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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 21, 2018
2:00 p.m.

TESTIMONY ON H.B. NO. 2651, H.D. 1, RELATING TO WIRELESS BROADBAND FACILITIES.

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on H.B. 2651, H.D. 1, Relating to Wireless Broadband Facilities. My name is Ji Sook "Lisa" Kim, and I am the Administrator of the Department's Cable Television Division. The Department appreciates the intent of this bill and provides the following comments.

This bill establishes a permitting, application, review, and approval process for broadband or wireless providers to install broadband or wireless facilities on state- or county-owned utility poles or to install associated utility poles in the rights of way.

The Department strongly supports efforts to improve access to broadband services for residents across the State and efforts to increase competition that may benefit consumers in accessing affordable services. The Department recognizes the benefits of small cell technology in this way and thus supports legislation that establishes statewide uniform and streamlined permit and approval processes that can

expedite the deployment of infrastructure required for small wireless systems. The Department, however, also recognizes the need to balance expedited deployment with the need to protect the public interest. Thus, the Department defers to state and county asset owners and managers to comment on the impact of this bill on their ability to manage, maintain, and preserve those public assets, to protect the public's safety, and to use those assets for their intended public purpose.

The Department also notes its support for the approach offered by the Department of Business, Economic Development, and Tourism in S.B. 2750 and H.B. 2323, which establishes a technology-neutral, streamlined process to allow for the collocation of broadband infrastructure on state or county utility poles, light standards, buildings, or structures while also providing the State and county reasonable review and approval or disapproval procedures. To this end, the Department appreciates the work of the Committee on Interstate Commerce to incorporate provisions of this approach into the H.D. 1 version of this measure.

With respect to the State's broadband coverage, the Department notes that the Federal Communications Commission's 2018 Broadband Deployment Report to Congress reported that 99.9 percent of Hawaii's population has access to either fixed broadband at 25 megabits per second download speed and three megabits per second upload speed or mobile LTE service with a minimum advertised speed of 5 megabits per second download speed and 1 megabit per second upload speed. Although wireless coverage in the State, as shown by maps using provider data, is widespread and wireless providers have in recent years indicated that substantial sums have been invested in building infrastructure in Hawaii, there is clearly a growing demand for wireless service capacity. Furthermore, there continues to be a need for broadband access in rural areas of the State that do not present a market case for providers because of the cost of extending service to those areas.

In any legislation adopted by this Committee allowing the deployment of small cell facilities on public assets or in public rights of way, the Department thus respectfully requests that consideration be given to include by statute enforceable commitments to

extend high-speed Internet access that can bridge the digital divide for residents in the unserved and underserved areas of the State.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

TODD NACAPUY
CHIEF INFORMATION OFFICER

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Testimony of
TODD NACAPUY
Chief Information Officer, State of Hawaiʻi

Before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Wednesday, February 21, 2018
2:00 P.M.
State Capitol, Conference Room 329

HOUSE BILL NO. 2651, HD1
RELATING TO WIRELESS BROADBAND FACILITIES

Dear Chair Takumi, Vice Chair Ichiyama and members of the committee:

I am Todd Nacapuy, Chief Information Officer for the State of Hawaiʻi and head of the Office of Enterprise Technology Services (ETS), testifying in **support** of the intent, and **providing comments** on HB2651 HD1, Relating to Wireless Broadband Facilities, which establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State.

As a strong advocate of adopting new technologies beneficial to State government, we fully support deploying the next generation cellular broadband technologies for the many economic and competitive advantages cited in the bill. We offer these comments.

The House Committee on Intrastate Commerce recognized the importance of State and County public safety and emergency communications operations by adding new language below to HB2651 HD1:

"14) State and county poles, related structures, sites, and facilities that support public safety, law enforcement, and emergency communications shall be excluded from these public access provisions."

This language will ensure that non-government systems do not hamper, obstruct, or hinder existing and future public safety communications operations and plans. The State, County, and Federal governments have invested hundreds of millions of dollars building and maintaining radio antennas, poles, towers, and ground facilities for statewide public safety, emergency, and disaster management services.

To minimize radio signal interference, to maintain secure physical and electronic access to sites, and to effectively manage limited infrastructure resources such as electrical power, floor space, conduit capacity, and cooling, the statewide wireless broadband and radio microwave tower systems do not permit collocating commercial systems or installing them nearby. Further, many landowner leases, partner agreements, and use licenses specifically restrict use and occupancy to government and government partners, and exclude commercial use or access for those public safety reasons.

We request that this and future drafts of the bill continue to cite the importance of public safety communications when considering the deployment of small cell wireless and future broadband systems.

Thank you for this opportunity to testify in support of the intent of HB 2651 HD1 and to provide comments.

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development and Tourism
before the
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, February 21, 2018
2:00PM
State Capitol, Conference Room 329

in consideration of
HB 2651, HD1
RELATING TO WIRELESS BROADBAND FACILITIES.

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

The Department of Business, Economic Development and Tourism (DBEDT) **supports** HB 2651, HD1, which establishes a standardized permitting, application, review, and approval process to upgrade and support next generation wireless broadband infrastructure on state- or county-owned utility poles and light standards throughout the State.

DBEDT appreciates the inclusion of language from HB 2323 which ensures a level playing field for competitive communications service providers by establishing a streamlined application process for collocation of small wireless facilities or small wireless facilities networks.

Thank you for the opportunity to submit testimony in **support** of HB 2651, HD1.

February 20th, 2018

Honorable Roy M. Takumi
Chair, House Consumer Protection & Commerce Committee
House District 35
Hawaii State Capitol
Room 320
Honolulu, Hawaii 96813

Honorable Linda Ichiyama
Vice Chair, House Consumer Protection & Commerce Committee
House District 32
Hawaii State Capitol
Room 327
Honolulu, Hawaii 96813

RE: Support Intent HB 2651 HD1 – Wireless Broadband Facilities

Dear Chairman Takumi and Vice Chair Ichiyama,

On behalf of CTIA, the trade association for the wireless communications industry, I am writing to express support for HB 2651 HD1. While we support the intent of the bill, there are some extremely problematic provisions that have been amended into the bill that we have significant concerns with. We would respectfully request these provisions be removed.

HB 2651 HD1 rightfully recognizes the importance of wireless to the people of Hawaii and the need for wireless providers to be able to update and upgrade their network infrastructure to accommodate demand and ready the networks for the next generation of wireless services. Notably, the deployment of small broadband facilities – commonly known as small cells – will be an important component of these next generation wireless networks.

However, the amendments added to HB 2651 severely restrict the size volumetrics of what constitutes a small cell. The proposed definition of six cubic feet has not been adopted anywhere in the country. Additionally, such a provision would effectively create Hawaii-specific wireless infrastructure requirements, thereby, potentially precluding wireless deployment of small cells in Hawaii.

Additionally, an amendment was added to HB 2651 that would sunset the entire Act in 2020. This provision is also extremely problematic. While there are limited 5G trials occurring across the country today, it is expected that widespread commercial deployment will be occurring in 2019 and beyond. By repealing the Act in 2020, Hawaii risks depriving itself of full 5G deployment and its benefits.

In closing, CTIA and its members support the intent of HB 2651 HD1, but have significant concerns with recent amendments. We look forward to working with the sponsor to find an appropriate path forward.

