

DAVID Y. IGE  
GOVERNOR  
  
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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  
CONSUMER PROTECTION & COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Date: Wednesday, April 5, 2017  
Time: 2:00 p.m.

TESTIMONY ON S.B. NO. 1201, S.D. 2, PROPOSED H.D. 3 – RELATING TO  
TECHNOLOGY.

TO THE HONORABLE ROY M. TAKUMI, 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, Proposed H.D. 3, which establishes:

- (1) A broadband task force to create a statewide broadband plan for submission to the Legislature prior to the 2018 legislative session; and
- (2) Permitting and approval processes for the installation of broadband infrastructure, small wireless facilities, and small wireless facilities networks on state and county-owned property.

The Department supports the general intent under Part I to gather public and private stakeholders to create a plan to advance broadband services across the State. The Department notes, however, that the allowed time frame of approximately six months is likely insufficient to prepare a statewide broadband plan, given the breadth and complexity of the issues directed to be included in the plan.

The Department also has serious concerns regarding the applicability of the State's Sunshine Law to the task force, which is required to take official action by vote. The current composition of the task force includes many public officials and private stakeholders who must, as a function of their jobs, communicate regularly on many of the very issues the task force is charged to consider, i.e., "board business." Because the Sunshine Law would likely restrict discussions between many task force members on matters that are "board business," persons designated under the bill may be unable to serve on the task force. The Department defers to the Department of Business, Economic Development, and Tourism for further comment on Part I of the Proposed H.D. 3.

The Department also supports the intent of Part II to streamline permitting and approval processes to facilitate deployment of, and access to, competitively priced broadband services across the State. However, the Department would like to highlight 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. These 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.

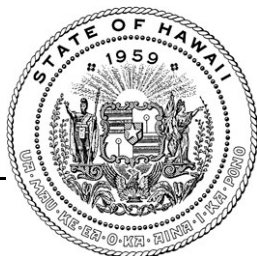
Rather than overriding existing approval processes designed to safeguard public health, safety, and welfare for one type of technology, the Department respectfully suggests that legislation that strengthens and provides enforcement of these existing rules and laws would be consistent with federal law 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 and 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. The Department notes that the many issues raised by proposed legislation to streamline small wireless facilities and small wireless facilities networks deployment have been the subject of much testimony and discussion, resulting in extensive revisions to H.B. No. 625, H.D. 3, S.D. 1, with additional amendments announced at decision making for that measure on April 4, 2017.

Lastly, subsection (h) (page 13, lines 8-21), contains provisions related to the collection of personal information by providers of telecommunications or internet service. The Department strongly supports protection of privacy and other rights of consumers in this State with respect to both the collection and use of personal information, but is uncertain at this time about the impacts this new provision would have on the other provisions proposed in this measure or its interrelation with existing consumer privacy laws.

Thank you for the opportunity to testify.



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
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Statement of  
**LUIS P. SALAVERIA**, Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
Wednesday, April 5, 2017  
2:00 P.M.  
State Capitol, Conference Room 329  
in consideration of  
**SB 1201, SD2, PROPOSED HD3**  
**RELATING TO TECHNOLOGY.**

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) **supports** SB 1201, SD2, Proposed HD3, **with amendments**.

DBEDT supports the intent to convene a task force of 17 stakeholders to develop a statewide broadband plan; and establish a permit application review and approval process for the installation of broadband infrastructure and small wireless facilities on state and county owned property. DBEDT recommends the following amendments to Part I:

- 1) Revise Section 1(a)(1) and (8) to designate the DBEDT director and the DCCA director as co-chairs of the task force; and
- 2) Amend language Section 1(f)(4) which requires the statewide broadband plan include a recommended structure to regulate all broadband services. Propose removing reference to DBEDT and allow the task force to determine the appropriate entity.

