



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

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

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

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

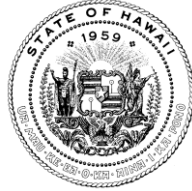
Wednesday, March 14, 2018  
1:15 PM  
State Capitol, Conference Room 414  
in consideration of

**HB 2651, HD2  
RELATING TO WIRELESS BROADBAND FACILITIES.**

Chairs Wakai and Baker, Vice Chairs Taniguchi and Tokuda, and Members of the Committees.

The Department of Business, Economic Development and Tourism (DBEDT) **supports** HB 2651, HD2, 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.

Thank you for the opportunity to submit testimony in **support** of HB 2651, HD2.



DAVID Y. IGE  
GOVERNOR

DOUGLAS S. CHIN  
LIEUTENANT GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
AND  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Wednesday, March 14, 2018  
1:15 p.m.

**TESTIMONY ON H.B. NO. 2651, H.D. 2, RELATING TO WIRELESS BROADBAND FACILITIES.**

TO THE HONORABLE GLENN WAKAI AND THE HONORABLE ROSALYN H. BAKER,  
CHAIRS, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2651, H.D. 2, 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, which is a companion to S.B. 2704, 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. H.D. 2 amends this measure by, among other things, specifying that no broadband or wireless provider shall furnish video programming services directly to subscribers via communications facilities deployed in the right of way without first obtaining a cable franchise subject to the provisions of Hawaii Revised Statutes chapter 440G.

The Department strongly supports efforts to improve access to broadband services for Hawaii residents and to increase competition that may result in more affordable services for consumers. The Department thus supports legislation that establishes uniform and streamlined permit and approval processes statewide that would expedite the deployment of infrastructure required for small wireless systems. The Department also recognizes the need to balance expedited deployment with protecting the public interest and thus defers to state and county asset owners and managers to comment on the bill's impact 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 further supports efforts to balance the regulation of equivalent services, regardless of the type of service provider. Specifically, the Department notes that in section 2, page 8, line 20 to page 9, line 3, H.D. 2 provides that “[n]o broadband or wireless provider, or affiliate thereof, shall furnish video programming services directly to subscribers via, in whole or in part, any communications facility deployed in the right of way without first obtaining a cable franchise subject to the provisions of chapter 440G.” The Department notes, however, that it has not had sufficient time to study and evaluate the implementation and consequences of this provision, including the application of federal law.

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

**STATE OF HAWAII**  
**OFFICE OF ENTERPRISE TECHNOLOGY SERVICES**

P.O. BOX 119, HONOLULU, HI 96810-0119  
Ph: (808) 586-6000 | Fax: (808) 586-1922  
ETS.HAWAII.GOV

Testimony of  
**TODD NACAPUY**  
Chief Information Officer, State of Hawai'i

Before the

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Wednesday, March 14, 2018  
1:45 P.M.

State Capitol, Conference Room 414

HOUSE BILL NO. 2651, HD2  
RELATING TO WIRELESS BROADBAND FACILITIES

Dear Chairs Wakai and Baker, Vice Chairs Taniguchi and Tokuda, and members of the committee:

I am Todd Nacapuy, Chief Information Officer for the State of Hawai'i and head of the Office of Enterprise Technology Services (ETS), testifying in **support** of the intent, and **providing comments** on HB2651 HD2, 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 preserve this language 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 HD2 and to provide comments.

Harry Kim  
Mayor



Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 74-5044 Ane Keohokālole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740  
(808) 323-4444 • Fax (808) 323-4440

March 12, 2018

Senator Glenn Wakai, Chair  
Committee on Economic Development, Tourism, and Technology  
Hawai'i State Capitol, Room 414  
Honolulu, HI 96813

Senator Rosalyn H. Baker, Chair  
Committee on Commerce, Consumer Protection, and Health  
Hawai'i State Capitol, Room 414  
Honolulu, HI 96813

Dear Chair Wakai, Chair Baker and Committee Members:

**Re: HB 2651, HD 2 Relating to Wireless Broadband Facilities**  
**Hearing Date: 03-14-18 – 1:15 pm; Conference Room 414**

Thank you for this opportunity to comment on HB 2651, HD 2.

The history of attempts to pass legislation in Hawai'i concerning broadband technology is not all positive. In a very technical area, the feeling has been that the major players have attempted to take advantage of the community's desire for broadband, to create a playing field that is tilted unjustly in favor of one or another. It therefore is necessary to approach this bill, and any other such legislation, with caution.

Having said that, I am told that HB 2651, HD 2, has made great strides toward assuring that the public interest is properly balanced against the interests of the technology providers. Therefore, I would urge that HB 2651, HD 2 move forward, but with the following amendments:

1. Section 2—The definition of “applicable codes” should end before “enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this chapter”—that language quoted should be deleted;
2. Take utility easement out of the definition of “right of way”
3. I also would recommend narrowing the definition of “Broadband or wireless support structure” to delete “or capable of supporting.”
4. Section 4-(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 broadband or wireless facilities or utility poles.”—take out “utility poles”—we already have pre-existing agreements about the use of utility poles with utility companies.

5. Section 4-(g) replace "return the right of way to its functional equivalence" to "same or better condition". Add that their permit will be voided if the State or county needs to do the repairs and the provider fails to pay the assessed cost.
6. Section 5- delete "(4) The State or county shall not require the placement of small broadband or wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole";
7. Section 7: There does not seem to be any definition of what would constitute adequate notice, and that should be clarified.
8. Section 10(d): Delete the bond limit of \$200 per small broadband or wireless facility and the total bond limit of \$10,000 per county.
9. Add language to assure that the installed cellular equipment won't degrade our infrastructure's wind rating. If we're to have equipment mounted on light and traffic poles, we would want assurance that the additional equipment wouldn't de-rate them.
10. The 30 days to determine if the application is complete and 90 days to grant/deny a completed application may be too short. Please specify that they refer to 30 and 90 working days rather than calendar days
11. Section 9, Implementation creates two concerns.

First, if laws must be adopted or modified "No later than January 1, 2019," does that mean that laws cannot be amended after that date? We certainly should not tie our hands in such a way.