Sincerely,

Bethanne Cooley
Senior Director, State Legislative Affairs
CTIA

verizon

Jesús G. Román
VP of Government Affairs
Pacific & North Central Market
15505 Sand Canyon Avenue
Irvine, CA 92618

February 20, 2018

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice-Chair
Members of the House Committee on
Consumer Protection and Commerce
Twenty-Ninth Legislature
Regular Session of 2018

RE: HB 2651, HD1 – RELATING TO WIRELESS BROADBAND FACILITIES
Hearing Date – February 21, 2018 at 2:00 p.m.

Dear Representative Takumi:

Mahalo for the opportunity to submit testimony on behalf of Verizon Wireless in SUPPORT, if amended, of HB 2651, HD1 – Relating to Wireless Broadband Facilities. Wireless broadband services are a significant and growing part of the nation's economy and will have a demonstrably positive impact on productivity in nearly every industry. As an essential part of the technology economy, the state must be ahead of the national curve by ensuring a robust and advanced wireless broadband network.

The Need for Small Cell Legislation

Current demands on the wireless networks have exploded over the past five years. The advent of unlimited data has provided consumers the ability to use mobile broadband anywhere, anytime, without the aid of WiFi, and consumer are using the wireless network constantly to stream high definition video, to play music and to apply for jobs, do homework, and just about all internet needs. The wireless infrastructure available in Hawaii is unable to adequately meet the growing demand for capacity and quality of service that consumers have become accustomed to and which they deserve.

But the existing challenges with providing a quality mobile broadband customer experience will only become more challenging. New technologies like 4K High Definition Video, Augmented Reality layered on smart phone apps (for example, PokeMan Go), Virtual Reality, among many others, put additional strain and demands on mobile broadband networks.

This is true for the existing 4G LTE network. But as carriers embark on the deployment of the fifth and next generation of advanced wireless broadband technology, 5G, consumer demand for these services will continue to increase, along with the demand for ultrafast speeds, low latency (responsiveness of the network) and connection to the Internet of Things. Because of the propagation characteristics of a certain type of spectrum that will be a big part of 5G (millimeter wave), which covers short distances, a different type of infrastructure is needed. In addition to the large macro towers currently in use, wireless carriers must add a relatively new type of cellular transmittal system known as small wireless facilities or "small cells."

As the name indicates, small cells are the latest wireless broadband transmittal systems and are much smaller than existing macro towers. Although the designs may vary slightly as required to support the network in a particular area, small cells typically consist of a small antenna, radios (that process the spectrum) and support equipment mounted on utility poles, street lights or other host structures. The small cells are essential to meeting consumer demand for supplement 4G LTE and to deploy 5G.

Because small cells are relatively new, the state and county agencies do not have existing permitting processes to allow deployment of small cells in a timely manner. Instead, the agencies rely upon antiquated permitting processes which can take more than 18-24 months for approval. The current permitting processes may have been needed for macro towers, which are visibly obtrusive and can occupy an area of 700 square feet or more, but can provide coverage for up to a 10-mile radius. On the other hand, because small cells are much smaller and visibly unobtrusive, but require a greater number because of the limited propagation area, a much simpler process is needed for effective and timely deployment.

HB 2651

HB 2651, as introduced, would provide a clear and appropriate permitting process by which carriers can upgrade the existing wireless broadband infrastructure and set the platform for 5G technology, subject to appropriate local control. Wireless carriers need deployment of small cells on state and county utility poles to be a permitted use and a framework for a statewide process to approve small cells in a reasonable time and at cost based rates. The bill also allows for the submission of a single permit application for a batch of small cells that are similar in form and structure, to expedite processing. Importantly, this legislation preserves state and local government control with the authority to deny an application for a host of reasons including if the proposed installation does not meet building, electrical, health and safety requirements.

Proposed Revisions to HB 2651, HD1

Although Verizon supports the intent of HB 2651, HD1, the revised version includes amendments that are detrimental to the deployment of small cells in Hawaii. As stated above, wireless carriers require (1) a reasonable process to access to state and county poles (2) small cells to be a permitted use on state and county poles, and (3) cost-based fees in order to deploy this expensive but game-changing technology. We feel that HB 2651, HD1 version limits that ability.

Specifically, HD1:

- Section 1 amendment limits the applicability of HB 2651 to “solely-owned” state or county poles.

  Response: Adding the term “solely-owned” creates confusion with the language of the bill and fails to protect the intent that this bill applies only to state or county poles. The stakeholders have agreed to language that addresses that concern, which is contained in the proposed HD2.

- Inserts the term “broadband” next to the term “wireless” throughout HD1 to broaden the scope of the bill to include wireline broadband companies such as HawTel.

  Response: Adding “broadband” also creates confusion and is more clearly addressed by language agreed to by stakeholders in the proposed HD2.

- Redefines “small wireless facility.”

  Response: The revised definition does not fit the specifications for a small cell and related equipment. As drafted, there are no existing small cells that fit the specifications of HD1, thereby creating a situation where the definition of small wireless facility robs the bill of its original intent and of any meaning. In addition to setting the foundation for the next generation of wireless broadband, this bill seeks to address the current capacity issues with wireless broadband provided with 4G LTE. Throughout the nation, the design specifications for small wireless facilities used for 4G LTE service, recognized by the Federal Communications Commission and numerous states that have adopted similar legislation, are as written in the bill as introduced. It is fundamental to the purpose of the bill that the definition remains as in the original.

  The dimensions of small wireless facilities in the original bill are taken from the FCC’s *First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.* That amendment was entered into to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA). 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f). The FCC, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (NCSHPO) agreed to the dimensions to account for the limited potential of small wireless antennas and associated equipment to affect historic properties.

  The agreement establishes exclusions from the Section 106 review process for small wireless facilities that do not exceed the dimensions. According to the FCC, “these new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country.”

- Removes subsection (e) from Section 5 regarding wireless providers ability to deploy small cells where county ordinance may require undergrounding of utilities.

  Response: By not allowing wireless providers to erect small cells in these areas, wireless providers will be unable to provide sufficient coverage, thus prohibiting the interconnectivity required for wireless broadband.

- Removes subsection (1) from Section 6 which prohibited exactions unrelated to deployment of small cells.

  Response: Costly exactions could make small cell deployment cost prohibitive and undermines the policy goal of providing wireless providers the ability to invest $10s of millions in small cell infrastructure.

- Adds language to the reasons for denial of an application in Section 6.

  Response: The language as drafted lends itself to expansive interpretation. For example, one provision allows for denial of an application if it “Could cause the installation of the equipment on the poles, buildings, and structures to be performed in a manner that does not protect public

health and safety and safe travel in the public rights of way." "Could cause" is very broad and would effectively allow the denial of all applications. This language is also unnecessary as the bill provides for denial of applications based on a host of reasons, including the failure to comply with "building and other applicable codes," where applicable codes is broadly defined to include "uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons."

- Removes the $40/pole maximum fee.

  Response: Without cost-based fees, wireless providers will be unable to deploy small cells statewide in a timely manner. This was one of the three primary elements wireless providers require to deploy small cells in Hawaii and undermines the policy goal to be achieved by this bill.