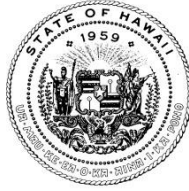
DBEDT's mission is to be the state's economic development agency. DBEDT strongly supports expanded and expedited deployment of broadband equipment, both wireline and wireless, to ensure that Hawaii remains economically viable in a rapidly changing global business environment.

DBEDT supports Part II of the bill which adds a new chapter to Hawaii Revised Statute to establish a permit application, review and approval process for placing small wireless equipment on state and county utility poles, light standards, buildings and structures. We believe Part II balances protection of state and county investments for

public safety, IT, and contractual obligations with expedited deployment of small wireless installations.

We defer to DCCA on the impact of this measure on the county public, educational, and government access providers and the regulation of wireless carriers.

Thank you for the opportunity to offer these comments on SB1201, SD2, Proposed HD3.



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

April 5, 2017  
2:00 p.m.  
State Capitol, Room 329

**S.B. 1201, Proposed H.D. 3**  
**RELATING TO TECHNOLOGY**

House Committee on Consumer Protection and Commerce

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The Department of Transportation (DOT) **supports** the intent of S.B. 1201, proposed H.D. 3 which establishes the siting process of infrastructure for small wireless facilities and small wireless facilities networks on state and county owned land.

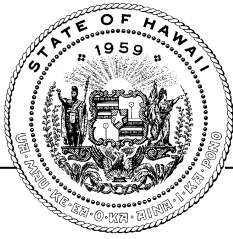
The DOT is concerned the bill requirement to allow small wireless facilities and small wireless facilities networks in all public rights-of-way could adversely impact the WiFi System Concession at our State airports.

The DOT, Airports Division requests it be exempted from this measure as it has a concessionaire on contract providing WiFi service for its major airports.

Thank you for the opportunity to provide testimony.

**Testimony by:**  
FORD N. FUCHIGAMI  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN  
DARRELL T. YOUNG  
IN REPLY REFER TO:



**OFFICE OF PLANNING  
STATE OF HAWAII**

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
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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 CONSUMER PROTECTION AND COMMERCE**  
Wednesday, April 5, 2017  
2:00 PM  
State Capitol, Conference Room 329  
  
in consideration of  
**SB 1201, SD2, HD3**  
**RELATING TO TECHNOLOGY.**

Chair Takumi, Vice Chair Ichiyama, and Members of the House Committee on Consumer Protection and Commerce.

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, increased economic competitiveness, addressing consumer privileges, and providing tourism services. The Office of Planning (OP) supports the intent of SB1201, SD2, HD3 and offers the following comments.

SB 1201, SD2, HD3 establishes a broadband task force to develop a statewide broadband plan and establishes new chapter in Hawaii Revised Statutes (HRS) Title 5, establishing a process for permit application, review, and approval processes for the collocation of small wireless facilities.

The intent of SB1201, SD2, HD3 supports implementation of Hawaii Revised Statutes (HRS) Chapter 226-103 Economic Priority Guidelines (g) (7) encourage the location of collocation 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.

Thank you for the opportunity to testify on this measure.

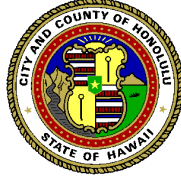
**OFFICE OF THE MAYOR  
CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 300 • HONOLULU, HAWAII 96813  
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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 CONSUMER PROTECTION  
AND COMMERCE  
WEDNESDAY, APRIL 5, 2017; 2:00 PM

TO: THE HONORABLE ROY M. TAKUMI, CHAIR  
THE HONORABLE LINDA E. ICHIYAMA, VICE CHAIR  
AND MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION  
AND COMMERCE

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

SUBJECT: COMMENTS SB1201 HD3 PROPOSED, 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 has the following concerns with SB1201 HD3 Proposed:

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.



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. The City prefers the language in HB625 SD3, which allows wireless carriers to install equipment only on poles.

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 proposed 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.

### 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.

### 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 the creation of a balanced task force with equal representation 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 HD3 Proposed as drafted.



