbandnow.com/hawaii>, last accessed 3/21/2017.

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 sectors, 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 create 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.

Senate Bill 1201 SD2 HD1 helps to remove barriers to efficient deployment of small cell wireless infrastructure. Senate Bill 1201 SD2 HD1 allows providers the opportunity to responsibly deploy small cells by having reasonable access to existing state and county infrastructure within and outside of the public rights-of-way (ROW). Such access will help to meet customer demands for faster data speeds, stronger in-building signals and an overall improved customer experience. Senate Bill 1201 SD2 HD1 makes small cells on existing infrastructure a "permitted use" and not subject to discretionary review like larger "macro" towers. Finally, Senate Bill 1201 SD2 HD1 also allows for consolidation of substantially similar small cell applications, to minimize administrative impacts while improving efficiency.

Further, Senate Bill 1201 SD2 HD1 seeks to impose reasonable rates, terms and conditions for access to infrastructure in and outside of the ROW. Today, county or state pole attachment rights often come with uncertain prices or terms that curb investment in wireless infrastructure. Senate Bill 1201 SD2 HD1 remedies this situation and provides wireless providers "...with a fair and predictable process for the deployment of small wireless...facilities," as stated in Section 1 of the bill.

Finally, it is important to note that Senate Bill 1201 SD2 HD1 places no limitations on a locality's ability to deny a permit 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

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.*

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 3/21/2017.

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. Senate Bill 1201 SD2 HD1 would send such a signal that Hawaii is ready for investment.

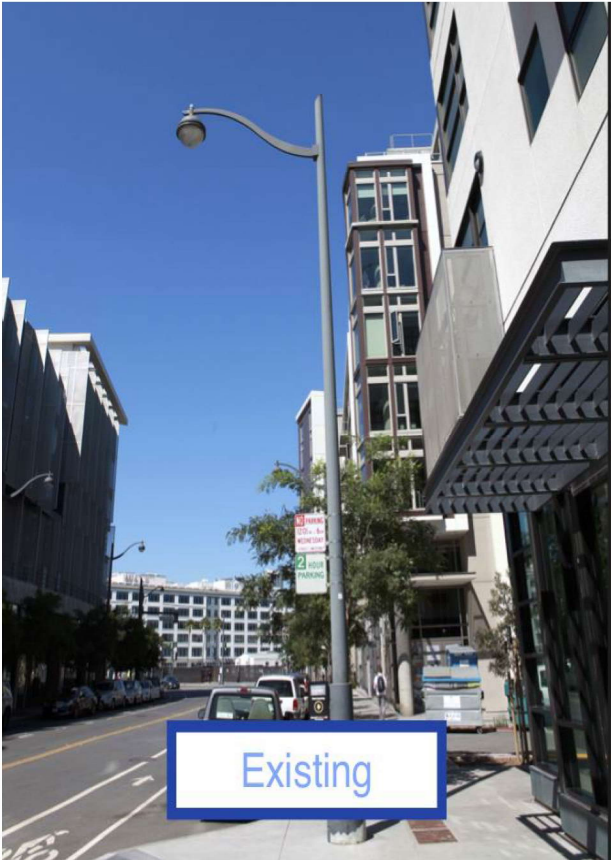
Thank you for the opportunity to submit testimony in support of Senate Bill 1201 SD2 HD1 and we strongly urge its approval.

Sincerely,

A handwritten signature in black ink that reads "Bethanne Cooley". The signature is written in a cursive style with a large initial 'B' and a long, sweeping tail on the 'y'.

Bethanne Cooley
Director, State Legislative Affairs
CTIA

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: <https://www.ctia.org/~/media/2017/04/2017-04-11-5G-Next-Generation-Wireless-Will-Improve-Communities-Across-America.pdf>

Testimony before the House Committee on Water & Land

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

**Wednesday, March 22, 2017
10:00 a.m., Conference Room 325**

**Senate Bill 1201 SD2 HD1
Relating to Technology**

Chair Yamane, Vice Chair Kong, and Members of the Committee:

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 SB 1201 SD2 HD1. We appreciate the House Committee on Intrastate Commerce in considering and incorporating our proposed amendments to SB 1201 SD2.

We support and encourage the deployment of high-speed broadband infrastructure in Hawaii, and, as an active participant in, 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 continue to work with the stakeholders to clarify the intent of this measure and to ensure consistency in the reference and exclusion of solely or jointly owned utility poles and light standards by the Hawaiian Electric Companies on other broadband measures with a similar intent.

Thank you for the opportunity to testify on this matter.