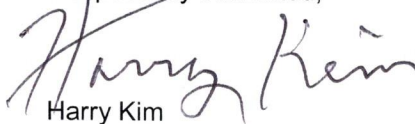
Second, Section 9 provides that "until such laws, regulations, or agreements are adopted, broadband or wireless providers may install and operate small broadband or wireless facilities and utility poles pursuant to this chapter." That would seem to give carte blanche to the providers to act precipitously before government can enact suitable standards. Such action should not be allowed.

Better language might be:

**No later than \_\_\_\_\_, 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. After that date, in the absence of laws, regulations, and agreements that 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.**

Thank you for your consideration.

Respectfully submitted,



Harry Kim  
Mayor, County of Hawai'i



Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

March 13, 2018

TO: The Honorable Glenn Wakai, Chair  
Senate Committee on Economic Development, Tourism, and Technology  
The Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Riki Hokama  
Councilmember

SUBJECT: **HEARING ON MARCH 14, 2018; TESTIMONY IN OPPOSITION TO HB 2651, SD1, RELATING TO WIRELESS BROADBAND FACILITIES**

Thank you for the opportunity to testify in **opposition** to this measure. The purpose of this bill is to establish a process to upgrade and support next generation wireless infrastructure throughout the State and establish 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.

I **oppose** this measure for the following reasons:

1. While the improvement of Hawaii's wireless broadband services may be beneficial, it should not be accomplished by infringing on the counties' ability to decide the use of their property. Each individual county should make the decision on how its utility poles and rights of way are used, not the State.
2. This measure imposes restrictions and requirements on the counties with an expectation for results without State assistance. If the State wants to support Hawaii's growing technological needs, it should do so in other ways. It should provide grants and work with the counties to develop local technology companies, and it should partner with schools to encourage students to consider exploring technology-related professions.

For the foregoing reasons, I **oppose** this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Riki Hokama".

RIKI HOKAMA  
Councilmember



March 12<sup>th</sup>, 2018

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

Honorable Rosalyn H. Baker  
Chair, Senate Commerce, Consumer Protection and Health Committee  
Hawaii State Capitol  
Room 230  
Honolulu, Hawaii 96813

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

Honorable Jill N. Tokuda  
Vice Chair, Senate Commerce, Consumer Protection and Health Committee  
Hawaii State Capitol  
Room 202  
Honolulu, Hawaii 96813

**RE: Support Intent for HB 2651 HD2 – Wireless Broadband Facilities**

Dear Chairs Wakai and Baker and Vice Chairs Taniguchi and Tokuda,

On behalf of CTIA, the trade association for the wireless communications industry, I am writing to express support for HB 2651 HD2. 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 HD2 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 in a statewide bill. 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 HD2, 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

**Warren Cho - TESTIMONY**

**March 12, 2018**

**Organization: Individual**

**Position: Oppose HB2651 HD2**

**Present at Hearing: Yes**

**Re: Hearing before the Senate Committee March 14, 2018**

To The Honorable Glenn Wakai, Chair;  
The Honorable Brian Taniguchi, Vice-Chair; and members of  
Senate Committee

My name is Warren Cho and I am Director of Hawaii as a Medical Consultant helping physicians increase their revenue by \$100K or more per year, while complying with current federal mandates. I am writing to share my position to OPPOSE HB 2651 HD2.

**Why is 5G so especially outrageous to the public?**

1. 5G would greatly extend FCC's current policy of the MANDATORY IRRADIATION OF THE PUBLIC without adequate prior study of the potential health impact and assurance of safety.
2. 5G would IRRADIATE EVERYONE, including the most vulnerable to harm from radiofrequency radiation: pregnant women, unborn children, young children, teenagers, men of reproductive age, the elderly, the disabled, and the chronically ill.
3. 5G would likely rely on the 1996 Telecommunications Act to continue to deny state and local governments and municipalities the right to bar the installation of wireless technology on environmental/health grounds. This Act may be the greatest offense to local rule of all time.
4. 5G would likely rely on the FCC's current outdated, excessively permissive, and thus widely criticized, radiation-exposure guidelines that enable many parties to make false claims of safety for wireless products. Those guidelines are based primarily on a 30-year-old analysis by the National Council on Radiation Protection and Measurements (NCRP) many years before the emergence of most of the digital wireless technology in use today. And the FCC's proposed move to 5G would offer no further study of safety, even though the new study by the National Toxicology Program at National Institute of Health(NIH) has already found those same FCC guidelines unprotective.
5. 5G would set a goal of irradiating all environments, including the insides of homes, whether single family homes, townhouses, or apartments, ending any remnant of the notion that "your home is your castle" in which you are supposed to be safe and to have a measure of control of your environment. Specifically, the proposed 5G Technology would blast through walls of any kind just as the current wireless technologies do. The result would be to drive even more people out of their homes than are already being displaced by the current wireless technologies.

6. 5G would force cell antennas onto residential streets, bringing the radiation threat even more up close and personal to the public.
7. 5G would bypass all current biomedical studies endeavoring to determine if radiofrequency radiation is a factor in the explosive growth of major health conditions -- such as autism, ADHD (attention deficit hyperactivity disorder), and Alzheimer's disease -- that are ruining the lives of so many people, from their youngest years to their oldest years.
8. 5G would increase the prospect for the continued explosion of health care costs, with a further worsening of the national debt, and with no clear assignment of responsibility to the providers of the harmful radiation. In short, 5G would continue to export to society the costs of the harm that wireless products cause.
9. 5G would totally ignore the rapidly growing international biomedical research literature that demonstrates that radiofrequency radiation adversely affects human health at levels far below the current FCC exposure guidelines. And the adverse impact on animal, insect, and plant health, too, would continue to be ignored.