- Adds subsection (b) of Section 9 – "Except as provided in this chapter with respect to the small broadband or wireless facilities subject to the permit, rate, and fee requirements established herein or specifically required pursuant to chapter 440G or federal law, the State and each county shall not adopt or enforce any regulations or requirements or charge additional rates or fees on the placement or operation of communications facilities in the right of way where the entity is already authorized by a franchise or authorization other than that granted in this chapter to operate throughout the right of way, and the State shall not regulate or charge fees for the provision of communications services, unless expressly authorized by applicable law."

  Response: It is unclear why this provision was added. This was not at the request of any wireless carrier and could engender government opposition to the passage of the bill.

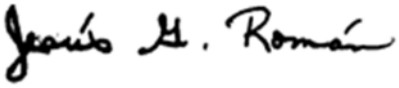
- Includes a sunset date of 6/30/2020;

  Response: It is unclear why a sunset is included. If the reason is to incentivize a speedier deployment of small wireless facilities, then the amendment misses a broader policy goal of the bill, which is to serve as a foundation to the deployment of the next generation of ultra-fast wireless broadband that comes with 5G. That service is just now being invented and standardized. And while Verizon has announced initial commercial deployment of fixed 5G service in 3 to 5 markets for the second half of this year, mobile 5G is still not available. And although wireless providers will be deploying 4G LTE small wireless facilities as soon as possible, given the 120 day approval period, 120 day make ready work period and that the act would only apply to applications on or after January 1, 2019, carriers would only have about 3 months to deploy small cells statewide. This period is obviously too short to meaningfully deploy the critically needed wireless infrastructure. A sunset date essentially ensures that existing challenges will return. No other of the 13 states that has adopted small cell legislation has included a sunset date. Hawaii shouldn't either.

We have attached a proposed HB 2651, HD2, with amendments agreed upon by several stakeholders for your consideration. Having worked with several of the stakeholders on these amendments, we believe the proposed HD2 strikes the right balance between the important policy goals of encouraging ongoing investment in wireless broadband technologies statewide to stimulate the technology economy and meet the demand of Hawaii residents and visitors, while maintaining the state and county agencies' oversight of host facilities in the right of way.

We appreciate your proactive approach in supporting the rapid deployment of wireless broadband technology to meet the state's important policy objectives and strongly feel that the proposed amendments to HB 2651, HD1 will provide the vehicle to achieve those objectives.

Mahalo,



Jesús G. Román

attachment

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

H.B. NO. 2651 HD 2 Draft

A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

SECTION 1. Wireless broadband services are a significant and growing part of the nation's economy that have a significant positive impact on productivity in nearly every industry, from healthcare to tourism. To support this growth, wireless service providers are investing billions on the deployment of wireless broadband technology to meet the current and forecast customer demand. This investment will dramatically increase connection speeds and the availability and variety of services and drive growth in jobs and gross domestic product, while providing a critical platform for the "internet of things" that will enable the realization of significant economic value from smart communities and other economic activity. The primary impediment to realizing these gains is often the ability to adjust public policy to support the timely and efficient deployment of infrastructure.

A key to many of the State's economic development initiatives is the availability of an advanced wireless broadband network. For example, a competitive tourism industry requires access to mobile on-demand services using the latest generation technology. This infrastructure will also be critical to achieving the State's goal of developing more than eighty thousand technology related jobs paying an annual salary of more than $80,000 by 2030. As the most isolated population center in the world, Hawaii has a greater need for interconnectivity. Unfortunately, the State currently ranks among the nation's lowest in broadband speeds available to consumers and among the lowest in wireless broadband service availability. Hawaii's wireless broadband network is at a steep competitive disadvantage when compared to other countries throughout the Pacific Rim.

Therefore, the legislature finds that encouraging the development of a robust wireless broadband network throughout the State is integral to Hawaii's economic competitiveness and a matter of statewide concern.

In addition to these economic development benefits, the rapid deployment of wireless broadband technology will help to immediately improve network capacity to meet the demand for wireless data from Hawaii residents. Consumers are using

sophisticated mobile devices to access the Internet like never before for virtually everything, including public safety, school homework, job searches, and high definition video, and as a result, consumers' mobile broadband use is growing exponentially. Indeed, consumer demand for wireless broadband connectivity is greater and growing faster than ever. In 2017, wireless networks carried more than one hundred thousand times the mobile data traffic than was carried in 2008. If not addressed, this skyrocketing consumer demand can cause network congestion, which slows down broadband connections, degrading the consumer's broadband experience even where there is coverage. These challenges are a function of network capacity and occur in every region of the State, wherever there is a cluster of people and devices attempting to connect to the Internet simultaneously. This unprecedented growth in mobile broadband consumption is driving the consumer's urgent need for wireless providers to add capacity to existing wireless infrastructure in the State. This Act seeks to address the difficulties in deploying wireless infrastructure and to increase competitive options for communications services, improve the communications network, and promote public safety, job growth, and education.

To realize these objectives and support this important infrastructure investment that will benefit the State's consumers without any public infrastructure investment, wireless providers need a reasonable and reliable process to deploy wireless facilities. The process must include: (1) access to public rights of way and the ability to utilize government-owned infrastructure in the rights of way; (2) reasonable and uniform cost-recovery based rates and fees for the permitting and deployment of small wireless facilities in rights of way and on public infrastructure, including state or county owned utility poles; and (3) a reasonable and uniform process for deploying the facilities on public infrastructure.

This Act is essential to establishing the policy framework to foster the installation of a robust, reliable, and technologically advanced wireless broadband network throughout the State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

"**CHAPTER**

WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

§ -1 Applicability. This chapter shall only apply to activities of a wireless or communications service provider to

deploy small wireless facilities and to modified or replaced utility poles associated with small wireless facilities. Except as to the state or county permitting authority related to utility poles, this chapter shall not be construed to apply to:

(1) Utility poles or other utility infrastructure solely owned by investor owned utility companies; or

~~(1)~~(2) Investor owned utility companies' Utility poles in which the state or county have an ownership interest.

§ **-2 Definitions.** For purposes of this chapter:

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

"Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this chapter.

"Applicant" means any person who submits an application and is a ~~wireless~~ communications service provider.

"Application" means a request submitted by an applicant to the State or county for a permit to collocate small wireless

facilities or to approve the installation or modification of a utility pole.

"Collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning.

"Communications service" means cable service, as defined in 47 U.S.C. 522(6), as amended, HRS section 440G-3; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended, or HRS section 269-1; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service.

"Communications service provider" means a cable operator, as defined in title 47 United States Code section 522(5)or HRS section 440G-3; a provider of information service, as defined in title 47 United States Code section 153(24); a telecommunications carrier, as defined in title 47 United States Code section 153(51) or HRS section 269-1; or a wireless provider.

"Decorative pole" means a state or county pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small

wireless facility attachment, specially designed informational and directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory state or county rules or codes.

"Historic district" means a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or as determined by the state historic preservation program in accordance with chapter 6E.

"Investor owned utility" means an incumbent local exchange carrier or electric utility, operated for profit and owned by private investor(s), including, but not limited to publicly traded business organization(s), and is a public utility under HRS § 269-1.

"Micro wireless facilities" means a small wireless facility having dimensions either:

(1) No larger than twenty-four inches in height, fifteen inches in width, and twelve inches in depth; or

(2) Twenty-four inches in length, fifteen inches in width, and twelve inches in height.

