



**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
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development and Tourism
before the
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM &
TECHNOLOGY**

Friday, February 3, 2017

1:15 PM

State Capitol, Conference Room 414

in consideration of

SB 760

RELATING TO TELECOMMUNICATIONS.

Chair Wakai, Vice Chair Taniguchi and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports the intent of SB 760. However, we prefer the language in SB 913.

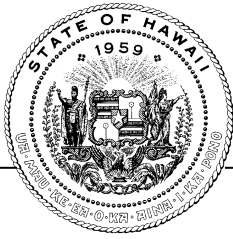
SB 760 repeals sections of Act 151(11) and codifies, in HRS Ch. 440J, exemptions of the installation of broadband equipment from various county and state permitting requirements, Chapters 171, 205A, and 343, and Public Utility Commission administrative rules; expands the exemptions permitted by Act 151 to include small wireless facilities.

Small wireless facilities fit on light standards or utility poles in public rights-of-way and their visual impact is minimal. Expediting their installation by all wireless carriers will help Hawaii residents keep up with the broadband capacity needed to remain economically competitive.

DBEDT prefers SB 913 which allows installations of up to 25 small wireless facilities to be treated as a permitted use. This bill has been reviewed by the Attorney General and includes provisions to expedite and simplify permitting processes and set a standard rate for siting.

If the Committee members are inclined to pass SB 760, DBEDT urges that the language be replaced with that from SB 913 to ensure that the AG's recommended changes are included in the measure that goes to the Senate Committees on Commerce, Consumer Protection and Health and Ways and Means.

Thank you for the opportunity to offer these comments on SB760.



**OFFICE OF PLANNING
STATE OF HAWAII**

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND
TECHNOLOGY**

Friday, February 3, 2017
1:15 PM

State Capitol, Conference Room 414

in consideration of
SB 760
RELATING TO TELECOMMUNICATIONS.

Chair Wakai, Vice Chair Taniguchi, and Members of the Senate Committee on Economic Development, Tourism, and Technology.

The Office of Planning (OP) supports the intent of SB 760, however, we prefer the language provided in SB 913.

SB 760 repeals sections of Act 151(11) and codifies, in HRS Ch. 440J, exemptions of the installation of broadband equipment from various county and state permitting requirements, Chapters 171, 205A, and 343, and Public Utility Commission administrative rules; expands the exemptions permitted by Act 151 to include small wireless facilities.

Small wireless facilities fit on light standards or utility poles in public rights-of-way and their visual impact is minimal. Expediting their installation by all wireless carriers will help Hawaii residents keep up with the broadband capacity needed to remain economically competitive.

OP prefers SB 913 which allows installations of up to 25 small wireless facilities to be treated as a permitted use. SB 913 has been reviewed by the Attorney General and includes provisions to expedite and simplify permitting processes and set a standard rate for siting.

Thank you for the opportunity to offer these comments/support on SB 760.



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET
P.O. Box 541
HONOLULU, HAWAII 96809
(808) 586-2620
FAX (808) 586-2625

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JI SOOK KIM
CABLE TELEVISION ADMINISTRATOR

TO THE SENATE COMMITTEE ON
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Date: Friday, February 3, 2017
Time: 1:15 p.m.

TESTIMONY ON S.B. NO. 760 – RELATING TO TELECOMMUNICATIONS.

TO THE HONORABLE GLENN WAKAI 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. 760, which codifies Act 151, Session Laws of Hawaii 2011, and seeks to expand its provisions to exempt the installation of new small wireless facilities and networks infrastructure from state and county permitting and approval processes. Because Act 151 was only intended to provide an exemption from certain county permitting and state permitting and approval requirements in a very limited situation in which actions were directly related to the replacement of wireline communications cables with new wireline cables using existing or replacement infrastructure and within existing rights-of-way and easements that had already been granted permits and approvals, the Department strongly recommends against the proposed amendment to exempt the new installation of small wireless facilities and networks from the state or county permitting and approval processes applied to new infrastructure deployment.