BEFORE THE COMMITTEE ON CONSUMER PROTECTION  
AND COMMERCE  
WEDNESDAY, APRIL 5, 2017; 2:00 PM

TO: THE HONORABLE ROY M. TAKUMI, CHAIR  
THE HONORABLE LINDA E. ICHIYAMA, VICE CHAIR  
AND MEMBERS OF THE COMMITTEE ON CONSUMER PROTECTION  
AND COMMERCE

SUBJECT: OPPOSITION TO SB1201 HD3 PROPOSED, HD1 RELATING TO  
TECHNOLOGY

The Hawaii Council of Mayors (HCOM) opposes SB1201 HD3 Proposed. 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.



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



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



Mayor Bernard Carvalho, Jr.  
County of Kauai  
4444 Rice Street  
Lihu'e, Hawai'i 96766



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

### 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. HCOM prefers the language in HB625 SD2, which allows the placement of small cell equipment only on poles and light standards.

### 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.

### 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.

## 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 the creation of a **balanced** task force with equal representation from the counties, State, industry, and public to look into ways to address the many issues that are not addressed in the current language.

**SB 1201 SD2 HD2**

**RELATING TO TECHNOLOGY**

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

**April 5, 2017**

Chair Takumi and Members of the Committee:

Hawaiian Telcom would like the committee to defer SB 1201 SD2 HD2 – Relating to Technology.

We are still in the process of reviewing the proposed HD 3 but we believe that the prohibition on collecting customer information will have the unintended consequence of endangering public safety and impair law enforcement efforts. We believe that this type of legislation is best addressed on the federal level in order to ensure broad compliance as well as fair and equitable treatment for all parties.

Hawaiian Telcom is also concerned that the proposed language in Section 2 excludes wireline services. Measures designed to promote both wireline and wireless broadband solutions provide Hawaii's consumers with the best opportunity to receive both the advanced broadband services that they need, and at competitive prices.

Thank you for the opportunity to testify.



# Chamber of Commerce HAWAII

*The Voice of Business*

## **Testimony to the House Committee on Consumer Protection & Commerce Wednesday, April 5, 2017 at 2:00 P.M. Conference Room 329, State Capitol**

### **RE: SENATE BILL 1201 SD2 PROPOSED HD3 RELATING TO TECHNOLOGY**

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **expresses serious concerns** regarding the new language in SB 1201 SD2 Proposed HD3, which establishes a broadband task force to create a statewide broadband plan; establishes a permit application, review, and approval process for the installation of broadband infrastructure, small wireless facilities, and small wireless facilities networks on state- and county-owned property; requires written authorization from customer for the provider to collect the customer's personal information.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ 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 support efforts to move the state forward on broadband issues. However, we would like to express serious concerns regarding the new language in this bill prohibiting the collection of information. Our members support the protection of personal and private information whether it be for an individual or a business. However, we are not sure this is the right course of action at this time nor do we believe there is a deep understanding at the state level of the complex federal regulations placed on companies in the internet ecosystem.

Prior to the FCC ruling that was recently changed; the FTC was the main federal body that regulated the collection and use of personal information. Their jurisdiction applies to both internet service providers (ISP) and internet companies like Google and Facebook. The FTC has brought over 500 cases so far to protect consumer privacy and security, including actions challenging deceptive privacy promises, illegal spyware, Do Not Call violations, and unreasonable data security practices, to name just a few.

The FCC had only regulated ISPs and not companies like Google, Facebook, Netflix and others who continue to collect and harvest personal information for commercial purposes. Also, as much as 70% of internet traffic is encrypted which makes the data invisible to ISPs but available to other internet companies.

The threat of damage caused by broadband companies sharing personal information is generally unfounded. In addition, new regulations unfairly target local broadband companies



# Chamber of Commerce HAWAII

*The Voice of Business*

and no other companies. Again, they do not affect any of the commonly used platforms that do collect, aggregate and sell personal information.

Also, this recent action by Congress does not change the status quo. The rules that were removed by Congress have not taken effect.