Please view California Democrat Governor Jerry Brown Veto the 5G Senate Bill 649  
<https://www.mercurynews.com/2017/10/16/california-gov-jerry-brown-vetoes-bill-easing-permits-on-cell-phone-towers/>

Environmental Health Trust (EHT) 5G Scientific Overview of Human Health Risks  
<https://ehtrust.org/key-issues/cell-phoneswireless/5g-networks-iot-scientific-overview-human-health-risks/>

Genetics & Neurological Effects  
[http://www.bioinitiative.org/report/wp-content/uploads/pdfs/section\\_1\\_table\\_1\\_2012.pdf](http://www.bioinitiative.org/report/wp-content/uploads/pdfs/section_1_table_1_2012.pdf)

In closing, with the small cell towers on every street of America, NO ONE human being is immune, exempt, pardoned or safe from this deadly EMF & RFR. The 30Ghz-300Ghz millimeter waves of radiation will be severely damaging the heart rate variability, bacterial affects, antibiotic resistance, immune system affects, Teratogenic effects, altered gene expression, and cataracts. And the long list of adverse biological effects, including:

- DNA Single and Double Strand Breaks
- Oxidative Damage
- Disruption of Cell Metabolism
- Increased Blood-Brain Barrier Permeability
- Melatonin Reduction
- Disruption of Brain Glucose Metabolism
- Generation of Stress Proteins

Respectfully Yours,  
Warren Cho



**TESTIMONY OF CHARTER COMMUNICATIONS**

**Senate Committee on Economic Development, Tourism, and Technology  
Senate Committee on Commerce, Consumer Protection, and Health**

**Hawai'i State Capitol, Conference Room 414**

**RE: H.B. 2651, H.D.2**

**WEDNESDAY, MARCH 14, 2018**

**1:15 PM**

Aloha Chair Wakai, Chair Baker and Members of the Committees,

I am Myoung Oh, Director of State Government Affairs, here on behalf of Charter Communications in offering our concerns on H.B. 2651, H.D.2.

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.

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 H.B. 2651, H.D.2, 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.

With respect to rural deployment and other commitments, Charter continues to expand access to closing the digital divide to unserved and underserved communities. 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, obligations placed on Charter includes not only rural deployment but also many others community and investment responsibilities.

- ) Access to low-income broadband service to: (1) households with children that have a student participating in the National School Lunch Program ("NSLP") and (2) senior citizens age 65 and older who are eligible and receive from the federal government Supplemental Security Income ("SSI") benefits.
- ) Deploy at least 1,000 new public WiFi access points throughout Hawai'i by 2020.
- ) Invest \$10 million to build out to unserved and underserved areas in Hawai'i.
- ) Abide by 25 homes-per-mile requirement for build out extensions.
- ) Increase broadband speed and enhancements.
- ) Provide energy efficient set-top-boxes.

Charter requests that the Committees consider the lack of parity in obligations, taxes, and funding between cable and wireless carriers.

Written Statement of  
**Ani Menon**  
Director of Government & Community Affairs

**SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY &  
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

March 14, 2018 1:15PM  
State Capitol, Conference Room 414

**COMMENTS FOR:**

**H.B. NO. 2651 HD2 RELATING TO WIRELESS BROADBAND FACILITIES**

To: Chairs Wakai and Baker, Vice Chairs Taniguchi and Tokuda, and Members of the Committees  
Re: **Testimony providing comments on HB2651 HD2**

Aloha Honorable Chair, Vice Chair, and Committee Members:

Thank you for this opportunity to submit comments. Hawaiian Telcom supports the intent of HB2651 HD2 but respectfully offers the following amendments clarifying definitions:

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**.

The purpose of this measure, as memorialized in Stand. Com. Rep. No. 1075-18, is to establish a permitting, application, review, and approval process for broadband or wireless providers to install broadband or wireless facilities...” In order to meet this purpose, the definition of “communications service provider” must be augmented to cite relevant definitions found within our Hawaii Revised Statutes.

2. Broaden the definition of “broadband or wireless facility” to include facilities relevant to both broadband and wireless facilities as intended by HB2651 House Drafts 1 and 2.

Although HB2651 House Drafts 1 and 2 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 addition 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.





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

March 13, 2018

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

Senator Rosalyn H. Baker, Chair  
Senator Jill N. Tokuda, Vice Chair  
Members of the Senate Committee Consumer  
Protection, and Health  
Twenty-Ninth Legislature  
Regular Session of 2018

RE: HB 2651, HD2 – RELATING TO WIRELESS BROADBAND FACILITIES  
Hearing Date – March 14, 2018 at 1:15 p.m.

Dear Chairs Wakai and Baker, Vice Chairs Taniguchi and Tokuda and Members of the Senate Committees on Economic Development, Tourism, and Technology, and Consumer Protection, and Health:

Mahalo for the opportunity to submit testimony on behalf of Verizon Wireless in SUPPORT, if amended, of HB 2651, HD2 – 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 consumers 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, HD2

Although Verizon supports the intent of HB 2651, HD2, 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, HD2 limits that ability.

Verizon has worked with almost every stakeholder interested in HB 2651 in an attempt to recommend a bill that is balanced and delivers on the policy framework necessary to rapid deployment of wireless broadband internet access infrastructure. In so doing, we have had multiple meetings with CTIA, AT&T, T-Mobile, Sprint, Charter, C&C of Honolulu, HECO, Hawaiian Telephone, Hawai'i Lodging & Tourism Association, various economic development boards, and several other stakeholders. The result of those meetings was an agreement by several stakeholders to support the SD2 version of SB 2704. We believe this version 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.

However, many revisions to HB 2561 in both HD1 and HD2 are inconsistent with the overall intent of bill and are, in fact, opposite of the intent. They should be removed from the bill or appropriately amended, as recommended in the attached proposed SD1 to HB 2561. Below is a summary of only a few of the revisions and policy implications for your consideration.

*The revision that reduces the dimensions to 6 cubic feet.*

These dimensions are so restrictive that virtually all current typical small cell designs are foreclosed. And while 5G facilities are expected to be smaller than 4G LTE small cells, the dimensions of the most effective 5G installation is still evolving.

There are no existing 4G LTE small cells that Verizon typically deploys that fit the 6 cubic foot specification, which if adopted, would create a situation where the definition of small wireless facility robs the bill of its original intent and 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 the fundamental linchpin of the bill.

The dimensions of small wireless facilities currently in SB 2704 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."