Bob Bass
*President, Hawaii
External Affairs*

AT&T Services, Inc.
16331 NE 72nd Way RTC1
Redmond, WA 98052

M: 425-786-8816
robert.bass@att.com
www.att.com

March 21, 2017

Honorable Ryan I. Yamane
Chair, House Committee on Water & Land
Hawaii State Capitol
Room 420
Honolulu, HI 96813

Honorable Sam Satoru Kong
Vice Chair, House Committee on Water & Land
Hawaii State Capitol
Room 313
Honolulu, HI 96813

RE: Support Senate Bill 1201 SD2 HD1 – Small Wireless Facility Deployment

On behalf of AT&T, I would respectfully request that the committee support Senate Bill 1201 SD2 HD1, related to the deployment of small wireless facilities -- a bill that will promote the installation of small cell wireless facilities to improve wireless networks.

Consumers and businesses are using their mobile devices more than ever to connect to everyone and everything around them. Since 2007, AT&T has experienced a 250,000% increase in data usage on our network. Additionally, as streaming video continues to become more prominent and new applications and services are introduced, this growth in data usage will continue to rise. Small cell wireless facilities will help bring customers faster download speeds, improved call quality and a better overall wireless experience.

With this increased demand and pressure on our mobile network, AT&T has developed innovative ways to enhance our network, prepare for 5G network deployment and provide the best possible experience for our customers by densifying our networks with small cells. Small cells are wireless antennas, no more than six cubic feet in volume, and with associated equipment less than twenty-eight cubic feet that will be deployed on existing structures like utility poles, street lights and traffic signals.

The densification of our network through the deployment of small cells and preparing our networks for the deployment of 5G technology will bring significant benefits and investments to Hawaii. Wireless consumers will benefit from increased speeds and improved networks and Hawaii telephone and cable companies will reap financial benefits from wireless carriers purchasing or leasing additional fiber backhaul as we deploy our small cell networks. Wireless companies depend upon local telephone and cable companies to provide the backhaul for our networks. So, support for Senate Bill 1201 SD2 HD1 not only will benefit the deployment of small cell networks, and wireless consumers, but will also benefit Hawaii telephone and cable companies and fiber deployment in Hawaii.



Senate Bill 1201 SD2 HD1 will allow wireless carriers access to the public rights-of-way at reasonable rates; expedite the process for small cell installation; and deploy critical small cell technology that will set the stage for 5G networks in Hawaii. This will lead to increased investment in Hawaii. We strongly urge your support of Senate Bill 1201 SD2 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Bass".

Bob Bass
President, Hawaii
External Affairs

Enclosure

Testimony of Mobilitie, LLC
IN SUPPORT OF SB 1201 SD2 HD1, Relating to Technology
Before the House Committee on Water & Land
Wednesday, March 22, 2017, 2017 10 am am
Conference Room 325, State Capitol

Chair Yamane, Vice Chair Kong, and Members of the Committee on Water & Land

Mobilitie **supports** SB 1201 SD2 HD1, which helps to facilitate the siting of small wireless facilities and networks; specifies certain sites where small wireless facilities or small wireless facilities networks may be located, including conditions and maximum fees for location and co-locations; and establishes an application process for co-location with recommended amendments as outlined by Verizon. We have been working with a consortium of wireless providers and have come to agreement on language, and we are working with other stakeholders to proactively work together to agree on language that will enable the build out of this infrastructure.

Mobilitie is a nationwide provider of wireless infrastructure solutions, currently deploying a hybrid transport network designed to provide high-speed, high-capacity bandwidth in order to facilitate the next generation of devices and data-driven services. Currently in Hawaii, Mobilitie is authorized by the Public Utilities Commission to provide telecommunications services under its' Certificate of Authority.

SB 1201 SD2, HD1 is much needed legislation that facilitates the deployment of high-speed broadband infrastructure in Hawaii. SB 1201 SD2 HD1 facilitates the permitting process through bulk submissions, consistent process for approval or denial, and set, non-discriminatory, rate structures consistent with the Federal Communications Commission. This enables the industry to efficiently and rapidly deploy much needed broadband infrastructure. These small wireless facilities will help densify the current network in order to sustain the data capacity needs of today, while building in capacity for future technologies that support 5G.

Mobilitie is poised to invest in building out our network as soon as this legislation is effective, which will provide for dozens of local jobs, and millions of dollars invested in the local economy. Therefore, I urge the committees to support SB 1201 SD2 HD1 with proposed amendments.

Thank you for the opportunity to testify.



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 1201 SD2 HD1

Relating To Technology

COMMITTEE ON WATER AND LAND

Wednesday, March 22, 2017, 10:00 am

Conference Room 325

Dear Chair Yamane, Vice Chair Kong and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **in support of** SB 1201 SD2 HD1, which clarifies the State and counties authority to prohibit, regulate, or charge for the co-location of small wireless or wireline facilities or small wireless or wireline facilities networks. Provides state and county zoning rules and classifications regarding the co-location of small wireless or wireline facilities and small wireless or wireline facilities networks. Describes the application process and rates for co-location.

MHLA believes that this measure would enable Hawai'i to establish a faster, more reliable wireless network to meet the growing demands of our communities and our visitor industry.