We support the task force, but we ask that representation reflect a balanced representation of both wireless and wireline providers. Measures designed to promote both wireless and wireline broadband solutions will provide Hawaii consumers with the best opportunity to receive the kind of advanced broadband services that they need at competitive prices.

Thank you for the opportunity to testify.





April 5, 2017

Honorable Roy M. Takumi  
Chair, House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Room 320  
Honolulu, HI 96813

Honorable Linda Ichiyama  
Vice Chair, House Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Room 327  
Honolulu, HI 96813

**RE: Opposition to Proposed House Draft 3 of Senate Bill 1201**

Dear Chair Takumi and Vice Chair Ichiyama:

On behalf of CTIA, the trade association for the wireless communications industry, we are writing to express concerns with Proposed House Draft 3 of Senate Bill 1201. The wireless industry takes a proactive and serious approach to protecting consumer privacy. Our members offer numerous privacy policies, which clearly describe to our customers how customer data will be protected. Current federal and state statutes provide an additional layer of protection for sensitive consumer information. However, Proposed House Draft 3 of Senate Bill 1201 imposes unjustified restrictions on Internet Service Providers ("ISPs"), and deviates from the privacy framework and standards that have been in place for decades. Therefore, we are writing in strong opposition to Proposed House Draft 3 of Senate Bill 1201. The legislation is unnecessary and will create inconsistent privacy standards for different parts of the Internet ecosystem that will confuse consumers and undermine privacy.

The wireless industry firmly believes that our customers deserve a wireless experience that is safe and secure. For this reason, amongst others, the wireless industry has set forth strong voluntary guidelines in, "CTIA's Consumer Code for Wireless Service."<sup>1</sup> These principles, along with current technology-neutral regulation at the state and federal

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<sup>1</sup> CTIA Consumer Code for Wireless Service, <http://www.ctia.org/initiatives/voluntary-guidelines/consumer-code-for-wireless-service>, last accessed 4/5/2017.



level, help protect our customers. This 12- point code, originally developed in 2003 and regularly updated, helps consumers make informed choices when selecting their wireless service. Specifically, Point 10, "Abide by Policies for Protection of Customer Privacy," affirms that each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online. The wireless industry recognizes the importance of customer's privacy, and we take strong measures to ensure our customer's data is secure and protected.

Proposed House Draft 3 of Senate Bill 1201 imposes excessive and unnecessary requirements on CTIA members. The legislation would essentially create two sets of "rules of the road" by laying the framework for new rules that are different for various entities of the Internet and wireless ecosystem, harming competition and leaving consumers uncertain of which rules apply to their data. Survey data submitted to the FCC last year showed that 94% of Internet users believe all companies touching their online data should follow the same privacy rules.<sup>2</sup> These findings conclude that Proposed House Draft 3 of Senate Bill 1201, which directly targets ISPs, is not only unfair and discriminatory, but also contradicts preferred rules and frameworks that customers expect from companies that have access to their data.

Recent Congressional actions did not change the privacy protections of our customers. The FCC's application of Section 222 of the Communications Act remains in force, establishing a duty on every telecommunications carrier to "protect the confidentiality of proprietary information of, and relating to...customers."<sup>3</sup> Carriers must take "reasonable precautions to prevent the unauthorized disclosure" of a customer's proprietary information. Furthermore, the FCC's May 2015 Enforcement Advisory remains in effect, providing guidance to broadband providers as to how the FCC Enforcement Bureau intends to enforce Section 222.<sup>4</sup> Finally, the leading ISPs, including CTIA members, have all recently recommitted principles to maintaining privacy protections that are consistent

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<sup>2</sup> The Progressive Policy Institute, "Consumers Want One Set of Rules Protecting Their Information," <http://www.progressivepolicy.org/press/press-releases/press-release-consumers-want-one-set-rules-protecting-information/>, last accessed 4/5/2017.

<sup>3</sup> 47 US Code § 222, <https://www.law.cornell.edu/uscode/text/47/222>, last accessed 4/5/2017.

