



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
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JI SOOK KIM
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TO THE HOUSE COMMITTEE ON
INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Date: Wednesday, March 15, 2017
Time: 9:00 a.m.

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

TO THE HONORABLE TAKASHI OHNO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Ji Sook “Lisa” Kim, and I am the Cable Television Administrator at the Department of Commerce and Consumer Affairs (the “Department”). The Department appreciates the opportunity to provide comment on S.B. No. 1201, S.D. 2, which establishes provisions relating to the siting of small wireless facilities and small wireless facilities networks.

The duties of the Department include supporting efforts and making recommendations to enhance and facilitate deployment of, and access to, competitively priced broadband services across the State. Thus, the Department strongly supports permit streamlining that may facilitate deployment of both wireless and wireline facilities. The Department notes that state and federal laws currently exist to facilitate timely and nondiscriminatory access to rights of way for both wireline and wireless telecommunications providers. These include state and federal laws creating permitting “shot clocks;” federal law requiring nondiscriminatory access to poles, ducts, conduits, and rights-of-way; and federal law allowing for nondiscriminatory and fair and reasonable compensation for such access where publicly disclosed. The federal laws are intended to provide nondiscriminatory, streamlined access for all types of technology, without overriding permitting and other approval processes designed to

protect public health and safety and other public impacts, including interference with other government functions and visual impacts to our communities.

Rather than overriding existing approval processes designed to safeguard public health, safety, and welfare for one type of technology, the Department respectfully suggests that legislation that strengthens and provides enforcement of these existing rules and laws be consistent with federal law and provide for expedited, non-discriminatory deployment for all telecommunications service providers. This may include provisions for “batch permitting” where appropriate; provisions for review on an expedited basis of state and county “shot-clock” laws, Hawaii Revised Statutes § 27-45 and § 46-89, respectively; or extensions of federal law to ensure application to all types of technology and enforcement. The Department has been working with stakeholders, including the Broadband Assistance Advisory Council (“BAAC”), to identify, establish, and/or adopt mechanisms that can support and enhance operation of existing laws and rules, as well as the coordination of government and private, transportation, utilities, and telecommunications projects. This includes the online utilities project notification system being developed by the City & County of Honolulu for management of projects in its rights-of-way, and an online statewide utility pole notification system, reviewed by the BAAC as a deployment best practice, that is currently under discussion by the joint pole owners in the State. These systems can improve communication, accountability, and documentation related to use of rights-of-way and utility pole attachments, respectively, and thereby increase efficiency and facilitate enforcement of timelines required by existing federal and state laws and pole attachment agreements.

With respect to S.B. No. 1201, S.D. 2, because the Department recognizes that permit streamlining must be balanced against appropriate review, the Department defers to those agencies responsible for permitting and other approvals on how the current bill may impact the ability of those agencies to review attachments to infrastructure for health and safety considerations, as well as to minimize visual impacts to our communities. The Department further defers to those agencies that serve as the state and county asset owners and managers for comment on the bill’s impact on their ability to manage, maintain, and preserve those assets and to perform government operations.

Thank you for the opportunity to testify on this bill.



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

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

HOUSE COMMITTEE ON INTRASTATE COMMERCE

Wednesday, March 15, 2017
9:00 A.M.
State Capitol, Conference Room 429

in consideration of
SB 1201, SD2
RELATING TO TECHNOLOGY

Chair Ohno, Vice Chair Choy, and Members of the Committee.

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

DBEDT strongly prefers the language in HB 625, HD3, with further amendments to ensure that county public safety and IT agencies have the ability to evaluate the impacts of small wireless installations and issue permits that protect their equipment.

DBEDT urges the Committee to amend SB 1201, SD2, to incorporate the language in HB 625, HD3, which allows state agencies to evaluate applications for small wireless installations on a geographic basis, plus amending Ch. 46 for county agencies to match the HB 625, HD3 language amending Ch.27.

SB1201, SD2, currently allows applications for up to 25 small wireless installations, an arbitrary number. Instead, DBEDT recommends that both Ch. 27 and Ch. 46 be amended to allow applications to be submitted for geographic areas as follows:

§27- Collocation permits; application, review, approval.

(a) A telecommunications carrier proposing to install broadband infrastructure shall submit an application for a permitted use

permit to a state or county agency with jurisdiction over utility poles, light standards, buildings or structures. The application shall include:

- (1) A geographic description of the project area;
- (2) A listing and description of the utility poles, light standards, buildings, and structures included in the project for the installation, mounting, operation, and placement of broadband infrastructure, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures; and
- (3) A description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure.

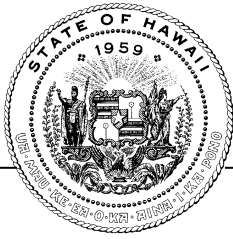
(b) The agency shall evaluate the impact of collocating the broadband infrastructure described in the application to insure that:

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

- (2) The utility poles and light standards are able to bear the additional weight of the equipment and that the equipment is not a hazard or obstruction to the public; and
- (3) The project equipment and broadband infrastructure does not interfere with government systems for public safety communication operations, emergency services.
- (c) The agency shall notify the applicant that:
 - (1) the permit is approved;
 - (2) the permit is approved with modifications; or
 - (3) the application is returned with a list of questions needing to be answered and information needed in more detail.