Our visitor industry needs to remain competitive globally, it is essential that Hawai'i reaffirms its position as a premier travel destination by establishing a stronger wireless network to remain attractive to visitors while keeping pace with their expectations. This Bill would accommodate the public's need for more data by expanding 4G services and in the future creating a next-generation (5G) network.

We respectfully request you consider passing SB 1201 SD2 HD1. Thank you for the opportunity to testify.



AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Ryan Yamane, Chair
Committee on Water Land
House of Representatives. Room 325
Hawaii State Legislature

LATE TESTIMONY

Hearing: Wednesday, March 22, 2017, 10:00am

Re: SB 1201, HD1 – Relating to Technology

Dear Chair Yamane and Honorable 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. As you know our airport system is supported by special funds.

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.

Thank you for allowing us to testify.

waltestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 21, 2017 1:14 AM
To: waltestimony
Cc: bfuruta@hawaii.rr.com
Subject: Submitted testimony for SB1201 on Mar 22, 2017 10:00AM

SB1201

Submitted on: 3/21/2017

Testimony for WAL on Mar 22, 2017 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Burt Furuta	Individual	Oppose	No

Comments: Thank you for this opportunity to testify. As a former computer consultant I certainly appreciate the benefits of technology, but I am also aware of the danger in focusing on those benefits without due consideration of what could go wrong. I concur with Mayor Harry Kim's prior testimony from the County of Hawaii, that no bill on this subject should be passed at this time. My reasons are different from Mayor Kim's. I believe we are focused on the benefits of wireless technology while totally ignoring the research on the harmful effects of radiofrequency radiation. We should be investing in wireline broadband, not wireless. There is a worldwide movement away from wireless. By the time that movement reaches Hawaii, we would have wasted millions of dollars on wireless infrastructure that could have been used for wireline. Everyone voting in favor of this bill will regret it. Other countries are ahead of the United States in promoting wireline broadband instead of wireless. Since children are more vulnerable than adults, the first place where wireless is being removed is schools. The Parents for Safe Technology website has a list of countries and the steps they have taken. <http://www.parentsforsafetechnology.org/worldwide-countries-taking-action.html> Thus far only one state has acknowledged the science behind this movement away from wireless. That state is Maryland. See http://phpa.dhmf.maryland.gov/OEHFP/EH/Shared%20Documents/CEHPAC/MD_CEHPAC_SchoolWiFi_022017_final.pdf It would be a shame if multiple companies had small wireless facilities on every block. They would be bombarding all residents with radiofrequency radiation 24 hours every day. All citizens would be at risk, children especially. When the dangers become well known, there will be an outcry, and questions: Why did we invest in wireless and put everyone at risk when others were already moving away from wireless? Why didn't we invest in fiber optics and cable instead? Why wasn't any attention given to the World Health Organization's 2011 classification of radiofrequency radiation as possibly carcinogenic to humans? Did anyone promoting wireless seriously consider the growing research that showed radiofrequency radiation was harmful? Hawaii should join Maryland in leading the country in promoting wireline broadband and reducing our exposure to radiofrequency radiation. We can do it right by going with wired connections, or we can ignore the science and go with wireless, then have to start over years later, after wasting millions of dollars and putting our citizens at risk.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

**TO THE HOUSE COMMITTEE ON
WATER & LAND**

**TESTIMONY REGARDING
SB1201 HD1 RELATING TO TECHNOLOGY**

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

**March 22, 2017
10:00 AM**

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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 SB 1201 HD1 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. SB 1201 HD1 would do nothing to spur wireless broadband deployment, which are 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 SB 1201 HD1, 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” was a clear example of the bill’s 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 co-locate their wireless facilities on State and county utility poles, structures 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.

SB 1201 HD1 makes significant changes to the current process for public right-of-way access and creates an uneven playing field. We ask the Committee 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 Committee decides to pass this measure, we ask that the Committee consider and incorporate the amendments included in the attached proposed amendments to SB1201 HD1, which seeks to further address fundamental concerns of disparate treatment among providers of like services, as described in greater detail above. We note that several of the amendments proposed by the Senate represent significant strides toward addressing some of these concerns and that the changes incorporated into SB1201 HD1 reversed some of those improvements. We respectfully ask that the Committee avoid changes, beyond the scope of these proposed amendments, which might reverse the improvements made previously. The attached draft also restores the repeal of Section 2 of Act 151, as Section 2 is unnecessary and is somewhat inconsistent with portions of HRS Chapters 27 and 46.

A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

1 SECTION 1. The legislature finds that the efficient deployment of broadband
2 infrastructure and technology is important to the future global connectivity and economic
3 viability of our island state. Among the benefits afforded by an advanced broadband
4 infrastructure system are increased and enhanced educational opportunities, telehealth
5 capacity, safety and civil defense communications, economic competitiveness, consumer
6 privileges, and tourism services.