<sup>4</sup> FCC Enforcement Advisory, [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-603A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-603A1.pdf), last accessed 4/5/2017.



with the FTC's effective privacy framework, covering transparency, consumer choice, security, and data breach notifications.<sup>5</sup>

Furthermore, the concerns that ISPs, including CTIA members, have unique access to customer data online are unfounded. A comprehensive study by veteran Clinton and Obama Administration privacy expert Peter Swire showed that ISPs actually have limited insight into consumer activities and information online. This bill unnecessarily targets one set of providers - telecommunications providers and Internet service providers - and treats them differently than others in the Internet ecosystem.<sup>6</sup>

In closing, CTIA members are absolutely committed to protecting our customer's information as their business and brand depend on our customer's trust. Existing federal law and protections remain intact today rendering the legislation before you unnecessary. For the reasons described herein, we respectfully ask for your rejection of Proposed House Draft 3 of Senate Bill 1201.

Sincerely,

Bethanne Cooley  
Director, State Legislative Affairs  
CTIA

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<sup>5</sup> "Protecting Consumer Privacy Online," <http://www.ctia.org/docs/default-source/default-document-library/final--protecting-consumer-privacy-online.pdf>, last accessed 4/5/2017

<sup>6</sup> "Online Privacy and ISPs: ISP Access to Consumer Data is Limited and Often Less than Access by Others," [http://www.iisp.gatech.edu/sites/default/files/images/online\\_privacy\\_and\\_isps.pdf](http://www.iisp.gatech.edu/sites/default/files/images/online_privacy_and_isps.pdf), Swire, Peter, last accessed 4/5/2017:

"ISP access to user data is not comprehensive – technological developments place substantial limits on ISPs' visibility. [And] ISP access to user data is not unique – other companies often have access to more information and a wider range of user information than ISPs."



April 5, 2017

The Honorable Roy Takumi  
Chair, Consumer Protection Committee  
Hawaii State Capitol

The Honorable Linda Ichiyama  
Vice-Chair, Consumer Protection Committee  
Hawaii State Capitol

Dear Chairman Takumi and Vice Chair Ichiyama:

The Center for Democracy & Technology is a champion of global online civil liberties and human rights, driving policy outcomes that keep the Internet open, innovative, and free.

CDT appreciates the opportunity to express our support for SB 1201. We believe the bill takes important steps toward protecting Hawaii consumers' personal information.

In light of the recent vote by the U.S. Congress to nullify the Federal Communication Commission's (FCC) broadband privacy rules, which would have given consumers the tools and information they need to make informed privacy decisions, we strongly support this state-level action to protect consumers. While consumer broadband privacy may not be sufficiently protected at the federal level, states like Hawaii can act now to protect their residents and provide necessary privacy safeguards and controls for consumers. The federal legal landscape for consumer privacy for the state of Hawaii has substantively diminished at both the FTC and FCC. Absent a new federal law restoring the privacy rights of individuals when they go online, it is important that state legislatures explore their options if they are inclined to fill the void created by Congress. **We urge you to vote yes on SB 1201.**

SB 1201 requires providers of telecommunications or internet service to obtain express written consent from customers before collecting their personal information. Importantly, the bill also prohibits providers from refusing service to a customer because they have not given their consent for the collection of personal information.

Consumers need and deserve more control over how their information is collected by internet service providers (ISPs). ISPs, by virtue of their position as gatekeepers to everything on the internet, enjoy a unique window into consumers' online activities, including details about an individual's web browsing history, purchases, habits, and application usage. This information can reveal very personal information about consumers and their families, including financial data, health data, social security



numbers, precise location, and application usage history.

There is no question that consumers favor more control over the personal data their ISP can collect and sell. Earlier this year, the advocacy organization Consumers Union launched an online petition drive in support of the Federal Communication Commission's broadband privacy rules. To date, close to 50,000 consumers have signed the petition and the number is growing. Consumers care about privacy and want strong privacy protections from their ISPs.