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

"Small wireless facilities" means a wireless facility or other facility providing communication services that meets one or both of the following qualifications:

(1) Each ~~wireless~~communication services provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and/or

(2) All other ~~wireless~~ equipment associated with the ~~wireless~~communication services facility, whether ground- or pole-mounted, is cumulatively no more than twenty-eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"State or county pole" means a utility pole owned, managed, or operated by, or on behalf of, the State of Hawaii or a county in the State of Hawaii.

"Substantial modification" means a proposed modification or replacement to an existing utility pole or wireless support structure that will substantially change the physical dimensions

of the utility pole or wireless support structure under the objective standard for substantial change adopted by the Federal Communications Commission pursuant to title 47 Code of Federal Regulations section 1.40001, or a proposed modification of the equipment compound boundaries in excess of the site dimensions specified in section III.B of title 47 Code of Federal Regulations part 1, appendix C.

"Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design or site location can be implemented without a reduction in the functionality of the small wireless facility.

"Utility pole" means a pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for the collocation of small wireless facilities. "Utility pole" shall not include wireless support structures.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(1) Equipment associated with wireless communications; and

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless facility" includes small wireless facilities, but does not include wireline backhaul.

"Wireless provider" means an individual, corporation, company, association, trust, or other entity or organization who:

(1) Provides services, whether at a fixed location or mobile, to the public using wireless facilities; or

(2) Builds or installs wireless communication transmission equipment or wireless facilities, including an individual authorized to provide telecommunications service in the State.

"Wireless support structure" means a structure, such as a monopole, tower, either guyed or self-supporting building, or other existing or proposed structure designed to support or capable of supporting wireless or broadband facilities that provide communication services, other than a structure designed solely for the collocation of small wireless facilities. "Wireless support structure" shall not include a utility pole.

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

§ -3 General. Except as provided in this chapter, the State or any county shall not prohibit, regulate, or charge for the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities.

§ -4 Zoning. Small wireless facilities and associated modified or replaced utility poles subject to the height limits in section -5(c), shall be classified as permitted uses and not subject to zoning review or zoning approval if they are deployed:

(1) In the right of way in any zone; or

(2) Outside the right of way in property not zoned exclusively for conservation.

Nothing in this chapter shall be construed to modify existing permitting processes for the placement of wireline backhaul in the right of way.

§ -5 Use of the right of way for small wireless facilities and utility poles. (a) The State or county shall not enter into an exclusive arrangement with any person for use

of the right of way for the construction, operation, marketing, or maintenance of small wireless facilities or utility poles.

(b) Subject to this section, the construction or modification of small wireless facilities in the right of way shall be a permitted use not subject to zoning review or other discretionary approval; provided that such structures and facilities shall be constructed and maintained so as not to obstruct the usual travel or public safety on such right of way or obstruct the legal use of such right of way by utilities. Modified or replaced utility poles associated with a small wireless facility that meet the requirements of this section are permitted uses subject to the permit process in section -6. No additional permit shall be required to maintain, operate, modify, or replace small wireless facilities and associated utility poles along, across, upon, and under the right of way.

(c) Each modified or replaced utility pole installed in the right of way for the collocation of small wireless facilities shall not exceed the greater of:

(1) Ten feet in height above the tallest existing utility pole in place as of the effective date of this Act located within five hundred feet of the modified pole in the same right of way; or

(2) Fifty feet above ground level.

New small wireless facilities in the right of way shall not extend more than ten feet above an existing utility pole in place as of the effective date of this Act. Subject to this section and section -6, a wireless provider may construct, modify, and maintain a utility pole or small wireless facility that exceeds these height limits along, across, upon, and under the right of way, subject to applicable zoning regulations.

(d) A wireless provider may replace a decorative pole, when necessary to collocate a small wireless facility, if the replacement pole reasonably conforms to the design aesthetics of the decorative pole or poles being replaced.

(e) Where the State or county has requirements for the undergrounding of facilities that pre-date the submission of an application, the State or county shall allow reasonable and nondiscriminatory access by wireless providers to place, construct, install, maintain, modify, operate, or replace state or county poles and other utility poles for the collocation of small wireless facilities subject to the requirements of this chapter.

(f) Subject to section -6, and except for facilities excluded from evaluation for effects on historic properties under title 47 Code of Federal Regulations section 1.1307(a)(4),

a State or county may require reasonable, technically feasible, non-discriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures shall not have the effect of prohibiting any provider's technology, nor shall any such measures be considered a part of the small wireless facility for purposes of the size restrictions.

(g) The State or county shall be competitively neutral in the exercise of its administration and regulation related to the management of the right of way and with regard to other users of the right of way, shall not impose any conditions that are unreasonable or discriminatory.

(h) The State or county may require a wireless provider to repair all damage to the right of way directly caused by the activities of the wireless provider in the right of way and to return the right of way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements, and specifications of the State or county. If the wireless provider fails to make the repairs required by the State or county within a reasonable time after written notice, the State or county may complete those repairs and charge the applicable party the reasonable, documented cost of the repairs.

(i) The State or county shall modify laws or ordinances regulating the development of real property to ensure that new development of real property or the redevelopment of existing real property, including in residential zones, shall include locations in the right of way capable of accommodating a utility pole or other structure for the placement of a small wireless facility. Any such utility pole or other structure installed at the locations shall be installed and available for collocation consistent with the requirements of this chapter.

§ -6 Permitting process in the right of way. The State or county may require an applicant to obtain one or more permits to collocate a small wireless facility or install a modified or replaced utility pole associated with a small wireless facility as provided in section -5; provided that the permits are of general applicability and do not apply exclusively to wireless facilities. The State or county shall receive permit applications and process and issue permits subject to the following requirements:

(1) The State or county shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the State or county including

reserving fiber, conduit, or pole space for the State or county;

(2) An applicant shall not be required to provide more information to obtain a permit than is required of communications service providers that are not wireless providers; provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in this subsection;

(3) The State or county shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole;

(4) The State or county shall not limit the placement of small wireless facilities by minimum separation distances;

(5) The State or county may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless provider within one year after the permit issuance date; provided that the State or county and the applicant may agree to extend this period or the period may be tolled if a delay is caused by lack of

commercial power or communications transport facilities to the site;

(6) Within ten days of receiving an application, the State or county shall notify the applicant in writing whether the application is complete. If an application is incomplete, the State or county shall specifically identify all missing information in writing. The processing deadline in paragraph (7) is tolled from the time the State or county sends the notice of incompleteness to the time the applicant provides the missing information;

(7) An application shall be processed on a nondiscriminatory basis and deemed approved if the State or county fails to approve or deny the application within sixty days of receipt of the application. The processing deadline may be tolled by agreement of the applicant and the State or county;

(8) The State or county may deny a proposed collocation of a small wireless facility or the construction or modification of a modified or replaced utility pole that meets the requirements in section -5(d) only if the proposed application:

(A) Materially interferes with the safe operation of public safety equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of ground-mounted equipment. Such spacing requirements shall not prevent a small wireless facility from serving any location; or

(E) Fails to comply with building or other applicable codes;

(9) The State or county shall document the basis for a denial, including the specific provisions of law on which the denial was based, and send the documentation to the applicant on or before the day the State or county denies an application. The applicant may address the deficiencies identified by the State or county and resubmit the application within thirty days

of the denial without paying an additional application fee. The State or county shall approve or deny the revised application within thirty days. Any subsequent review shall be limited to the deficiencies cited in the original documentation noting the basis for denial;

(10) An applicant seeking to collocate small wireless facilities within the State or the jurisdiction of a single county shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of up to twenty-five~~multiple~~ small broadband wireless facilities within a three square-mile radius; provided that the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch; within ten days of receiving a permit for a consolidated application, the applicant shall publish notice of the permit in a newspaper of general circulation in the county where the small wireless facility is to be located.