7 To ensure that consumers throughout the State may benefit from these services as
8 soon as possible, and to provide wireless ~~and wireline~~ providers with a fair and
9 predictable process for the deployment of small wireless ~~or wireline~~ facilities, the
10 legislature finds that laws are needed to specify the extent and way in which the
11 deployment of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities
12 networks are regulated in the State.

13 The purpose of this Act is to facilitate the deployment of high-speed broadband
14 infrastructure in Hawaii, including small wireless ~~or wireline~~ facilities, in a way that
15 encourages new technology and ensures a level playing field for competitive
16 communications service providers by:

- 1 (1) Establishing limits on the State’s and counties’ authority to prohibit,
2 regulate, or charge for the co- location of small wireless ~~or wireline~~
3 facilities or small wireless ~~or wireline~~ facilities networks;
- 4 (2) Specifying certain sites where small wireless ~~or wireline~~ facilities or small
5 wireless ~~or wireline~~ facilities networks may be located, including
6 conditions and maximum fees for location and co- location; ~~and~~
- 7 (3) Establishing an application process for co-location; ~~and~~
- 8 (4) Repealing Section 2 of Act 151, Session Laws of Hawaii 2011.

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

11 “§27- Co- location permits; application; review; approval. (a) Except
12 as otherwise provided in this chapter, a ~~telecommunications carrier~~ wireless provider
13 proposing to co-locate ~~small wireless facilities~~ ~~broadband infrastructure~~ shall submit an
14 application for a permitted use permit to the state agency with jurisdiction over utility
15 poles, light standards, buildings, or structures. The application shall include:

- 16 (1) A geographic description of the project area;
- 17 (2) A listing and description of the utility poles, light standards, buildings, or
18 structures included in the project for the installation, mounting, operation,
19 and placement ~~of small wireless facilities~~ ~~of broadband infrastructure,~~
20 including an assessment of the identifying information, location, and

1 ownership of the listed utility poles, light standards, buildings, or
2 structures; and

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

8 (b) The agency shall evaluate the impact of co-locating the ~~broadband~~
9 ~~infrastructure facilities~~ described in the application to ensure that:

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

13 (2) The utility poles or light standards are able to bear the additional weight of
14 the equipment and that the equipment is not a hazard or obstruction to the
15 public; and

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

19 (c) The agency shall notify the applicant that:

20 (1) The permit is approved;

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

1 (3) The application is returned for resubmission with a list of specific
2 questions seeking answers, clarification, or additional detailed
3 information.

4 §27- Siting of small wireless ~~or wireline~~ facilities and small wireless ~~or~~

5 ~~wireline~~ facilities networks. (a) The State shall not prohibit, regulate, or charge for

6 the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or wireline~~

7 facilities networks, except as provided in this section; provided that ~~no approval for the~~

8 ~~installation, placement, maintenance or operation of a small wireless facility pursuant to~~

9 ~~this section shall be construed to confer authorization for provision of cable television~~

10 ~~service or for the installation, placement, maintenance or operation of a communications~~

11 ~~facility in the right-of-way. this section shall not be construed to obviate or otherwise~~

12 ~~waive the right of the State to require a license, franchise, or other agreement to access~~

13 ~~the right of way more broadly to install wireline broadband backhaul facilities, or to~~

14 ~~attach coaxial or fiber optic cable between poles.~~ Small wireless ~~or wireline~~ facilities

15 and small wireless ~~or wireline~~ facilities networks shall be deemed permitted uses, and no

16 special use or conditional use permit shall be required, for their location on:

17 (1) All public rights-of-way and property;

18 (2) All land in the rural or agricultural districts pursuant to chapter 205; and

19 (3) All land in the urban district pursuant to chapter 205.

1 (b) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~
2 facilities networks may require special use or conditional use permits where such
3 facilities are located on land in the conservation district pursuant to chapter 205.

4 (c) Wireless providers shall have the right to co-locate small wireless ~~or~~
5 ~~wireline~~ facilities on state utility poles, state structures, and light standards; provided such
6 utility poles, structures, and light standards are not owned solely or jointly by an investor-
7 owned electric utility. The State may require building permits or other permits for the co-
8 location of small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities
9 networks; provided that permits are of general applicability. The State shall receive
10 applications to process and issue permits and approvals in accordance with applicable
11 law, including section 27-45 and chapter 269, and subject to the following requirements:

12 (1) Applicants shall not be required to perform any services, including
13 restoration work not directly related to the co-location, to obtain approval
14 for applications;

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

1 (3) An applicant for a small wireless ~~or wireline~~ facilities network involving
2 no greater than twenty-five individual small wireless ~~or wireline~~ facilities
3 of a substantially similar design shall be permitted, upon request by the
4 applicant, to file a consolidated application and receive a single permit for
5 the installation, construction, maintenance, and repair of a small wireless
6 ~~or wireline~~ facilities network instead of filing separate applications for
7 each individual small wireless ~~or wireline~~ facility.