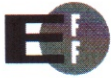
CDT lauds Hawaii for taking steps to return control over personal information to its citizens. The bill empowers consumers to make informed choices about the collection, use, and disclosure of highly sensitive personal information, with measures of transparency and accountability. We believe the bill uses a common sense consent-based approach that offers a workable solution for industry.

Thank you again for the opportunity to comment on SB 1201. Please do not hesitate to contact me with any questions.

Sincerely,

Michelle De Mooy  
Director, Privacy and Data Project  
Center for Democracy & Technology





**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

April 5, 2017

The Honorable Roy Takumi  
Chair  
Consumer Protection Committee  
Hawaii State Capitol

The Honorable Linda Ichiyama  
Vice-Chair  
Consumer Protection Committee  
Hawaii State Capitol

Re: Broadband Privacy

Dear Chairman Takumi and Vice Chair Ichiyama:

The Electronic Frontier Foundation (EFF) is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. With over 35,000 dues-paying members and well over 1 million followers on social networks, we focus on promoting policies that benefit both creators and users of technology. We work to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

Recently President Trump and Congressional Republicans enacted S.J. Res. 34, legislation that invoked the Congressional Review Act to repeal the Federal Communications Commission (FCC) broadband privacy rules.<sup>1</sup> In effect the repeal eliminated the updated privacy rules for broadband providers and placed a prohibition on the FCC from reviving identical or “substantially similar” rules in the future. These rules established clear guidelines for the cable and telephone industry to secure the consent of their users before being allowed to resell their personal data such as the websites they visit, the applications they use, and other details an individual reveals about themselves when using the Internet.

Due to the usage of the Congressional Review Act and its subsequent bar on agency activity, it has become an open question as to the extent the FCC is able to enforce an individual’s legal right to communications privacy under Section 222 of the Telecommunications Act of 1996. For example, it is unknown whether the FCC could invoke Section 222 if a telecommunications provider uses an individual’s online activities without their consent for any means under the CRA.

Compounding the federal gap in privacy protection is the Ninth Circuit Court of Appeals’ 2016 *Federal Trade Commission vs AT&T Mobility* decision<sup>2</sup> where the court found that the FTC is legally barred from exerting its authority over cable and telephone companies due to the common carrier exclusion in the FTC Act.<sup>3</sup> In effect,

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<sup>1</sup> *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, 47 CFR 64, available at <https://www.federalregister.gov/documents/2016/12/02/2016-28006/protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services>.

<sup>2</sup> *FTC v. AT&T Mobility*, 835 F.3d 993 (9th Cir. 2016)

<sup>3</sup> 15 U.S.C. § 45(a)(2)



**ELECTRONIC FRONTIER FOUNDATION**

Protecting Rights and Promoting Freedom on the Electronic Frontier

the federal legal landscape for consumer privacy for the state of Hawaii has substantively diminished at both the FTC and FCC. Therefore, absent a new federal law restoring the privacy rights of individuals when they go online, it is important that state legislatures explore their options if they are inclined to fill the void created by Congress.

We support efforts to utilize state power to close the potential gap created by Congress and the courts through legislation and other means of state authority to protect individual consumer privacy. We recognize that states will face unique legal challenges in trying to achieve the same level of protection afforded by the original FCC broadband privacy rules and in some instances may fall short. However, Americans from across the political spectrum agree that their personal data belongs to them and that it should be their choice in how it is utilized by the corporations and the government. In the face of retreat by the federal system, the states should advance the privacy interests of their citizens.

Sincerely,

Electronic Frontier Foundation

**TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE  
TESTIMONY REGARDING  
SB1201 PROPOSED HD3 RELATING TO TECHNOLOGY**

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

**April 5, 2017  
2:00 PM**

TO THE HONORABLE ROY M. TAKUMI, 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. We support this measure and have a few comments and recommendations for the legislation as it is currently drafted.