*Exclusion of wireline backhaul.*

Verizon does not oppose excluding wireline backhaul from the provisions of the bill, as this bill is not intended to streamline the permitting process for the deployment of fiber or wireline backhaul. SB 2704 SD1 took revisions, including defining wireline backhaul, to address this concern. HB 2561 HD2, however, defines wireline backhaul so broadly as to include virtually any use of wires in a small cell installation. Small cells use fiber from the antenna to a demarcation point that is either at the base of the pole or nearby. That demarcation point is

where wireline backhaul begins. Under the House bill's language, small cell installations would effectively be carved out of the small cell bill.

*Limitation on the City from regulating the deployment of small cells except as provided in the bill.*

Section -3 of HB 2561 states 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." This provision thus expressly authorizes the State or county to regulate, and charge for small cells attachments in accordance with the process provided in the bill. Yet, HB 2561 HD2 removes this section. The bill establishes a policy framework for the state and counties to follow based upon the State's compelling interest in accelerating the deployment of advanced wireless broadband internet access. Removing this provision would rob the bill of its main purpose by turning the bill into simple guidelines. Among other reasons, this provision is needed to ensure consistent statewide policy.

The deletion of this provision when juxtaposed against the inclusion in HB 2561 HD1 of the following language in section -9(b), which appears to only protect cable providers, bolsters the need for retaining the language:

(b) 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.

It is unclear why this provision was added. This was not at the request of any wireless carrier; Verizon recommends it be removed.

*Requirement of a cable franchise*

HB 2561 HD2 requires any wireless provider or affiliate thereof, to obtain a cable franchise subject to the provisions of chapter 440G. This would include payment of a cable franchise fee. The provision is not consistent with the intent of this bill and is in any event, unlawful.

It is also misplaced for legal, policy, and technological reasons. The cable franchise model was never intended to apply to deployment of wireless facilities, even if the provider of those facilities offers video programming. Congress explicitly exempted video services provided by radio communications from regulation.<sup>1</sup> The FCC has also ruled that the definition of "cable system"

---

<sup>1</sup> 47 U.S.C. § 571(a)(1).

requires delivery of programming to subscribers **by wire**, and that does not include transmission by radio.<sup>2</sup>

Moreover, 47 USC section 332 of the Communications Act prohibits states from raising barriers to entry, and franchising is a form of entry regulation. Section 332 preempts state and local jurisdictions from imposing entry regulation on CMRS providers.<sup>3</sup> The offering of an over-the-top streaming video service also would not require a broadband provider to obtain a cable franchise, because streaming video is not a “cable service” and Internet access service is not a “cable service” provided over a “cable system” subject to cable regulation.<sup>4</sup> Furthermore, the FCC has determined for competitive cable entrants that a local franchising authority’s jurisdiction “applies only to the provision of cable services over cable systems,” and does not extend to other services.<sup>5</sup>

A flat fee schedule, such as the 5% of an attachers’ gross revenues that would result from adoption of this provision, intrudes on the FCC’s authority to specify circumstances in which attachment fees may be fair, unreasonable, and/or a barrier to entry, as Congress intended in 47 USC sections 224, 253 and 332 of the Communications Act, and thus preempts state imposition of such fees on wireless providers.

Finally, this proposal ignores significant distinctions between cable TV model and small cells deployment and therefore is unworkable for small cells: Wireless small cells will be deployed on a completely different scale than use of ROW to deploy cable TV services. Cable franchises generally authorize digging trenches and construction throughout the local franchising authority’s (LFA) jurisdiction to lay cable in order to serve all or most customer locations in the LFA. Small cells will be deployed in targeted areas to meet demand and may never require disruption to streets or ROW. Most small cell installations will lease fiber from the cable companies or wireline telephone companies who have already deployed fiber or will deploy the fiber needed and upon which they will pay a franchise fee, likely partly recovered on the lease payment charged.

#### *Elimination of fees language*

HB 2561 HD2 eliminates one of the three key pillars of the bill, the establishment of cost recovery based rates not to exceed \$40. Without cost-recovery based fees, wireless providers will be unable to deploy small cells statewide in any meaningful degree. Failure to include a cost recovery based rate undermines the policy goal to be achieved by this bill. As FCC Chairman Wheeler stated, “If siting for a small cell takes as long and costs as much as siting for a cell tower, few communities will ever have the benefits of 5G.” Heeding Chairman Wheeler’s

---

<sup>2</sup> *Definition of a Cable Television System*, 5 FCC Rcd 7638, ¶ 7 (1990).

<sup>3</sup> 47 U.S.C. § 332(c)(3).

<sup>4</sup> *See Office of Consumer Counsel v. Southern New England Telephone Co.*, 515 F. Supp. 2d 269, 279 n.6 (2007); 47 U.S.C. § 522(6); *see also Cable Modem Order*, ¶¶ 60 *et seq.*

<sup>5</sup> *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, ¶¶ 121-122 (2007), *pet. for review denied*, *Alliance for Community Media v. FCC*, 529 F.3d 763 (6<sup>th</sup> Cir. 2008).

warning, thirteen other states have already passed state-wide legislation most of which limit the per pole annual fee to between \$5-50. Several other states are also currently considering legislation.

*June 30, 2020 sunset*

The HD2 version of the House bill sunsets the bill only 18 months after January 1, 2019, the presumptive effective date of the law, should it pass. 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 lengthy 240 days for make ready in HB 2561 HD2, the bill as worded would result in only 10 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.

In addition, we propose the following amendments to HB 2651, HD2 to more fully comply with the intent of the bill to create a uniform policy framework to promote the rapid deployment of small cell legislation.

- Remove the reference to “solely-owned” state or county poles.

Justification: 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. Importantly, the stakeholders have agreed to language that addresses that concern, which is contained in the proposed SD1.

- Remove the term “broadband” next to the term “wireless” throughout HB 2651, HD2.

Justification: The purpose of adding “broadband” next to “wireless” is likely aimed at broadening the scope of the bill to include wireline broadband companies such as HawTel. Adding “broadband” also creates confusion and is more cleanly and clearly addressed by language agreed to by stakeholders, including HawTel, in the proposed SD1. That language defines “communications service” broadly and then uses that term throughout the bill.