(11) Installation or collocation for which a permit is granted pursuant to this section shall be completed

within one year of the permit issuance date; provided that the State or county and the applicant may agree to extend this period or the period may be tolled if a delay is caused by lack of commercial power or communications transport facilities to the site. Approval of an application authorizes the applicant to:

(A) Undertake the installation or collocation; and

(B) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole covered by the permit for a period of not less than twenty years, which must be renewed for equivalent durations so long as they are in compliance with the criteria set forth in this subsection;

(12) The State or county shall not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the

installation or modification of utility poles to support small wireless facilities; and

(13) The State or county shall not require an application for:

(A) Routine maintenance;

(B) Replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size and weight or smaller, provided that the wireless provider notifies the State or county department in which the small wireless facility was originally approved at least ten days, but no more than 60 days, prior to commencing such work; or

(C) Installation, placement, maintenance, operation, or replacement of micro wireless facilities on utility poles or that are strung on cables between existing utility poles, in compliance with the national electrical safety code. The State or county may, however, require a permit to work within the right of way for such activities, if applicable. Any such permits shall be subject to the requirements provided in section -5 and this section.

§ -7 Access to state or county poles within the right of way. (a) A person owning, managing, or controlling state or county poles in the right of way shall not enter into an exclusive arrangement with any person for the right to attach to such poles.

(b) The rates to collocate on state or county poles shall be nondiscriminatory regardless of the services provided by the collocating person. The rate to collocate on state or county poles shall be in accordance with section -8.

(c) The rates, fees, and terms and conditions for the make-ready work to collocate on the state or county pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this chapter.

(d) The State or county shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within sixty days of written acceptance of the good faith estimate by the applicant.

(e) The person owning, managing, or controlling the state or county pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees

for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance. Fees for make-ready work including any pole replacement shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(f) The provisions of this section shall apply to activities of the wireless or communications service provider within the right of way.

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

§ **-8 Rates and fees within the right of way.** (a) This section shall govern the State's or county's rates and fees for

the placement of a wireless facility or utility pole in the right of way.

(b) The State or county shall not require a wireless provider to pay any rates, fees, or compensation to the State, county, or other person other than what is expressly authorized by this section for collocation of small wireless facilities on utility poles in the right of way or for the construction, operation, modification, and maintenance of utility poles in the right of way.

(c) Application fees shall be subject to the following requirements:

(1) The State or county may charge an application fee only if the fee is required for similar types of commercial development or construction within the State's or county's jurisdiction;

(2) Where costs to be recovered by an application fee are already recovered by existing fees, rates, or taxes paid by a wireless provider, no application fee shall be assessed;

(3) An application fee shall not include:

(A) Travel expenses incurred by a third party in its review of an application; or

(B) Direct payment or reimbursement of third party rates or fees charged on a contingency basis or a result-based arrangement;

(4) The application fees for collocation of small wireless facilities on an existing or replacement state or county pole shall not exceed $100 each; and

(5) The application fees for collocation of multiple small wireless facilities on an existing or replacement state or county pole shall not exceed $100 each for the first five small wireless facilities on the same application and $50 for each additional small wireless facility on the same application.

(d) The rate for collocation of a small wireless facility on a state or county pole in the right of way shall not exceed the actual, direct, and reasonable costs related to the wireless provider's use of space on the state or county pole not to exceed $40 per pole annually. In any dispute concerning the appropriateness of a cost-based rate for any state or county pole, the State or county shall have the burden of proving that the rate does not exceed the actual, direct, and reasonable costs for the applicant's use of the pole.

§ **-9 Local authority.** Subject to this chapter and applicable federal law, the State or county may continue to

exercise zoning, land use, planning, and permitting within its jurisdictional boundaries, including with respect to utility poles; except that no state or county shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the State or county, other than to comply with applicable codes. Nothing in this chapter authorizes the State or county to require wireless facility deployment or to regulate wireless services.

§ **-10 Implementation.** No later than January 1, 2019, the State and each county shall adopt or modify laws, regulations, and agreements for lands within its jurisdiction that make available rates, fees, and other terms that comply with this chapter to wireless providers. In the absence of laws, regulations, and agreements that fully comply with this chapter and until such laws, regulations, or agreements are adopted, wireless providers may install and operate small wireless facilities and utility poles pursuant to this chapter.

§ **-11 Indemnification, insurance, and bonding.** (a) The State or county may adopt indemnification, insurance, and

bonding requirements related to small wireless facility permits subject to this section.

(b) The State or county may require a wireless provider to indemnify and hold the State or county and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees resulting from the wireless provider's actions in installing, repairing, or maintaining any wireless facilities or utility poles.

(c) The State or county may require a wireless provider to have in effect insurance coverage consistent with this subsection and requirements for other right of way users, if such requirements are reasonable and nondiscriminatory.
The State or county shall not require a wireless provider to obtain insurance naming the State or county or its officers and employees as an additional insured. If insurance coverage is required, the State or county may require a wireless provider to furnish proof of insurance prior to the effective date of any permit issued for a small wireless facility.

(d) The State or county may adopt bonding requirements for small wireless facilities if the State or county imposes similar requirements in connection with permits issued for other right of way users.

The purpose of such bonds shall be to:

(1) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that the State or county determines a need for the small wireless facilities to be removed to protect public health, safety, or welfare;

(2) Restoration of the right of way; or

(3) Recoupment of past due rates or fees that have not been paid by a wireless provider in over twelve months; provided that the wireless provider has received reasonable notice from the State or county of the non-compliance listed and an opportunity to cure the rates or fees.

Bonding requirements shall not exceed $200 per small wireless facility.

For wireless providers with multiple small wireless facilities within the jurisdiction of a single state or county, the total bond amount across all facilities shall not exceed $10,000, which amount may be combined into one bond instrument."

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by

county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

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

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

(2) Game and fish propagation;

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

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

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

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

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

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

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

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-

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

(11) Agricultural parks;

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

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

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

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

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

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

fide agricultural activity" means a farming operation as defined in section 165-2;

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

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

For the purposes of this paragraph:

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

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

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

As used in this paragraph:

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

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

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

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

(18) Construction and operation of wireless communication antennas[~~;~~]<u>, including wireless facilities;</u> provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the

provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection; provided further that "wireless facilities" shall have the same meaning as in section -2;

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

(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a

special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

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

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

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

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

(A) The area occupied by the solar energy facilities is also made available for compatible

agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Within one year of the effective date of this Act, the State or county shall conduct an evaluation of subsection -6(6) and -6(7) to determine the adequacy of the timeline for review in providing a reasonable period of time for the State or county to process and approve applications, based on the number of applications submitted and available resources, and submit a report to the legislature.