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.

In our testimony on previous versions of this bill, we highlighted the complex nature of the right-of-way regime in Hawaii and urged the legislature to take a deliberative and holistic approach to these issues, rather than providing a streamlined process for wireless providers for one type of technology when others, such as cable operators, continue to operate pursuant to a much more burdensome right-of-way and fee structure. We pointed out that access to public rights-of-way should be equitable for all occupiers and that cable providers should not be treated discriminatorily simply because we use the public rights-of-way to offer video/cable service.

**Part I**

We are therefore very pleased that Part I of the proposed SB 1201 SD2 HD3 recognizes the complexity of ROW access and calls for a broadband task force to study these issues, fully vetting all the implications of any change to Hawaii's current right-of-way regime. The bill requires the task force to study, among other issues, how fees are used for infrastructure and the impact of wireless technology on the availability of revenue. This legislation commits the state



to a thoughtful and inclusive stakeholder process that will take a comprehensive approach to broadband and right-of-way issues in Hawaii.

We fully support and welcome the creation of a task force, and have several minor suggestions for the Committee to consider. First, we believe the provider community (national wireless providers; third party wireless infrastructure providers; cable, internet, and phone service providers) should have equal representation on the task force. While changes have been made to balance out the representation on the task force, because there are more wireless and wireless infrastructure providers than cable television providers in the state, the current composition of the task force still does not lend itself to balanced industry representation. Instead of the current composition, we would suggest the following: two representatives each from wireless, cable and telephone industries and who are engaged in each of these businesses in Hawaii. Second, instead of suggesting that DBEDT regulate broadband, the bill should ask the task force to look more broadly at the regulatory landscape as a whole for the provision of voice, video and broadband and the establishment of whether and how these industries should be regulated and by whom.

## **Part II**

Part II, which sets forth an expedited process for installation of wireless facilities in the ROW, is completely at odds with Part I, which recognizes the complexity of the issue and calls for a study. Part II, in its entirety, should be deleted from the bill, including subsection (h), which adds a completely new concept regarding the collection of personal information by internet service and telecommunications providers. The concept is unrelated to ROW access for broadband services, has not been previously discussed in the context of legislation regarding the creation of a task force, and should not be part of SB 1201.

**Testimony of Mobilitie, LLC  
IN SUPPORT OF SB 1201, SD2, HD2, Relating to Technology  
Before the House Consumer Protection and Commerce Committee  
Wednesday, April 5, 2017 2:00 pm  
Conference Room 329, State Capitol  
RE: Senate Bill SB 1201, SD2, HD2**

Chair Takumi, Vice Chair Ichiyama, and Members of the Consumer Protection and Commerce Committee:

Mobilitie **supports** SB 1201, SD2, HD2, which establishes a broadband task force to create a statewide broadband plan.

Mobilitie is a nationwide provider of wireless infrastructure solutions, currently deploying a hybrid transport network designed to provide high-speed, high-capacity bandwidth to facilitate the next generation of devices and data-driven services. SB 1201, SD2, HD 2, in concurrence with HB 625, is much needed legislation which would allow Mobilitie to efficiently deploy small wireless facilities that will meet the needs of both Hawaii's consumers and businesses.

SB 1201, SD2, HD2 creates a statewide broadband plan which will bring together relevant stakeholders, including third party wireless infrastructure parties. HB 625 facilitates the permitting process of small wireless facilities (also known as small cells) which are installed on state or county utility poles, light standards, or other structures.

Together these bills will enable the industry to efficiently and rapidly deploy much needed high-speed broadband infrastructure for Hawaii. 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 throughout Hawaii, which will provide for dozens of local jobs, and millions of dollars invested in the local economy. Therefore, I urge you to support SB 1201, SD2, HD 2.

Thank you for the opportunity to testify.