- Re-insert the provision from HB 2651 allowing wireless providers the ability to deploy small cells where county ordinance may require undergrounding of utilities.

Justification: By not allowing wireless providers to erect small cells in these areas, wireless providers may be unable to improve coverage. The challenge is substantial, especially in newer developments where electric, cable and telephone facilities are already underground. There are no utility poles on which to install antennas, and unlike the other utilities, antennas cannot be undergrounded. And residents of these undergrounded communities frequently oppose the installation of macro towers, leaving wireless service of poor quality.

- Re-insert the provision from HB 2651 prohibiting exactions unrelated to deployment of small cells.

Justification: 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.

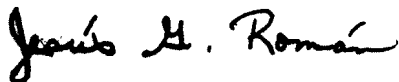
- Remove subsection (9)(F)-(I) of Section 5 which provides additional reasons for denial of an application.

Justification: 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.”

We have attached a proposed HB 2651, SD1, with amendments agreed upon by several stakeholders for your consideration. Having worked with several of the stakeholders on these amendments, we believe the proposed SD1 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, HD2 will provide the vehicle to achieve those objectives.

Mahalo,



Jesús G. Román

attachment



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

March 13, 2018

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

Senator Rosalyn H. Baker, Chair  
Senator Jill N. Tokuda, Vice Chair  
Members of the Senate Committee Consumer  
Protection, and Health  
Twenty-Ninth Legislature  
Regular Session of 2018

RE: HB 2651, HD2 – RELATING TO WIRELESS BROADBAND FACILITIES  
Hearing Date – March 14, 2018 at 1:15 p.m.

Dear Chairs Wakai and Baker, Vice Chairs Taniguchi and Tokuda and Members of the Senate Committees on Economic Development, Tourism, and Technology, and Consumer Protection, and Health:

Mahalo for the opportunity to submit testimony on behalf of Verizon Wireless in SUPPORT, if amended, of HB 2651, HD2 – 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 consumers 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, HD2

Although Verizon supports the intent of HB 2651, HD2, 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, HD2 limits that ability.

Verizon has worked with almost every stakeholder interested in HB 2651 in an attempt to recommend a bill that is balanced and delivers on the policy framework necessary to rapid deployment of wireless broadband internet access infrastructure. In so doing, we have had multiple meetings with CTIA, AT&T, T-Mobile, Sprint, Charter, C&C of Honolulu, HECO, Hawaiian Telephone, Hawai'i Lodging & Tourism Association, various economic development boards, and several other stakeholders. The result of those meetings was an agreement by several stakeholders to support the SD2 version of SB 2704. We believe this version 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.

However, many revisions to HB 2561 in both HD1 and HD2 are inconsistent with the overall intent of bill and are, in fact, opposite of the intent. They should be removed from the bill or appropriately amended, as recommended in the attached proposed SD1 to HB 2561. Below is a summary of only a few of the revisions and policy implications for your consideration.

*The revision that reduces the dimensions to 6 cubic feet.*

These dimensions are so restrictive that virtually all current typical small cell designs are foreclosed. And while 5G facilities are expected to be smaller than 4G LTE small cells, the dimensions of the most effective 5G installation is still evolving.

There are no existing 4G LTE small cells that Verizon typically deploys that fit the 6 cubic foot specification, which if adopted, would create a situation where the definition of small wireless facility robs the bill of its original intent and 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 the fundamental linchpin of the bill.

The dimensions of small wireless facilities currently in SB 2704 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."

*Exclusion of wireline backhaul.*

Verizon does not oppose excluding wireline backhaul from the provisions of the bill, as this bill is not intended to streamline the permitting process for the deployment of fiber or wireline backhaul. SB 2704 SD1 took revisions, including defining wireline backhaul, to address this concern. HB 2561 HD2, however, defines wireline backhaul so broadly as to include virtually any use of wires in a small cell installation. Small cells use fiber from the antenna to a demarcation point that is either at the base of the pole or nearby. That demarcation point is

where wireline backhaul begins. Under the House bill's language, small cell installations would effectively be carved out of the small cell bill.

*Limitation on the City from regulating the deployment of small cells except as provided in the bill.*

Section -3 of HB 2561 states 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." This provision thus expressly authorizes the State or county to regulate, and charge for small cells attachments in accordance with the process provided in the bill. Yet, HB 2561 HD2 removes this section. The bill establishes a policy framework for the state and counties to follow based upon the State's compelling interest in accelerating the deployment of advanced wireless broadband internet access. Removing this provision would rob the bill of its main purpose by turning the bill into simple guidelines. Among other reasons, this provision is needed to ensure consistent statewide policy.

The deletion of this provision when juxtaposed against the inclusion in HB 2561 HD1 of the following language in section -9(b), which appears to only protect cable providers, bolsters the need for retaining the language:

(b) 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.

It is unclear why this provision was added. This was not at the request of any wireless carrier; Verizon recommends it be removed.

*Requirement of a cable franchise*

HB 2561 HD2 requires any wireless provider or affiliate thereof, to obtain a cable franchise subject to the provisions of chapter 440G. This would include payment of a cable franchise fee. The provision is not consistent with the intent of this bill and is in any event, unlawful.

It is also misplaced for legal, policy, and technological reasons. The cable franchise model was never intended to apply to deployment of wireless facilities, even if the provider of those facilities offers video programming. Congress explicitly exempted video services provided by radio communications from regulation.<sup>1</sup> The FCC has also ruled that the definition of "cable system"

---

<sup>1</sup> 47 U.S.C. § 571(a)(1).

requires delivery of programming to subscribers **by wire**, and that does not include transmission by radio.<sup>2</sup>

Moreover, 47 USC section 332 of the Communications Act prohibits states from raising barriers to entry, and franchising is a form of entry regulation. Section 332 preempts state and local jurisdictions from imposing entry regulation on CMRS providers.<sup>3</sup> The offering of an over-the-top streaming video service also would not require a broadband provider to obtain a cable franchise, because streaming video is not a “cable service” and Internet access service is not a “cable service” provided over a “cable system” subject to cable regulation.<sup>4</sup> Furthermore, the FCC has determined for competitive cable entrants that a local franchising authority’s jurisdiction “applies only to the provision of cable services over cable systems,” and does not extend to other services.<sup>5</sup>

A flat fee schedule, such as the 5% of an attachers’ gross revenues that would result from adoption of this provision, intrudes on the FCC’s authority to specify circumstances in which attachment fees may be fair, unreasonable, and/or a barrier to entry, as Congress intended in 47 USC sections 224, 253 and 332 of the Communications Act, and thus preempts state imposition of such fees on wireless providers.