8 (d) A wireless provider or a wireless provider's licensed contractor may co-
9 locate small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~ facilities
10 networks on state structures, state utility poles, and light standards located within the land
11 identified in subsection (a)(1) to (3), subject to reasonable rates, terms, and conditions if
12 such rates, terms, and conditions are required by the State for similar types of commercial
13 use; provided such structures, utility poles, and light standards are not owned solely or
14 jointly by an investor- owned electric utility. The annual recurring rate to co-locate a
15 small wireless ~~or wireline~~ facility on state structures, utility poles, and light standards
16 shall not exceed the rate produced by applying the formula adopted by the Federal
17 Communications Commission pursuant to title 47 United States Code section 224(d);
18 provided that if the Federal Communications Commission adopts a rate formula for small
19 wireless ~~or wireline~~ facility attachments, that rate formula shall apply.

1 (e) The State shall ~~authorize but shall~~ not require a wireless ~~or wireline~~
2 provider or wireless ~~or wireline~~ provider’s licensed contractor to apply for or obtain a
3 permit to:

4 (1) Maintain, repair, or replace the provider’s small wireless ~~or wireline~~
5 facilities and small wireless ~~or wireline~~ facilities networks with facilities
6 that are substantially the same, or smaller, in size, weight, and height as
7 the existing facilities; or

8 (2) Install, place, maintain, operate, or replace micro wireless ~~or wireline~~
9 facilities that are suspended on ~~messenger~~ cables that are strung between
10 existing utility poles in compliance with national safety codes.

11 (f) Except as relates to the small wireless facilities pursuant ~~provided in to~~
12 this chapter, ~~no authority~~ ~~or as required by section 440G-8 or federal law, the State shall~~
13 ~~not~~may adopt or enforce any regulations or requirements that would require a holder of a
14 cable franchise to obtain an additional authorization or to pay additional fees for the
15 provision of communications services over such holder’s communications facilities in the
16 rights-of-way ~~on the placement or operation of wireless or wireline facilities in the right-~~
17 ~~of way where the entity is already authorized by a franchise or other authorization to~~
18 ~~operate throughout the right of way, and shall not regulate wireless or wireline~~
19 ~~communications services or impose or collect fees on wireless or wireline~~
20 ~~communications services unless expressly required by state or federal statute.”~~

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

3 “§46- Co- location permits; application; review; approval. (a) Except
4 as otherwise provided in this chapter, a ~~A telecommunications carrier~~ wireless provider
5 proposing to ~~collocate small wireless facilities~~ ~~broadband infrastructure~~ shall submit an
6 application for a permitted use permit to the county agency with jurisdiction over utility
7 poles, light standards, buildings, or structures. The application shall include:

8 (1) A geographic description of the project area;

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

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

19 (b) The agency shall evaluate the impact of co-locating the facilities
20 ~~broadband infrastructure~~ described in the application to ensure that:

- 1 (1) The equipment installed on the poles, light standards, buildings, or
2 structures are done in a manner to protect public health and safety, and
3 safe travel in the public rights-of-way;
- 4 (2) The utility poles or light standards are able to bear the additional weight of
5 the equipment and that the equipment is not a hazard or obstruction to the
6 public; and
- 7 (3) The project equipment ~~and broadband infrastructure~~ does not interfere
8 with government systems for public safety communication operations and
9 emergency services.
- 10 (c) The agency shall notify the applicant that:
 - 11 (1) The permit is approved;
 - 12 (2) The permit is approved with specified modifications; or
 - 13 (3) The application is returned for resubmission with a list of specific
14 questions seeking answers, clarification, or additional detailed
15 information.”

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

18 ““Co-location” means the installation, mounting, maintenance, modification,
19 operation, or replacement of wireless ~~or wireline~~ facilities on a tower, utility pole, light
20 standard, or other structure existing on the effective date of Act _____, Session Laws of

1 Hawaii 2017, for the purpose of transmitting or receiving radio frequency signals for
2 communications purposes.

3 “General applicability” means laws, regulations, or processes that apply to
4 objective requirements to all persons or services in a nondiscriminatory manner and do
5 not apply exclusively to small wireless ~~or wireline~~ facilities.

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

9 “Micro wireless ~~or wireline~~ facilities” means small wireless ~~or wireline~~ facilities
10 that are no larger in dimension than twenty-four inches long, fifteen inches in width,
11 twelve inches in height, and that has an exterior antenna, if any, no longer than eleven
12 inches.

13 “Small wireless ~~or wireline~~ facilities” means wireless ~~or wireline~~ facilities that
14 meet the following qualifications:

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

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

1 fixed location or mobile, provided using wireless ~~or wireline~~ facilities. “Wireless ~~or~~
2 ~~wireline~~ communications service” does not include wireline backhaul service.