April 5, 2017

**VIA ELECTRONIC MAIL**

Chair Roy Takumi  
reptakumi@capitol.hawaii.gov  
Vice Chair Linda Ichiyama  
repichiyama@capitol.hawaii.gov  
HAWAII STATE LEGISLATURE  
House Committee on Consumer Protection & Commerce

**Re: SB1201 -- Broadband Privacy**

Chair Takumi and Vice Chair Ichiyama:

On behalf of the Digital Privacy Alliance, we would like to express our support of SB1201.

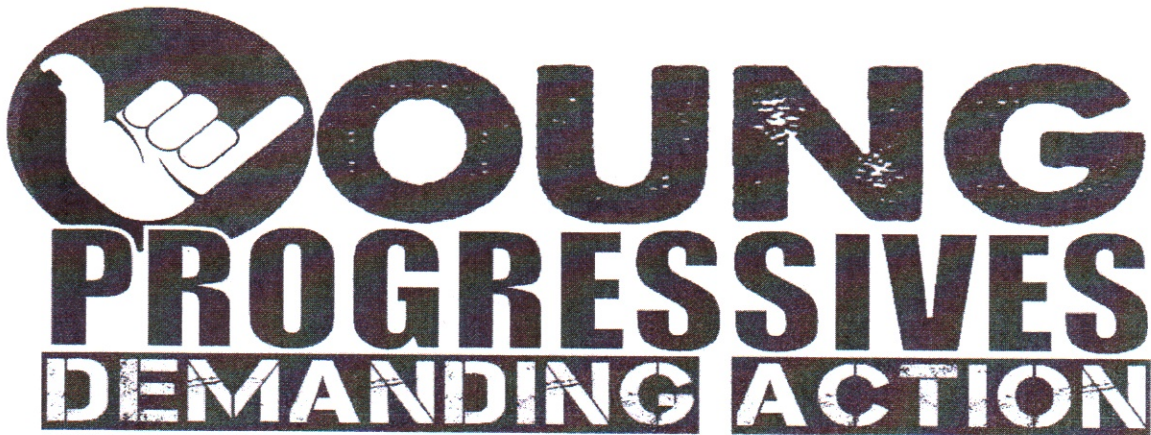
The prevalence of Internet-enabled technologies in everyday devices are enabling third party companies to collect, use, and sell personal and sensitive information about consumers without them ever knowing. This not only poses serious privacy risks, but it is also be dangerous. Emerging technologies are currently being used to defraud consumers, track their movements, and steal their identities, among many other things.

We're at a pivotal time in our country's history. The recent repeal of the FCC's broadband privacy rules has sparked a national discussion about privacy. State legislatures around the country are addressing important issues, such as who has the right to control personal data, who has the right to decide whether that data is collected in the first place, and who should decide how that data is used or sold. Right now, many consumers have no say in the matter. Numerous states legislatures are considering bills to change that, including yours.

We believe that SB1201 takes an important step towards protecting consumers' fundamental privacy rights. Requiring telecommunications or Internet service providers to be transparent about what personal information they collect and sell is simple. The Digital Privacy Alliance wants to thank you for taking on these incredibly timely and important issues.

Respectfully,  
Digital Privacy Alliance

cc: Representative Matthew S. LoPresti (relopresti@capitol.hawaii.gov)



April 5, 2017

The Honorable Roy Takumi

Chair, Consumer Protection Committee

The Honorable Linda Ichiyama

Vice-Chair, Consumer Protection Committee

Dear Chairman Takumi and Vice Chair Ichiyama:

On behalf of the YPDA Hawaii chapter and our 800+ members in Hawaii, we SUPPORT the PROPOSED HD3 of SB 1201. We must close the gap left by US Congress that leaves our citizens vulnerable to unwanted breaches of privacy. In today's world where the internet and technology is becoming an integral part of our lives, especially for our member's generation, we must keep up with the times and ensure that our consumers have the utmost control over our sensitive data. The data that would be exposed would be geo-location data, social security numbers, browsing history, and much more. We thank you for this opportunity to testify on this measure.

Sincerely,

Young Progressives Demanding Action