SECTION ~~5~~6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ~~6~~7. This Act shall take effect upon its approval; provided that this Act shall apply to permit applications filed with the State or county after December 31, 2018.

Report Title:
Small Wireless Facilities; Wireless Facilities; Broadband; Economic Development; State-owned and County-owned Utility Poles; Permits

Description:
Establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the state; Establishes a permitting, application, review and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Takes effect on approval. Applies to permit applications filed with the state or county after 1/1/2019.

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

TESTIMONY OF CHARTER COMMUNICATIONS

House Committee on Consumer Protection & Commerce

Hawai‘i State Capitol, Conference Room 329

RE: H.B. 2651, H.D.1

WEDNESDAY, FEBRUARY 21, 2018
2:00 PM

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

I am Myoung Oh, Director of State Government Affairs, here on behalf of Charter Communications in **opposition** to H.B. 2651, H.D.1.

Charter Communications is a dedicated community partner in Hawai‘i. We currently have over 3,500 Wi-Fi hotspots deployed throughout the islands with a commitment to provide hundreds more in 2018. We employ 1,400 Hawai‘i residents and contribute to Hawai‘i’s economy with over $50 million in taxes.

We have also raised our base-level broadband speed to 200 Mbps for new customers and have launched Spectrum Internet Assist, our low-cost broadband program, for low-income families and seniors, which at 30 Mbps, is 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 Hawai‘i.

As a connectivity and customer service company, Charter embraces new technology like 5G and the deployment of wireless facilities and continues to advance new products and services that meet the ever growing needs of our customers.

Presently, wireless companies are not precluded from acquiring right-of-way (ROW) authority to attach antennas or other wireless infrastructure. Case in point is Resolution 18-34 that is before the Honolulu County Council. Wireless providers currently have the authority to request attachment rights for both utility and county owned poles as well as the ability to work with counties on attachments for other structures.

As its currently drafted, H.B. 2651, H.D.1 would create an uneven playing field between cable and wireless providers in the State by crafting special rules for the placement of wireless facilities in the public (ROW).

Charter offers video service and so do wireless carriers. Wireless companies have made no secret of their desire to use 5G to compete against cable companies. Entities that offer a video service by using facilities in the ROW should be treated similarly, hence our proposal to subject all video providers that use the ROW to the franchise regime regardless of technology utilized in the ROW.

Charter certainly want to be sure that as long as we are subject to franchising and gross revenue fee requirements for operating video service facilities in the ROW, other providers that also seek

to use the ROW to provide video to subscribers should be subject to the same regime for video, even if those facilities are wireless.

For example, pursuant our Decision & Order 346:

> A. The Privilege of a Franchise
>
> The grant of a cable franchise gives the recipient a non-exclusive right to use and occupy certain limited and scarce Public Places, Public Highways and easements for the construction, use, operation and maintenance of a Cable System for a fixed period. The franchise confers no right, title or interest in any public right-of-way beyond those expressly conferred herein. The privilege of a cable franchise also carries with it associated obligations. TWE recognizes that there are certain responsibilities it assumes when issued a cable franchise. These include operating a System that is reliable, responsive, and responsible to the public it serves, providing the widest possible diversity of information sources and services to its Subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and PEG access (as requested by the Director).

In order to access the public ROW Charter is required to obtain separate franchise agreements with Oahu, Hawai‘i, Maui, and Kauai. Additionally, we have agreements with the Navy/Airforce, Army, and Marines.

We are also subject to stringent safety requirements and other obligations, including the requirement to pay franchise fees of up to 5% of gross annual revenues for occupancy and use of the ROW. This equates to millions of dollars each year in payments.

Charter believes H.B. 2651, H.D.1 is intended largely to allow unfranchised entities to circumvent the ROW authorization process, by bypassing the procedure applicable to Charter. **We believe access to public rights-of-way should be equitable for all occupiers without discrimination.**

Our customers should not have to pay to use the public ROW when others do not. A review of the ROW regime requires serious and thoughtful analysis. If the intent is to change the payment structure for access to the right of way, it must do so fairly for all service providers and consider all unintended consequences.

Finally, this bill would do little to advance the policy goals for broadband deployment, especially in rural areas where it is needed most. Small cell technology is not a viable solution for rural broadband deployment and wireless providers have made no commitment to build out rural areas of this State. Whereas, Charter is obligated through its franchise agreement to provide services to unserved and underserved communities, to the extent possible.

In closing, Charter strongly opposes the establishment of an uneven playing field by creating an uncompetitive environment by not subjecting certain ROW users to franchising and gross revenue fee requirements for operating video service facilities in the ROW.

However, if the Committee is inclined to pass the bill, Charter respectfully requests amendments that, at a minimum, the bill must ensure that all providers using facilities in the ROW to provide video service to subscribers are subject to the same franchising framework, regardless of delivery method. A technology-neutral framework that ensures regulatory parity for all providers is the best approach for both competition and consumers.

New Definition

"Video programming services" means the provision of video programming directly to subscribers, without regard to delivery technology, via communications facilities located in, over, under, above, or across the right of way. The term includes, but is not limited to, video programming delivered directly to subscribers via internet protocol technology or as cable service as defined in 47 U.S.C. § 522(6). The term does not include over-the-top or online video programming offerings accessible to Internet users via the public Internet.

§ -5 Use of the right of way for small broadband or wireless facilities and utility poles.

(b) Subject to this section, the construction or modification of small broadband or wireless facilities in the right of way shall be a permitted use not subject to zoning review or other discretionary approval; provided that such structures and facilities shall be constructed and maintained so as not to obstruct the usual travel, public safety, or other factors set forth in section -6(10) on such right of way or obstruct the legal use of such right of way by utilities. Modified or replaced utility poles associated with a small broadband or wireless facility that meet the requirements of this section are permitted uses subject to the permit process in section -6. No additional permit shall be required to maintain, operate, modify, or replace small broadband or wireless facilities and associated utility poles along, across, upon, and under the right of way. The grant of a Permit for a Small Wireless Facility does not authorize the provision of any communications service or the installation, placement, maintenance or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right of way, and shall not otherwise be a general authorization to occupy and use the rights-of-way. No wireless provider, or affiliate thereof, shall furnish video programming services directly to subscribers via, in whole or in part, any communications facilities deployed in the right of way without first obtaining a cable franchise subject to the provisions of Chapter 440G.

Mahalo for the opportunity to testify.

Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association
on
HB2651 HD1
Relating To Wireless Broadband Facilities

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Wednesday, February 21, 2018, 2:00 pm
Conference Room 329

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

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 185 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **in support** of HB 2651 HD1, which establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Applies to permit applications filed with the State or county after 12/31/2018.

MHLA believes that this measure would modernize Hawaii's legal and policy framework to facilitate the expeditious deployment of small cells, the foundational element to high speed video-streaming facilitating wireless broadband internet access to meet the growing demands of our communities and our visitor industry.

With the advent of unlimited data plans across all wireless carriers, traffic across wireless networks has exploded and continues to exponentially grow; keeping ahead of this demand with current infrastructure is becoming increasingly challenging. Small cell technology is the essential form of wireless infrastructure needed to deliver improved 4G LTE service. Increasing network capacity is even more critical if the residents and visitors of Hawaii are to benefit from the next generation of wireless technology, 5G.