3 “Wireless ~~or wireline~~ facilities” means the set of equipment and network
4 components, including but not limited to antennas, accessory equipment, transmitters,
5 receivers, power supplies, and other associated equipment necessary to provide wireless
6 ~~or wireline~~ communications service. “Wireless ~~or wireline~~ facilities” shall not include:

- 7 (1) The structure or improvements on, under, or within which the equipment
8 is co-located;
9 (2) Wireline backhaul facilities; or
10 (3) Coaxial or fiber-optic cable between utility poles or that is otherwise not
11 immediately adjacent to and directly associated with a particular antenna.

12 “Wireless ~~or wireline~~ provider” means a person or entity that is:

- 13 (1) A provider of wireless ~~or wireline~~ communications service;
14 (2) A wireless ~~or wireline~~ telecommunications service provider, as defined in
15 section 269-16.93(d); or
16 (3) Authorized in accordance with chapter 269 to provide facilities based
17 telecommunications services in the State, and builds, installs, operates, or
18 maintains facilities and equipment used to provide wireless ~~or wireline~~
19 service.

20 “Wireline backhaul” means the transport of communications data or other
21 electronic information by wire from wireless ~~or wireline~~ facilities to a network.”

1 SECTION 5. Section 46-4, Hawaii Revised Statutes, is amended to read as
2 follows:

3 “§46-4 County zoning. (a) This section and any ordinance, rule, or
4 regulation adopted in accordance with this section shall apply to lands not contained
5 within the forest reserve boundaries as established on January 31, 1957, or as
6 subsequently amended.

7 Zoning in all counties shall be accomplished within the framework of a long-
8 range, comprehensive general plan prepared or being prepared to guide the overall future
9 development of the county. Zoning shall be one of the tools available to the county to put
10 the general plan into effect in an orderly manner. Zoning in the counties of Hawaii,
11 Maui, and Kauai means the establishment of districts of such number, shape, and area,
12 and the adoption of regulations for each district to carry out the purposes of this section.
13 In establishing or regulating the districts, full consideration shall be given to all available
14 data as to soil classification and physical use capabilities of the land to allow and
15 encourage the most beneficial use of the land consonant with good zoning practices. The
16 zoning power granted herein shall be exercised by ordinance which may relate to:

- 17 (1) The areas within which agriculture, forestry, industry, trade, and business
18 may be conducted;
- 19 (2) The areas in which residential uses may be regulated or prohibited;

- 1 (3) The areas bordering natural watercourses, channels, and streams, in which
- 2 trades or industries, filling or dumping, erection of structures, and the
- 3 location of buildings may be prohibited or restricted;
- 4 (4) The areas in which particular uses may be subjected to special restrictions;
- 5 (5) The location of buildings and structures designed for specific uses and
- 6 designation of uses for which buildings and structures may not be used or
- 7 altered;
- 8 (6) The location, height, bulk, number of stories, and size of buildings and
- 9 other structures;
- 10 (7) The location of roads, schools, and recreation areas;
- 11 (8) Building setback lines and future street lines;
- 12 (9) The density and distribution of population;
- 13 (10) The percentage of a lot that may be occupied, size of yards, courts, and
- 14 other open spaces;
- 15 (11) Minimum and maximum lot sizes; and
- 16 (12) Other regulations the boards or city council find necessary and proper to
- 17 permit and encourage the orderly development of land resources within
- 18 their jurisdictions.

19 The council of any county shall prescribe rules, regulations, and administrative
20 procedures and provide personnel it finds necessary to enforce this section and any
21 ordinance enacted in accordance with this section. The ordinances may be enforced by

1 appropriate fines and penalties, civil or criminal, or by court order at the suit of the
2 county or the owner or owners of real estate directly affected by the ordinances.

3 Any civil fine or penalty provided by ordinance under this section may be
4 imposed by the district court, or by the zoning agency after an opportunity for a hearing
5 pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive
6 relief ordered by the circuit court.

7 Nothing in this section shall invalidate any zoning ordinance or regulation
8 adopted by any county or other agency of government pursuant to the statutes in effect
9 prior to July 1, 1957.

10 The powers granted herein shall be liberally construed in favor of the county
11 exercising them, and in such a manner as to promote the orderly development of each
12 county or city and county in accordance with a long-range, comprehensive general plan
13 to ensure the greatest benefit for the State as a whole. This section shall not be construed
14 to limit or repeal any powers of any county to achieve these ends through zoning and
15 building regulations, except insofar as forest and water reserve zones are concerned and
16 as provided in subsections (c) and (d).