Finally, this proposal ignores significant distinctions between cable TV model and small cells deployment and therefore is unworkable for small cells: Wireless small cells will be deployed on a completely different scale than use of ROW to deploy cable TV services. Cable franchises generally authorize digging trenches and construction throughout the local franchising authority’s (LFA) jurisdiction to lay cable in order to serve all or most customer locations in the LFA. Small cells will be deployed in targeted areas to meet demand and may never require disruption to streets or ROW. Most small cell installations will lease fiber from the cable companies or wireline telephone companies who have already deployed fiber or will deploy the fiber needed and upon which they will pay a franchise fee, likely partly recovered on the lease payment charged.

#### *Elimination of fees language*

HB 2561 HD2 eliminates one of the three key pillars of the bill, the establishment of cost recovery based rates not to exceed \$40. Without cost-recovery based fees, wireless providers will be unable to deploy small cells statewide in any meaningful degree. Failure to include a cost recovery based rate undermines the policy goal to be achieved by this bill. As FCC Chairman Wheeler stated, “If siting for a small cell takes as long and costs as much as siting for a cell tower, few communities will ever have the benefits of 5G.” Heeding Chairman Wheeler’s

---

<sup>2</sup> *Definition of a Cable Television System*, 5 FCC Rcd 7638, ¶ 7 (1990).

<sup>3</sup> 47 U.S.C. § 332(c)(3).

<sup>4</sup> *See Office of Consumer Counsel v. Southern New England Telephone Co.*, 515 F. Supp. 2d 269, 279 n.6 (2007); 47 U.S.C. § 522(6); *see also Cable Modem Order*, ¶¶ 60 *et seq.*

<sup>5</sup> *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, ¶¶ 121-122 (2007), *pet. for review denied*, *Alliance for Community Media v. FCC*, 529 F.3d 763 (6<sup>th</sup> Cir. 2008).

warning, thirteen other states have already passed state-wide legislation most of which limit the per pole annual fee to between \$5-50. Several other states are also currently considering legislation.

*June 30, 2020 sunset*

The HD2 version of the House bill sunsets the bill only 18 months after January 1, 2019, the presumptive effective date of the law, should it pass. 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 lengthy 240 days for make ready in HB 2561 HD2, the bill as worded would result in only 10 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.

In addition, we propose the following amendments to HB 2651, HD2 to more fully comply with the intent of the bill to create a uniform policy framework to promote the rapid deployment of small cell legislation.

- Remove the reference to “solely-owned” state or county poles.

Justification: 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. Importantly, the stakeholders have agreed to language that addresses that concern, which is contained in the proposed SD1.

- Remove the term “broadband” next to the term “wireless” throughout HB 2651, HD2.

Justification: The purpose of adding “broadband” next to “wireless” is likely aimed at broadening the scope of the bill to include wireline broadband companies such as HawTel. Adding “broadband” also creates confusion and is more cleanly and clearly addressed by language agreed to by stakeholders, including HawTel, in the proposed SD1. That language defines “communications service” broadly and then uses that term throughout the bill.

- Re-insert the provision from HB 2651 allowing wireless providers the ability to deploy small cells where county ordinance may require undergrounding of utilities.

Justification: By not allowing wireless providers to erect small cells in these areas, wireless providers may be unable to improve coverage. The challenge is substantial, especially in newer developments where electric, cable and telephone facilities are already underground. There are no utility poles on which to install antennas, and unlike the other utilities, antennas cannot be undergrounded. And residents of these undergrounded communities frequently oppose the installation of macro towers, leaving wireless service of poor quality.

- Re-insert the provision from HB 2651 prohibiting exactions unrelated to deployment of small cells.

Justification: 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.

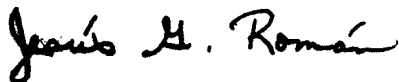
- Remove subsection (9)(F)-(I) of Section 5 which provides additional reasons for denial of an application.

Justification: 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.”

We have attached a proposed HB 2651, SD1, with amendments agreed upon by several stakeholders for your consideration. Having worked with several of the stakeholders on these amendments, we believe the proposed SD1 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, HD2 will provide the vehicle to achieve those objectives.

Mahalo,



Jesús G. Román

attachment

---

---

# A BILL FOR AN ACT

RELATING TO WIRELESS BROADBAND FACILITIES.

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

SECTION 1. 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 apply only to activities of a wireless or communications service provider to deploy small ~~broadband or~~ wireless facilities and to modified or replaced State or county solely-owned utility poles associated with small ~~broadband or~~ 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 ~~broadband or~~ 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 communications service provider.

"Application" means a request submitted by an applicant to the State or county for a permit to collocate small ~~broadband or~~ wireless facilities or to approve the installation or modification of a State or county solely-owned utility pole.

"~~Broadband or~~ wireless facility" means a radio transceiver and antenna at a fixed location that physically enables wireless



communications service, using licensed or unlicensed spectrum, to be provided between user equipment and a communications network, including small wireless facilities and micro wireless facilities, but not including:

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

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

"~~Broadband-or~~ 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 ~~broadband-or~~ wireless facilities, other than a structure designed solely for

the collocation of small ~~broadband or~~ wireless facilities. "~~Broadband or~~ wireless support structure" shall not include a utility pole.