Our visitor industry needs to remain competitive globally, it is essential that Hawai`i reaffirms its position as a premier travel destination by establishing a stronger wireless network to remain attractive to visitors while keeping pace with their expectations.

Thank you for the opportunity to testify.

1727-B Wili Pa Loop • Wailuku, HI 96793 • 808/244-8625 • 808/244-3094 fax • info@mauihla.org

LATE

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
WEDNESDAY, FEBRUARY 21, 2018; 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 ON HB2651, HD1

Thank you very much for considering this important measure. The City and County of Honolulu (City) continues to support the deployment of small cell infrastructure for 4G and 5G technology as demonstrated by the approval of over 60 installations on Oahu to date. Following are our comments on this bill.

Public Safety Concerns Not Addressed:

The City must emphasize that the installation of small cell infrastructure should not adversely impact or compromise public safety. Development and/or installation of structures within the public right of way directly affects vehicular, pedestrian and bicycle traffic as well as the standards associated with planned development of communities and neighborhoods. It is therefore not a trivial or minimal issue that should be left to the discretion of a small cell equipment applicant where and when to install a new, dedicated pole for small cell equipment within the public right of way.

It is equally important to ensure that existing City utility poles and light standards ("poles") are able to bear the additional weight of small cell equipment, particularly because this added equipment was not included in the original design, sizing, and selection of the poles. Also, the City must ensure that the equipment does not pose a hazard or obstruction to pedestrians, bicyclists, motorists, and/or people maintaining or repairing other pole-mounted equipment, components, or lines. To this end, the City is concerned with the following:

- Prohibition on regulation of deployment: Page 7, lines 10 to 14, which states that the State and the counties shall not prohibit, regulate, or charge for the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities. This provision expressly prohibits the City from reviewing, inspecting, and regulating the deployment of small cells, which severely limits the City's ability to protect the public and ensure that small cells are installed in a safe manner.

- Prohibits requiring an application for replacing equipment: Page 8, line 20 to page 9, line 2 prohibits the City from requiring a permit for the replacement of small cell equipment with other small cell equipment. Limiting the City's ability to review all equipment on its poles negatively impacts public safety. Without City review or approval, a carrier may install additional small broadband or wireless facilities and associated utility poles in the right of way. The equipment may be substantially heavier and take up more space and may interfere with public safety equipment. There do not appear to be limitations on the replacement equipment that a carrier may install. The City would not be able to know or to verify that the existing pole is able to handle any additional load from "replacement" equipment. The City requests that an amendment be made to require notice and approval of any replacement equipment to be installed on City-owned poles.

- Review time: The City appreciates the amendments made by the Committee on Intrastate Commerce for additional time to review applications. However, on page 14, line 1, the processing deadline is tolled from the time notification of incompleteness is sent until the applicant provides the missing information. Line 9 on page 14 indicates that the processing deadline may be tolled by agreement of the applicant and the City. It is unclear if the lack of agreement will result in the automatic approval of the application upon the passage of ninety days.

- Installation of Applicant Owned Poles within the Public Right Of Way: Page 18, lines 6 to 12 prohibits the City from imposing a moratorium on the installation of utility poles. This provision effectively prevents the City from exercising its ability to control the development and construction of structures within the public right of way. Non-City owned poles were previously permitted within the public right of way when standards allowed. However, present standards for new development and construction require underground utilities effectively prohibiting the installation of new poles by utilities or third parties.

- Actual pole condition report not required: In our review process, the City requires that the carrier submit a report on the actual condition of each pole on which a carrier seeks to install small cell equipment because the conditions of each pole

differ. The current draft does not include such a requirement. Without this requirement, carriers are able to submit generic information for each pole so long as the equipment is the same. This does not address public safety concerns because the generic information is not an accurate representation of what the actual pole is able to bear.

Fees

This measure could interfere with the City's ordinance establishing rates for the installation of telecommunications equipment. Section 28-12.2, Revised Ordinances of Honolulu (ROH) establishes the rate for such equipment at $1,000 per month. The fee language should be deleted as there is already an established City fee schedule and this provision is unnecessary.

Further, this measure limits the amount the City may charge for application review to $100 per pole or $100 per application batch of 5 poles and $50 for each additional pole in the batch. Reviewing an application involves visiting each pole for inspection. This fee would not cover the time and materials expense of travel to each pole in an application batch that potentially includes a multitude of poles located across the island of Oahu. Additionally, the $40 per pole annual fee is unreasonably low. Other jurisdictions such as San Francisco charge $4,000 per pole per year.

The City also believes that shifting the burden to the City to prove that fees are cost-based and do not exceed the actual, direct, and reasonable costs for the applicant's use of the pole are inappropriate. This burden should remain with the party raising the issue of the appropriateness of fees. If a carrier brings a lawsuit against another party, the carrier would be required to satisfy the burden of proof with respect to the claim. Similarly, the burden should remain with the carrier bringing a complaint about the appropriateness of a fee.

Visual Blight is Only Partially Addressed:

This bill does not allow the State or the City to regulate and prevent "Franken-poles" from emerging in the most picturesque communities. Instead, the City and the State are only able to require concealment in a "historic district." (*see* page 10, lines 3 to 12) Although many carriers present visually appealing photos of equipment integrated into the utility poles of other jurisdictions, this bill prohibits the State and a county from requiring similar designs everywhere except in historic districts. The City respectfully requests that your Committee amend this measure to allow the State and counties discretion to require that all carriers make all reasonable attempts to ensure that the equipment installed on poles and facilities is done in a manner that is context sensitive and minimizes visual blight.

Community Concerns Not Addressed:

This measure expressly prohibits the State or City from requiring the carriers or operators to provide information to the communities in which the small cell equipment is installed. (*see* page 12, lines 13 to 16) Residents have a right to know and ask questions about the equipment being installed near or right in front of their homes. To that end, the City is requiring carriers and operators to make presentations at Neighborhood Board meetings so that affected residents are able to learn about proposed installations, gather information, and ask pertinent questions. The small cell carriers or operators are the only entities able to answer questions about their equipment and operation. The City respectfully requests that this measure be amended to allow counties to impose such a requirement.

Interference with City Uses of its Own Poles:

The City is concerned that this measure may preclude unanticipated future uses of its own poles. Carriers and operators should not be able to use all of the structural capacity on a City owned pole, such that the City cannot use the pole for its own purposes without first replacing it with a pole of a higher capacity. For example, the City is in the process of converting its light poles to utilize LED lights with advanced controls functions.

This requires the City to install additional equipment on its existing light poles without the need to acquire and install new poles of higher structural capacity. If a carrier or operator installs equipment that effectively imposes structural loading to the maximum load carrying capacity of the existing pole, the City would be precluded from installing its own LED lights and controls. The City is unable to anticipate all future uses and the need to install additional equipment of its own on each pole, and therefore requests that this measure be amended to allow the City to reserve capacity on its poles for its own future uses.

Repairs to the Right of Way:

If a carrier damages a sidewalk or other part of the right of way and fails to make the require repairs, the language on page 11, lines 2 to 7 allows the City to complete the required repairs and charge the applicable party the reasonable, documented cost of the repairs "within a reasonable time". The City requests that a shot clock be imposed on the carriers to complete required repairs to the right of way. The City is held to specific time frames for reviews and responses. It seems only appropriate that carriers be held to a similarly specific time frame.