17 Neither this section nor any ordinance enacted pursuant to this section shall
18 prohibit the continued lawful use of any building or premises for any trade, industrial,
19 residential, agricultural, or other purpose for which the building or premises is used at the
20 time this section or the ordinance takes effect; provided that a zoning ordinance may
21 provide for elimination of nonconforming uses as the uses are discontinued, or for the

1 amortization or phasing out of nonconforming uses or signs over a reasonable period of
2 time in commercial, industrial, resort, and apartment zoned areas only. In no event shall
3 such amortization or phasing out of nonconforming uses apply to any existing building or
4 premises used for residential (single-family or duplex) or agricultural uses. Nothing in
5 this section shall affect or impair the powers and duties of the director of transportation as
6 set forth in chapter 262.

7 (b) Any final order of a zoning agency established under this section may be
8 appealed to the circuit court of the circuit in which the land in question is found. The
9 appeal shall be in accordance with the Hawaii rules of civil procedure.

10 (c) Each county may adopt reasonable standards to allow the construction of
11 two single-family dwelling units on any lot where a residential dwelling unit is permitted.

12 (d) Neither this section nor any other law, county ordinance, or rule shall
13 prohibit group living in facilities with eight or fewer residents for purposes or functions
14 that are licensed, certified, registered, or monitored by the State; provided that a resident
15 manager or a resident supervisor and the resident manager's or resident supervisor's
16 family shall not be included in this resident count. These group living facilities shall
17 meet all applicable county requirements not inconsistent with the intent of this
18 subsection, including but not limited to building height, setback, maximum lot coverage,
19 parking, and floor area requirements.

20 (e) Neither this section nor any other law, county ordinance, or rule shall
21 prohibit the use of land for employee housing and community buildings in plantation

1 community subdivisions as defined in section 205-4.S(a) (12); in addition, no zoning
2 ordinance shall provide for the elimination, amortization, or phasing out of plantation
3 community subdivisions as a nonconforming use.

4 (f) Neither this section nor any other law, county ordinance, or rule shall
5 prohibit the use of land for medical marijuana production centers or medical marijuana
6 dispensaries established and licensed pursuant to chapter 329D; provided that the land is
7 otherwise zoned for agriculture, manufacturing, or retail purposes.

8 (g) Neither this section nor any other county law, ordinance, or rule shall
9 prohibit the co-location of small wireless ~~or wireline~~ facilities or small wireless ~~or~~
10 ~~wireline~~ facilities networks, as defined in section 27-41.1, except as provided in this
11 section; provided that this section shall not be construed to obviate or otherwise waive the
12 right of the county or State to require a license, franchise, or other agreement to access
13 the right-of-way more broadly to install wireline backhaul facilities, or to attach coaxial
14 or fiber- optic cable between utility poles, or that is otherwise not immediately adjacent
15 to and directly associated with a particular antenna:

16 (1) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~
17 facilities networks shall be deemed permitted uses, and no special use or
18 conditional use permit shall be required, for their location on:

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

20 (B) All land in the rural or agricultural districts pursuant to chapter
21 205; and

- 1 (C) All land in the urban district pursuant to chapter 205;
- 2 (2) Small wireless ~~or wireline~~ facilities and small wireless ~~or wireline~~
3 facilities networks may require special use or conditional use permits
4 where such facilities are located in the conservation district pursuant to
5 chapter 205;
- 6 (3) Wireless ~~or wireline~~ providers shall have the right to co-locate small
7 wireless ~~or wireline~~ facilities on county-owned utility poles, structures,
8 and light standards, as defined in section 27-41.1; provided that the poles,
9 structures, and light standards are not owned solely or jointly by an
10 investor-owned electric utility. Any county may require building permits
11 or other permits for the co-location of small wireless ~~or wireline~~ facilities
12 and small wireless ~~or wireline~~ facilities networks; provided that permits
13 are of general applicability. A county shall receive applications to process
14 and issue permits and approvals in accordance with applicable law,
15 including section 46-89 and chapter 269, and subject to the following
16 requirements:
- 17 (A) Applicants shall not be required to perform any services, including
18 restoration work not directly related to the co-location, to obtain
19 approval for applications;
- 20 (B) Applications may be denied if the application does not meet
21 applicable laws or rules regarding construction in the public rights-

1 of-way or building or electrical codes or standards; provided that
2 codes and standards are of general applicability. A county shall
3 document the basis for any application denial, including the
4 specific code provisions or standards on which the denial was
5 based; and

6 (C) An applicant for a small wireless ~~or wireline~~ facilities network
7 involving no greater than twenty-five individual small wireless ~~or~~
8 ~~wireline~~ facilities of a substantially similar design shall be
9 permitted, upon request by the applicant, to file a consolidated
10 application and receive a single permit for the installation,
11 construction, maintenance, and repair of a small wireless ~~or~~
12 ~~wireline~~ facilities network instead of filing separate applications
13 for each individual small wireless ~~or wireline~~ facility;