"Collocate" means to install, mount, maintain, modify, operate, or replace ~~broadband or~~ wireless facilities on or adjacent to a ~~broadband or~~ 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 269-1; or a ~~broadband or~~ 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 ~~broadband or~~ 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 ~~broadband or~~ wireless facilities" means a small ~~broadband or~~ 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 ~~broadband or~~ wireless facilities" means a ~~wireline or~~ wireless facility or other facility providing communications services that ~~consists only of a radio transceiver and antenna that could both fit within an enclosure of no more than six~~

cubic feet in volume meets one or both of the following qualifications:

- (1) Each communication services provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and/or
- (2) All other equipment associated with the 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 solely-owned by the State or a county, which may be 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 ~~broadband or~~ wireless support structure that will substantially change the physical dimensions of the utility pole or ~~broadband 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 ~~broadband or~~ wireless facility, or its design or site location can be implemented without a reduction in the functionality of the small ~~broadband or~~ 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 ~~broadband or~~ wireless facilities. "Utility pole" shall not include ~~broadband or~~ 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~~service or any other electronic communications by coaxial, fiber optic cable, or any other wire.~~

§ -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.

**§ -43 Zoning.** Small ~~broadband-or~~wireless facilities and associated modified or replaced utility poles subject to the height limits in section -4(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.

**§ -54 Use of the right of way for small ~~broadband-or~~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 ~~broadband-or~~wireless facilities or 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 facilities shall be constructed and maintained so as not to obstruct the usual travel, public safety, or other factors set forth in section ~~5(9)~~ 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 ~~65~~. 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 broadband or 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 broadband or wireless facility, in the right of way, and shall not otherwise be a general authorization to occupy and use the right of way. No broadband or wireless provider, or affiliate thereof, shall furnish video programming services directly to subscribers via, in whole or in part, any communications facility deployed in the right of way without first obtaining a cable franchise subject to the provisions of chapter 440G. As used in this subsection, "video programming services" means the provision of video programming directly to subscribers, without regard to delivery technology, via~~



~~communications facilities located in, over, 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 United States Code section 522(6). The term does not include over-the-top or online video programming offerings accessible to internet users via the public internet.~~

(c) Each modified or replaced utility pole installed in the right of way for the collocation of small ~~broadband or~~ 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 Act \_\_\_\_\_, Session Laws of Hawaii 2018, located within five hundred feet of the modified pole in the same right of way; or
- (2) Fifty feet above ground level.

New small ~~broadband or~~ 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 Act \_\_\_\_\_, Session Laws of Hawaii 2018. Subject to this section and section ~~-65~~, a ~~broadband or~~ wireless provider may construct, modify, and maintain a utility pole or small ~~broadband or~~ wireless facility that exceeds these height limits along, across, upon, and under the right of way, subject to applicable zoning regulations.

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

(e) ~~Subject to section 5, and except for facilities excluded from evaluation for effects on historic properties under title 47 Code of Federal Regulations section 1.1307(a)(4),~~ Where the 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 ~~broadband or~~ wireless facility for purposes of the size restrictions.

(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.

(~~gf~~) 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.

(~~hg~~) The State or county may require a ~~broadband-or~~ wireless provider to repair all damage to the right of way directly caused by the activities of the ~~broadband-or~~ 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 ~~broadband-or~~ wireless provider fails to make the repairs required by the State or county within thirty days 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.

§ ~~-65~~ **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 ~~broadband-or~~ wireless facility or install a modified or replaced utility pole associated with a small ~~broadband-or~~ wireless facility as provided in section ~~-54~~; provided that the permits are of general applicability and do not apply exclusively to ~~broadband-or~~ 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~~The applicant shall provide a geographical description of the project area;~~
- (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~~The applicant shall provide a listing and description of the utility poles, light standards, buildings, and broadband or wireless support structures included in the project for the~~

~~installation, mounting, operation, and placement of broadband or wireless facilities, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures;~~

~~(3) The applicant shall provide a description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure;~~

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

(45) The State or county shall not limit the placement of small ~~broadband or~~ wireless facilities by minimum separation distances; provided that the State or county may limit the number of small ~~broadband or~~ wireless facilities placed on a single utility pole;

(56) The State or county may require an applicant to include an attestation that the small ~~broadband or~~ wireless facilities will be operational for use by a ~~broadband or~~ 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;

(~~67~~) Within ~~thirty-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 (~~78~~) is tolled from the time the State or county sends the notice of incompleteness to the time the applicant provides the missing information;

(~~78~~) 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 ninety days of receipt of the application. The processing deadline may be tolled in accordance with paragraph (~~67~~) or by agreement of the applicant and the State or county;

(~~89~~) The State or county may deny a proposed collocation of a small ~~broadband-or~~ wireless facility or the construction or modification of a modified or replaced utility pole that meets the requirements in section ~~-54~~(c) 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 ~~broadband or~~ wireless facility from serving any location;
- (E) Fails to comply with building or other applicable codes;

~~\_\_\_\_\_ (F) Could cause the installation of the facilities 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;~~

~~\_\_\_\_\_ (G) Could cause the utility poles and light standards to be unable to bear the additional weight of the facilities and the facilities could pose a hazard or obstruction to the public;~~

~~(H) Could allow the project equipment and broadband and wireless facilities to interfere with government systems for public safety communication operations or emergency services; and~~

~~(I) Causes the load carrying capacity of the State or county owned utility pole, building, or structure, to exceed seventy per cent as determined by the appropriate State or county agency.~~

(910) 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 ninety days. Any subsequent review shall be limited to the deficiencies cited in the original documentation noting the basis for denial;

(11) An applicant seeking to collocate multiple small ~~broadband or~~ wireless facilities within a threetwo-mile radius may, at the applicant's discretion, file a



consolidated application and receive a single permit for the collocation of no more than twenty-five small ~~broadband or~~ wireless facilities; provided that the denial of the collocation of one or more small ~~broadband or~~ wireless facilities in a consolidated application shall not delay processing of any other small ~~broadband or~~ 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~~2) 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 ~~broadband or~~ wireless facilities and any associated utility pole

covered by the permit for a period of not less than twenty years, which shall be renewed for equivalent durations so long as the facilities and pole are in compliance with the criteria set forth in this subsection; provided that the State or a county may remove a utility pole if it decides to do so;

(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 or permit, or charge any rate, fees, or compensation for:

- (A) Routine maintenance;
- (B) Replacement of small ~~broadband or~~ wireless facilities with small ~~broadband or~~ 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 ~~broadband or~~ 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 ~~-54~~ and this section; and

(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.