The Department supports permit streamlining that can facilitate statewide access to affordable, high speed broadband services necessary to build a vibrant economy and to improve the quality of life for our residents. The Department further supports permit

and authorization streamlining that expedites broadband infrastructure deployment while creating and protecting an even playing field for the various technologies and providers who offer or seek to offer communications services in the State. However, the Department also recognizes that such streamlining must be balanced against the need to protect the health and safety of the public, the need to control visual impacts in the community, and the need to collect appropriate and reasonable fees necessary to maintain state infrastructures and rights-of-way. The Department believes that S.B. No. 913, together with the recently enacted shot-clock law under Section 46-89, Hawaii Revised Statutes, provides such balance by creating a streamlined process for small wireless facilities and networks that provides appropriate checks and reasonable cost standards to be applied by the agencies responsible for safeguarding the public and public property and facilities, as well as protecting the nature and quality of our community. This approach thus takes into account the possible impacts of the deployment of new small wireless facilities under an appropriate but streamlined review process.

Specifically, S.B. No. 760 (1) inserts “small wireless facilities” and “small wireless facilities networks” into the exemption at Section 2 of Act 151 (and codifies that section); and (2) inserts new language at page 6, lines 1-6, that would deem the installation of a small wireless facility to not be a significant change to existing public rights-of-way or public utility easements. These changes thus create an exemption for the new deployment of small wireless facilities and networks that is not provided for in the new deployment of any other type of communications infrastructure, and also significantly changes the intent and impact of Act 151, which was only intended to exempt from certain county permitting and state permitting and approval requirements specific actions taken to replace existing wireline telecommunications cables with new wireline cables (1) on existing or replacement utility poles and conduits and using existing infrastructure and facilities; (2) within existing rights-of-way or public utility easements or existing telecommunications infrastructure; and (3) where that replacement makes no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure. Accordingly, the Department strongly recommends that Act 151 not be amended.

Thank you for the opportunity to provide testimony.



Joyce Masamitsu
Director, Public Policy & Legal Affairs
Pacific and North Central Markets
15505 Sand Canyon Avenue
Irvine, CA 92618

February 3, 2017

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

Honorable Brian T. Taniguchi
Vice Chair, Senate Committee on Economic Development, Tourism, and Technology
Room 404
Honolulu, HI 96813

RE: SENATE BILL 760 – Relating to Telecommunications - SUPPORT

Dear Chairs Wakai and Vice Chair Taniguchi,

On behalf of Verizon, mahalo for allowing me to submit testimony in STRONG SUPPORT of SB 760, Relating to Telecommunications. SB 760 codifies the exemptions to state and county permitting requirements for broadband projects in Act 151, S.L.H. 2011, into Hawaii Revised Statutes and clarifies that the exemptions in Act 151 are applicable to small wireless facilities.

SB 760 also clarifies that small wireless facility installations and broadband projects shall be exempt from specified permitting provided that the installations are directly related to improving these facilities on existing, replacement or new poles. The bill continues to disallow exemptions where permitting is required by federal law or for federal funding and defines small wireless facilities and small wireless facilities network based on a definition and dimensions in Federal Communication Commission regulations. Finally, SB 760 authorizes the state or counties to impose a specified charge for attaching small wireless facilities to government poles or structures, including poles used for lighting.

SB 760 will provide the necessary clarifications in existing law to expedite the deployment of small wireless facilities, improving current coverage and laying the foundation for the availability of 5G technologies.

According to CTIA, 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. This is a trend which is occurring nationwide where 292.2 million mobile users are expected by 2020. The end result is slower broadband speeds, shrinking cellular footprints and increased coverage problems evidenced by an increase in dropped calls. Rather than continue to build “macro” cell towers to meet demand, carriers can and in many cases must now deploy small wireless facilities to address network capacity challenges. Small wireless facilities deployed in greater quantity offloads capacity from existing macro towers and improve the user experience for subscribers in the immediate service area.

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 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.

Creating a streamlined legal framework for small wireless facilities is critical to their deployment to meet current mobile users' demands as well as the next generation wireless network: 5G. This new technology—spawned by the new release of “millimeter wave” spectrum—will be truly a game changer. 5G is 100x faster than the current technology, 4G, and 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. Smart City solutions can prove fruitful to meet the pressing needs of state and local governments. Solutions such as intelligent lighting, intelligent traffic and smart meters can facilitate significant reduction of energy consumption while supporting the state’s sustainability goals and more.