Bonding Requirements:

The City believes that indemnification of the State and the counties is very important and supports an indemnification requirement. However, the City believes that $200 per small wireless facility up to a maximum of $10,000 per county, regardless of the number of installations in that county is very low. Carriers will likely install more equipment in the City compared with other counties. The bonding requirements should be adjusted to reflect that difference in equipment installed.

Requiring Installation after Permits are Approved:

The City supports the provisions that require a carrier to install equipment within one year after the permit is granted. We are concerned that carriers or operators may submit permits for the sole purpose of reserving space and precluding other carriers from installing their equipment. The language on page 13, lines 8 to 16 addresses this concern.

Thank you for your consideration of this testimony. The City continues to believe that the deployment of 4G and 5G technology is important as demonstrated by the approval of over 60 installations on Oahu to date and looks forward to continuing to work with small cell carriers, operators, and the Legislature on this important issue.

MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

HEARING BEFORE THE HOUSE COMMITTEE CONSUMER PROTECTON & COMMERCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 329
WEDNESDAY, FEBRUARY 21, 2018 AT 2:00 P.M.

To The Honorable Roy M. Takumi, Chair;
The Honorable Linda Ichiyama, Vice Chair; and
Members of Committee on Consumer Protection & Commerce;

TESTIMONY IN SUPPORT OF HB2651 RELATING TO WIRELESS BROADBAND FACILITIES

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing share our support of HB2651.

The purpose of HB2651 is to support the current 4G LTE network and to lay the groundwork for new wireless connectivity in Hawaii. There is a growing demand for faster and more reliable wireless networks in Hawaii with the increased usage of wireless devices. Local businesses, residents, and our visitors expect the best network available, but this cannot be achieved without small wireless facilities. Also broadband linkages are very important for market expansion, both to domestic and international markets. Many businesses and residents are already reporting that while 4G networks are offered, they are still experiencing times of very slow access, which hampers operational performance as well. Further, as more businesses are using cloud based services and storage, these speeds become more and more important. We support this bill as it will streamline the process and remove regulatory obstacles for the deployment of small wireless facilities and provide the required groundwork to get 5G up and running.

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

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

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

TRANSFORM HAWAI'I GOVERNMENT
Every Citizen • Every Service • Every Island

LATE

February 21, 2018

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce
Conference Room 329
Hawai'i State Capitol
Honolulu, HI 96813

RE: Testimony on HB2651 HD1, Relating to Wireless Broadband Facilities

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

My name is Christine Sakuda and I serve as the executive director of Transform Hawai'i Government (THG), a coalition of organizations and individuals who believe in improving government services for every Hawai'i resident on every island. THG supports House Bill 2651 HD1, Relating to Wireless Broadband Facilities, which establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the state.

THG was established to promote an open, transparent and responsive Hawai'i government. We advocate improving government business practices through technology to ensure government employees, residents and businesses have convenient and secure access to reliable information and data on demand. Our goal is to have government services that are streamlined, integrated and delivered in ways that exceed the expectations of the public and the needs of Hawai'i's businesses.

Access to high-speed Internet services is invariably linked to economic viability, and a critical component of our state's success in the 20th Century economy will be our ability to nurture innovation with modern digital infrastructure — including broadband infrastructure. Passage of this bill will further the state's Hawai'i Broadband Initiative goal of increasing broadband performance for businesses and residents, not only securely, but also through diverse pathways to mitigate any service interruptions.

THG strongly supports this capacity-building effort, provided the concerns of state and local government public safety agencies are addressed. By establishing a permitting, application, review and approval process to install wireless facilities on state- or county-owned utility poles (or install associated utility poles), wireless service providers will be able to collaborate with state and local agencies to build and expand ultra-high-speed Internet capacity responsibly. This measure includes language that would require permitted small wireless facilities to be constructed and maintained so as not to obstruct or materially interfere with travel or public safety equipment.

In recognition of the above, we ask that you consider allowing this measure to move forward.

Thank you for the opportunity to provide testimony in support of this important bill.

DAVID Y. IGE
GOVERNOR

Testimony by:

JADE T. BUTAY
INTERIM DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 21, 2018
2:00 p.m.
State Capitol, Room 329

H.B. 2651, H.D. 1
RELATING TO WIRELESS BROADBAND FACILITIES

House Committee on Consumer Protection & Commerce

The Department of Transportation (DOT) **supports** this bill that proposes to expedite the installation of wireless broadband infrastructure. However, DOT has concerns over some of the requirements.

HB 2651 appears to require DOT to perform upgrades to poles to support wireless infrastructure within a specified timeframe. DOT believes this cost should not be born by the Department. Also, timeframes for delivery of upgrades should consider manufacturing and delivery from the continental US.

DOT is required to collect fair market value for users of the Federal Aid system. If DOT is not allowed to charge this value, we may be in violation of the requirements of our Federal Aid program.

We recommend maintaining the requirement that any work within the Highways Division right-of-way still requires the entity to obtain the Highways Permit under Section 264-6, HRS. This allows the Highways Division to make certain all new infrastructure within the right-of-way meet current safety and design standards, and coordinate work with other entities and highways projects.

Thank you for the opportunity to provide testimony.

Hawaiian Telcom
HAWAII'S TECHNOLOGY LEADER

Written Statement of
Ani Menon
Director of Government & Community Affairs

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

February 21, 2018 2:00PM
State Capitol, Conference Room 329

COMMENTS FOR:

H.B. NO. 2651 HD1 RELATING TO WIRELESS BROADBAND FACILITIES

To: Chair Takumi, Vice Chair Ichiyama, and Members of the Committee
Re: Testimony providing comments on HB2651 HD1

Aloha Honorable Chair, Vice Chair, and Committee Members:

Thank you for this opportunity to submit comments. Hawaiian Telcom supports the intent of this measure and respectfully offers the following amendments to HB2651 HD1:

1. Amend the definition of "communications service provider" to include cable operators as defined in **HRS § 440G:3**, and "telecommunications carrier" as defined in **HRS § 269:1**.

2. Re-introduce the requirement enumerated in HB2651 Section 6(1), copied below:
"The State or county shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the State or county including reserving fiber, conduit, or pole space for the State or county."

3. Broaden the definition of "broadband or wireless facility" to include facilities relevant to <u>both broadband and wireless</u> facilities. Although HB2651 HD1 intended to include small broadband facilities, the amended definition strictly limits the definition of "broadband or wireless facility" to wireless facilities. In order to encourage an equal level playing field, we suggest the following <u>addition</u> to the definition of "broadband or wireless facility":
Broadband facility means equipment at a fixed location that enables high-speed bandwidth data transmission between user equipment and a communications network, including but not limited to wireless, wireline, and satellite devices and their auxiliary components regardless of technological configuration.

Thank you for the opportunity to provide these comments.

LATE

DAVID Y. IGE
GOVERNOR

Testimony by:
JADE T. BUTAY
INTERIM DIRECTOR

LATE TESTIMONY

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

February 21, 2018
2:00 p.m.
State Capitol, Room 329

H.B. 2651, H.D. 1
RELATING TO WIRELESS BROADBAND FACILITIES

House Committee on Consumer Protection & Commerce

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Thank you for the opportunity to provide testimony.