**§ ~~-76~~ Access to state or county utility poles within the right of way.** (a) A person owning, managing, or controlling state or county utility 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 communications services provided by the collocating person.

(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.

(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 ~~broadband-or~~ wireless provider or communications service provider, including pole replacement if necessary, within one hundred and twenty days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within one hundred and twenty 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 ~~broadband-or~~ wireless ~~or~~ provider and communications service provider within the right of way.

**§ -7 Public notice.** Prior to collocating a small ~~broadband-or~~ wireless facility or installing a modified or replaced utility pole associated with a small ~~broadband-or~~ wireless facility, a ~~broadband-or~~ wireless provider shall

provide notice to the surrounding community of such collocation or installation.

§ -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.

§ ~~-98~~ **Local authority.** (a) 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 neither the State nor a county shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small ~~broadband or~~ 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 a county to require ~~broadband or~~ wireless facility deployment or to regulate ~~broadband or~~ wireless services.

~~(b) 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 440C 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.~~

§ ~~-109~~ **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 ~~broadband or~~ 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, ~~broadband or~~ wireless providers may install and operate small ~~broadband or~~ wireless facilities and utility poles pursuant to this chapter.

§ ~~-10~~ **Indemnification, insurance, and bonding.** (a) The State or county may adopt indemnification, insurance, and bonding requirements related to small ~~broadband or~~ wireless facility permits subject to this section.

(b) The State or county may require a ~~broadband or~~ 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 ~~broadband or~~ wireless provider's actions in installing, repairing, or maintaining any ~~broadband or~~ wireless facilities or utility poles.



(c) The State or county may require a ~~broadband-or~~ 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. If insurance coverage is required, the State or county may require a ~~broadband-or~~ wireless provider to furnish proof of insurance prior to the effective date of any permit issued for a small ~~broadband-or~~ wireless facility.

(d) The State or county may adopt bonding requirements for small ~~broadband-or~~ 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 ~~broadband-or~~ wireless facilities, including those for which the State or county determines a need for the small ~~broadband-or~~ 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 ~~broadband-or~~ wireless provider in over twelve months; provided that the ~~broadband-or~~ wireless provider has received reasonable notice from the State or county of the non-compliance listed and an

opportunity to cure the delinquency of the rates or fees.

Bonding requirements shall not exceed \$200 per small ~~broadband or~~ wireless facility. For ~~broadband or~~ wireless providers with multiple small ~~broadband or~~ 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 construction and operation of 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[;], including ~~broadband-or~~ wireless facilities; 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 "~~broadband-or~~ wireless facilities" shall have the same meaning as in section 165-2; 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;
- (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 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION ~~6~~. This Act shall take effect on July 1, 3000; provided that:

~~\_(1) The amendment made to section 205-4.5, Hawaii Revised Statutes, by this Act shall not be repealed when section 205-4.5, Hawaii Revised Statutes, is reenacted on June 30, 2019, by section 3 of Act 52, Session Laws of Hawaii 2014;~~

~~(2) This Act shall be repealed on June 30, 2020;~~

~~(3) On June 30, 2020, section 205-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act;~~

~~(4) On June 30, 2020, section 205-4.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of Act 52, Session Laws of Hawaii 2014; and~~

~~(5) T~~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.*



# Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Lisa H. Paulson**

Executive Director

Maui Hotel & Lodging Association

on

HB2651 HD2

**Relating To Wireless Broadband Facilities**

COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

**Wednesday, March 14, 2018, 1:15 pm**

**Conference Room 414**

Dear Chairs Wakai and Baker; Vice Chairs Taniguchi and Tokuda; 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 HD2**, 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 broadband or wireless service providers to install broadband or wireless facilities on state or county solely-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.



**HB-2651-HD-2**

Submitted on: 3/13/2018 11:40:37 AM

Testimony for ETT on 3/14/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

Good afternoon, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on **HB2651 HD2**, relating to Small Broadband or Wireless Facilities; Broadband or Wireless Facilities; Economic Development; State or County Solely-owned Utility Poles; and Permits.

The OCC Legislative Priorities Committee is in favor of **HB2651 HD2** and supports its passage.

**HB2651 HD2** is in alignment with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it (1) establishes a process to upgrade and support next-generation wireless broadband infrastructure throughout the State; (2) establishes a permitting, application, review, and approval process for broadband or wireless service providers to install broadband or wireless facilities on state or county solely-owned utility poles, or install associated utility poles, in the right of way; and (3) applies to permit applications filed with the State or county after 12/31/2018.

Specifically, the DPH Platform states that improvements to infrastructure are critical to providing a healthy base to the Hawaiian economy. As such, State and county governments have a key role to play in setting reasonable standards for industry and trade. (Platform of the DPH, P. 1, Lines 50, 44-45 (2016)).

"We recognize that the responsible use and development of technology in all its manifestations offers immense potential for our community, government, including institutions of higher education and business sectors. We encourage synergistic research, development, commercialization and educational programs to promote technological proficiency and innovation. In particular we support Science, Technology, Engineering and Math (STEM) initiatives in our public, private and charter schools as these prepare the next generation to address the needs of our state. We also support programs that facilitate incubator, i.e. start-up, opportunities for new and promising technologies, and encourage the local retention of our intellectual resources.(Platform of the DPH, P. 3, Lines 149-156 (2016)).

Given that **HB2651 HD2** (1) establishes a process to upgrade and support next-generation wireless broadband infrastructure throughout the State; (2) establishes a permitting, application, review, and approval process for broadband or wireless

service providers to install broadband or wireless facilities on state or county solely-owned utility poles, or install associated utility poles, in the right of way; and (3) applies to permit applications filed with the State or county after 12/31/2018, it is the position of the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Text/Tel.: (808) 258-8889