In sum, SB 760 helps to streamline permitting by clarifying that small wireless facilities deployment shall benefit from the specified permitting exemptions already in law; those enacted in Act 151. It encourages ongoing investment in wireless broadband data technology that consumers, business and government increasingly demand and helps set the stage for the 5G revolution that is imminent.

Chairs Wakai, Vice Chair Taniguchi and members of the Senate Committee on Economic Development, Tourism, and Technology, for the above reasons, Verizon requests your vote to SUPPORT Senate Bill 760.

Thank you for your consideration.

**Testimony of Mobilitie, LLC
IN SUPPORT OF SB 760, Relating to Telecommunications
Before the Senate Economic Development, Tourism, and Technology Committee
Friday, February 3, 2017 1:15 pm
Conference Room 414, State Capitol**

Chair Wakai, Vice Chair Taniguchi and Members of the Economic Development, Tourism, and Technology Committee:

Mobilitie supports SB 760, which codifies exemptions to permitting requirements established by Act 151, Session Laws of Hawaii 2011, within the Hawaii Revised Statutes and expands those exemptions to include broadband over wireless or mobile platforms, including small wireless facilities. In addition, SB 760 establishes a definition of wireless communications antennas that includes small wireless facilities, and repeals those sections of Act 151, Session Laws of Hawaii 2011, which have been codified with the Hawaii Revised Statutes.

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 760 is much needed legislation that takes into account that broadband technology has advanced substantially since 2011, and wireless technology is now essential to the delivery of broadband. SB 760 will permit the industry to efficiently and rapidly deploy much needed broadband technology in the State of Hawaii. The expanded exemptions which include wireless broadband will enable Mobilitie and other industry to densify the current network in order to sustain the data 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 committee to support SB 760.

Thank you for the opportunity to testify.



February 2, 2017

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

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

RE: Support Senate Bill 760 – Act 151 And Small Wireless Facilities

Dear Chair Wakai and Vice Chair Taniguchi:

On behalf of CTIA, the trade association for the wireless communications industry, I am writing in support of Senate Bill 760, related to Act 151 and 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, 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. In recognition of this explosive demand for data, Senate Bill 760 seeks to clarify Act 151 of 2011 by ensuring wireless broadband and small wireless facilities are treated similarly as other broadband deployments.

By way of background, 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 1/30/2017.

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 1/30/2017.

³ Broadband Now, Broadband Internet in Hawaii, at: <http://broadbandnow.com/hawaii>, last accessed 11/9/2016.

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 ten times faster than today. Imagine communities that are smarter and more connected. Entire industries, from public safety to transportation, will be transformed.

Senate Bill 760 helps to advance this future by clarifying Act 151 enacted in 2011. Act 151 was enacted to exempt certain broadband facility deployments from permitting requirements. Senate Bill 760 seeks to clarify that wireless broadband and small wireless facilities are treated similarly and included in this exemption. Senate Bill 760 helps to remove barriers to efficient deployment of small cell wireless infrastructure and provides regulatory certainty for providers.

In closing, wireless providers require regulatory certainty when deploying wireless infrastructure. Senate 760 clarifies existing broadband deployment statute to ensure that wireless providers can meet the demands of their customers.

Thank you for the opportunity to submit testimony in support of Senate Bill 760 and we strongly urge its approval.

Sincerely,

A handwritten signature in cursive script that reads "Bethanne Cooley".

Bethanne Cooley
Director, State Legislative Affairs
CTIA



Bob Bass
President
Hawaii
External Affairs

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

T: 425-580-5836
M: 425-786-8816
robert.bass@att.com
www.att.com

February 3, 2017

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

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

RE: Support Senate Bill 760 – Act 151 and Small Cell

Committee Chair Wakai and Vice Chair Taniguchi:

On behalf of AT&T, please accept this letter of support for Senate Bill 760—Act 151 and Small Cell -- 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 before in history 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 help bring customers faster download speeds, improved call quality and a better overall wireless experience.

With this increased demand and pressure on the 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 using small cell technology.