14 (4) A wireless ~~or wireline~~ provider or a wireless ~~or wireline~~ provider's
15 licensed contractor may co-locate small wireless ~~or wireline~~ facilities and
16 small wireless ~~or wireline~~ facilities networks on county structures, utility
17 poles, and light standards located within the land identified in
18 paragraph (1)(A) to (C) subject to reasonable rates, terms, and conditions,
19 if such rates, terms, and conditions are required by the county for similar
20 types of commercial use; provided that the structures, utility poles, and
21 light standards are not owned solely or jointly by an investor owned

1 electric utility. County utility pole co-location requests shall be processed
2 in the same manner as permit applications under paragraph (3). The
3 annual recurring rate to co-locate a small wireless ~~or wireline~~ facility on
4 county structures, utility poles, and light standards shall not exceed the
5 rate produced by applying the formula adopted by the Federal
6 Communications Commission pursuant to title 47 United States Code
7 section 224(d); provided that if the Federal Communications Commission
8 adopts a rate formula for small wireless ~~or wireline~~ facility attachments,
9 that rate formula shall apply;

10 (5) Counties shall authorize but shall not require a wireless ~~or wireline~~
11 provider or wireless ~~or wireline~~ provider's licensed contractor to apply for
12 or obtain a permit to:

13 (A) Maintain, repair, or replace the provider's small wireless ~~or~~
14 ~~wireline~~ facilities and small wireless ~~or wireline~~ facilities
15 networks with facilities that are substantially the same, or smaller,
16 in size, weight, and height as the existing facilities; or

17 (B) Install, place, maintain, operate, or replace micro wireless facilities
18 that are suspended on ~~messenger~~ cables that are strung between
19 existing utility poles in compliance with national safety codes; and

20 (6) Except as relates to the small wireless facilities pursuant to this chapter, a
21 county may not adopt or enforce any regulations or requirements that

1 would require a holder of a cable franchise to obtain an additional
2 authorization or to pay additional fees for the provision of
3 communications services over such holder’s communications facilities in
4 the rights-of-way. ~~Except as provided in this chapter or as required by~~
5 ~~section 440G-8 or federal law, a county shall not adopt or enforce any~~
6 ~~regulations on the placement or operation of wireless or wireline facilities~~
7 ~~in the right of way where the entity is already authorized by a franchise or~~
8 ~~other authorization to operate throughout the right of way, and shall not~~
9 ~~regulate wireless or wireline communications services or impose or collect~~
10 ~~fees on wireless or wireline communications services unless expressly~~
11 ~~required by state or federal statute.~~

12 For the purposes of this subsection, “co-location”, “general applicability”, “light
13 standard”, “micro wireless ~~or wireline~~ facilities”, “small wireless ~~or wireline~~ facilities”,
14 “small wireless ~~or wireline~~ facilities network”, “utility pole”, “wireless ~~or wireline~~
15 facilities”, “wireless ~~or wireline~~ provider”, “wireless ~~or wireline~~ communications
16 service”, and “wireline backhaul” shall have the same meanings as in section 27-41.1.”

17 SECTION 6. Act 151, Session Laws of Hawaii 2011, section 2, Session Laws of
18 Hawaii 2016, is repealed.

19 ~~[“SECTION 2. Beginning January 1, 2012, actions relating to the installation,~~
20 ~~improvement, construction, or development of infrastructure relating to broadband~~
21 ~~service or broadband technology, including the interconnection of telecommunications~~

1 cables, shall be exempt from county permitting requirements, state permitting and
2 approval requirements, which includes the requirements of chapters 171, 205A, and 343,
3 Hawaii Revised Statutes, and public utilities commission rules under Hawaii
4 Administrative Rules, chapter 6-73, that require existing installations to comply with new
5 pole replacement standards at the time of any construction or alteration to the equipment
6 or installation, except to the extent that such permitting or approval is required by federal
7 law or is necessary to protect eligibility for federal funding, services, or other assistance;
8 provided that the installation, improvement, construction, or development of
9 infrastructure shall:

10 (1) — Be directly related to the improvement of existing telecommunications
11 cables or the installation of new telecommunications cables;

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

13 (B) — Using existing infrastructure and facilities;

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

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

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

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

10 SECTION 7. Statutory material to be repealed is bracketed and stricken. New
11 statutory material is underscored.

12 SECTION ~~8~~7. This Act shall take effect on July 1, 2090; provided that this Act
13 shall be repealed on July 1, 2019.

Report Title:

Technology; Broadband; Wireless ~~or Wireline~~-Facilities Networks; Zoning; Counties; State Functions and Responsibilities

Description:

Clarifies the State and counties authority to prohibit, regulate, or charge for the co-location of small wireless ~~or wireline~~-facilities or small wireless ~~or wireline~~-facilities networks. Provides state and county zoning rules and classifications regarding the co-location of small wireless ~~or wireline~~-facilities and small wireless ~~or wireline~~-facilities networks. Describes the application process and rates for co-location. (SB1201 HD1)

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