Senate Bill 760 contains language to treat wireless broadband and small cell facilities as other broadband deployments in Act 151 which will allow for expanded deployment of small cells.

Please support Senate Bill 760.

Respectfully submitted,

Bob Bass
AT&T

SB 760

RELATING TO TELECOMMUNICATIONS

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

February 3, 2017

Chair Wakai and members of the Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on SB 760 - Relating to Telecommunications.

Hawaiian Telcom supports the intent of SB 760 to promote the deployment of advanced broadband services throughout the state by codifying in Chapter 27, Hawaii Revised Statutes, the provisions of Act 151, Session Laws of Hawaii 2011.

The measure also adds small wireless facilities to the list of exemptions permitted by Act 151. While we are not opposed to the inclusion of wireless facilities, we believe that benefits afforded to small wireless facilities under SB 760 should apply equally as well to wireline broadband.

In order to maintain a level regulatory playing field, Hawaiian Telcom respectfully requests that the bill be amended to include wireline facilities to the list of proposed wireless exemptions. Attached is a copy of our suggested amendments for the committee's consideration.

As the late Senator Daniel K. Inouye proclaimed at a hearing on the importance of increasing Hawaii's broadband capabilities:

“Broadband matters because broadband communications have become the great economic engine of our time. Broadband deployment drives opportunities for business, education, and healthcare...Add to this hundreds of millions of dollars in savings through e-government and telemedicine initiatives and untold riches we can reap by tapping the genius of web-based entrepreneurs in every corner of this country. The case for better broadband is clear.”

Measures designed to encourage and promote both wireline and wireless broadband services are essential tools moving us closer to our goal of providing advanced broadband services second to none.

Based on the aforementioned, Hawaiian Telcom requests that the committee look favorably upon our suggested amendments. Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

SECTION 1. The legislature finds that Act 151, Session Laws of Hawaii 2011 (Act 151), provides an exemption for the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology from state and county permitting requirements, under certain circumstances.

The legislature further finds that, since Act 151 was enacted, broadband technology has advanced substantially. Wireless technology is now essential to the delivery of broadband service. Implementation of wireless technology, such as small wireless facilities, will play a major role in continuing the benefits afforded by broadband infrastructure in Hawaii.

The purpose of this Act is to:

- (1) Codify exemptions to permitting requirements established by Act 151, Session Laws of Hawaii 2011, within the Hawaii Revised Statutes and expand those

- exemptions to include broadband over wireless or mobile platforms, including small wireless facilities;
- (2) Establish a definition of wireless communications antennas that include small wireless facilities; and
 - (3) Repeal those sections of Act 151, Session Laws of Hawaii 2011, which have been codified within the Hawaii Revised Statutes.

SECTION 2. Chapter 440J, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . EXEMPTION OF BROADBAND INFRASTRUCTURE FROM PERMITTING REQUIREMENTS

§440J-A Definitions. As used in this part, unless the context otherwise requires:

"Small wireless **or wireline** facilities" means wireless **or wireline** facilities that meet the following qualifications:

- (1) **If applicable, [E]**each individual antenna, excluding the associated equipment, is individually no more than three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume; and **/or**

(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 collocations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;
- (B) Twenty-one cubic feet for collocations on all pole structures, including but not limited to light poles, traffic signal poles, and utility poles, that can support fewer than three providers;
- (C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or
- (D) Twenty-eight cubic feet for pole collocations that can support at least three providers;

provided that the volume of any deployed equipment that is not visible from public spaces at the ground level from two hundred fifty feet or less may be omitted from the calculation of volumetric limits.

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

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

§440J-B Exemption of broadband infrastructure installation from permitting requirements. (a) Actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including but not limited to the interconnection of telecommunications cables and the installation of small wireless or wireline facilities on a utility pole or other supporting structure, shall be exempt from:

- (1) County permitting requirements;
- (2) State permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343; and
- (2) Public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require

existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation; except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:

- (1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables, including the installation of small wireless or wireline facilities and small wireless or wireline facilities networks:
 - (A) On existing or replacement utility poles and conduits; and
 - (B) Using existing infrastructure and facilities;
- (2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and
- (3) Make no significant changes to the existing public rights-of-way, public utility easements, or

telecommunications infrastructure; ~~[provided that the installation of a small wireless facility within the dimensions stated in section 440J-A, shall be deemed to not make a significant change to existing public rights-of-way, public utility easements, or telecommunications infrastructure.]~~

(b) A person or entity taking any action under this section shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.

(c) A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken

is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure.

§440J-C Upgrade or replacement of utility poles. (a) No person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or small wireless **or wireline** facilities, or to improve existing telecommunications cables or small wireless **or wireline** facilities; provided that:

- (1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement;
- (2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and
- (4) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables **or small wireless or wireline facilities.**

(b) The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, including but not limited to planning, engineering, construction, installation, or replacement of utility poles. Recovery of all prudently incurred costs shall also apply to a broadband service provider.

(c) If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under 47 Code of Federal Regulations Chapter 1. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

§440J-D Annual recurring rates. (a) The State or county may establish an annual recurring charge on small wireless **or wireline** facilities and small wireless **or wireline** facilities networks collocated on utility poles, structures, and lighting

standards located within the public rights-of-way. The rates shall be nondiscriminatory regardless of the services provided by the collocating person.

(b) Charges shall not exceed the lesser of:

(1) The annual recurring rate that would be permitted under rules adopted by the Federal Communications Commission under title 47 United States Code section 224(e) or (i); or

(2) \$20 per year.

Charges shall recover the actual, direct, and reasonable costs related to the use of space on the utility pole. In any controversy concerning the appropriateness of a charge for a state or county owned utility pole, the State or county shall have the burden of proving that the charges are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period."

SECTION 3. Chapter 440J, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"[+]CHAPTER 440J[+]

TELECOMMUNICATIONS AND CABLE INDUSTRY [~~INFORMATION REPORTING~~]"

SECTION 4. Chapter 440J is amended by designating sections 440J-1 through 440J-3 as part I, entitled "Information Reporting".

SECTION 5. Section 440J-1, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]440J-1~~ Definitions. As used in this ~~[chapter,]~~ part, unless the context otherwise requires:

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

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

"Broadband speed threshold" means the highest speed threshold defined or established in the most recent broadband

progress report issued by the Federal Communications Commission to Congress.

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

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

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

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

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

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

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

- ~~(1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:~~
 - ~~(A) On existing or replacement utility poles and conduits; and~~
 - ~~(B) Using existing infrastructure and facilities;~~
- ~~(2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and~~

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

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

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

SECTION 7. Section 3, Act 151, Session Laws of Hawaii 2011, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, is repealed.

~~["SECTION 3. Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or to improve existing telecommunications cables; provided that:~~

- ~~(1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement;~~
- ~~(2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and~~
- ~~(3) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.~~

~~The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, Hawaii Revised Statutes, including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband service provider.~~

~~If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards."]~~

SECTION 8. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute

appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 10. This Act shall take effect upon its approval.

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

TESTIMONY RELATING TO SB 1201

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

**February 3, 2017
1:20 PM**

TO CHAIR WAKAI, CHAIR NISHIHARA, AND MEMBERS OF BOTH COMMITTEES:

My name is Mark Brown, and I am Vice President for State Regulatory Affairs for Charter Communications, the overall corporate parent of Oceanic Time Warner Communications. I appreciate the opportunity to speak with you today 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 certain aspects of SB 1201 have the potential to create an uneven playing field 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 access for all occupiers.

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.

We are very concerned that 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.

Although we are still reviewing these bills, and any unintended consequences, it is worth noting that the expedited process contemplated by this legislation does not apply only to the antennas themselves. The definition of “small wireless facilities” in SB 1201, for example, appears to include all “associated equipment”, which seems to encompass “cable runs for the connection of power and other services.” Use of the term “associated equipment” for the provision of “other services” is a clear example of the bills’ effort to broaden its application beyond the stated purpose of wireless facility deployment and cover all uses of the public rights-of-way, including a series of wireline connections between wireless antenna sites.

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 makes significant changes to the current process for public right-of-way access and create an uneven playing field. We ask the Committee to hold consideration of the bills until it has an opportunity to further review the implications of these bills and provide entities, like Charter, an opportunity to more fully detail issues and concerns.