Expediting permits, not subject to conditional use or special use permit hearings, to install small wireless equipment on state and county poles and light standards by all carriers will help Hawaii residents keep up with the increased speed and capacity needed to remain economically competitive with the rest of the world.

Thank you for the opportunity to offer these comments on SB 1201, SD2.



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON INTRASTATE COMMERCE
Wednesday, March 15, 2017
9:00 AM
State Capitol, Conference Room 429



in consideration of
SB 1201, SD2
RELATING TO TECHNOLOGY

Chair Ohno, Vice Chair Choy, and Members of the House Committee on Intrastate Commerce.

Broadband technology is now a critical part of infrastructure and it is important to support efficient broadband opportunities and to facilitate the deployment of such high-speed broadband technology for the future global connectivity and economic viability of the State. Broadband technology is essential across multi-sector industries and among many benefits, provides opportunities for: enhanced educational opportunities, expansion of telehealth capacity, strengthening safety and civil defense communications, increasing economic competitiveness, addressing consumer privileges, and providing tourism services. The Office of Planning (OP) offers the following comments.

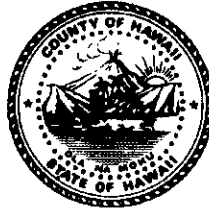
SB 1201, SD2 supports the development of critical infrastructure, establishing a siting process at State and county levels in order to facilitate the deployment of broadband technology by: amending Hawaii Revised Statutes (HRS) Chapter 27 to include a section prohibiting the State from prohibiting, regulating, or charging for the co-location of small wireless facilities or small wireless facilities networks except as provided in Section 2; as proposed; amends HRS Section 27-41.1 to include new definitions while deleting the definition of “wireless service”; amends HRS Chapter 46-4 establishing a process for county rules and classifications regarding co-location of small wireless facilities and small wireless facilities networks; and repeals sections of Act 151, Session Laws of Hawaii (SLH) 2011.

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

However, OP finds that codifying prohibitions on state and county agencies' activities as described in this measure does not enable those agencies with responsibilities in public safety and emergency management to appropriately review and assess potential issues of collocation of small wireless facilities which may conflict with existing or future needs of existing technological infrastructure related to emergency response and communications. Therefore, OP finds that prohibitions for collocation of small wireless facilities may not provide a suitable analysis "ensuring public health, safety, and welfare" as stated above.

Thank you for the opportunity to testify on this measure.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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LATE

March 14, 2017

Representative Takashi Ohno
Intrastate Commerce
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Ohno and members:

**RE: SB 1201, SD2
Relating to Technology**

Thank you for this opportunity to testify against SB 1201, SD2.

Over the past weeks, we have raised objections to various aspects of numerous telecommunication bills. Each time, we have suggested that the bills be kept alive for further discussion, but we now believe that the issues are simply too complex to expect them to be resolved this session. At this point, we would urge that no bill pass this session, and that the Legislature set up a mechanism (by Joint Resolution, study by the Auditor, or some other approach) for further discussion in the interim, with a consensus bill to be presented to next year's Legislature. The installation of telecommunication facilities on county-owned or State-owned property is complicated, far reaching in scope, and raises substantial questions related to fairness and public safety. Our concerns are mirrored by the State and the other counties, and with numerous private sector voices compounding the number of perspectives that must be accommodated, we trust that the legislative process will yield a satisfactory result, but only if given substantially more time.

Our main objection to SB 1201, SD2, remains the same—it still does not protect radio towers/first responder communications. It may give the counties some ability to regulate in the right of way, but those towers are still vulnerable (and probably prime targets for the telecommunications companies because they will get good coverage where we get good coverage).

Among numerous concerns we have is that, if this or any other bill were to pass in present form, the County could not adequately protect against the overburdening of its equipment, which could cause interference with the County's existing equipment or system.

In addition, coerced co-location could interfere with the County's existing and prospective contractual relations, as some County "structures" are on leased or licensed properties that do not allow collocation without a landowner's consent, and landowners may be hesitant to let the County have a structure on their properties if doing so will allow any and all small wireless facilities or small wireless facilities networks to be placed on their properties without their consent. Co-location raises security concerns, concerns about existing equipment being damaged by allowing private entities to do installation and other work on County sites, and concerns about increased use and wear-and-tear on existing structures, equipment, and access routes to rural sites. We do not believe any of the bills a) grant counties immunity for private entities accessing and using county property, b) allow the counties to recoup costs due to a small wireless facility or network's use of counties' utilities, or c) expressly allow counties to require companies that are accessing or using a county's property to assume liability for any damages to existing equipment or structures and to defend and indemnify a county for any such damages.

If the final bill doesn't define "structure," it could be read to allow wireless equipment to be placed on any County owned or operated building.

An earlier draft totally exempted wireless equipment from any County permits. It required the wireless companies to provide notice prior to installation to the DCCA but not to an affected county. It allowed utilities to reject applications but did not provide counties that authority and did not have any process for applications. It required wireless companies to comply with "applicable safety and engineering requirements", but that would be difficult for us to check with no prior notice or permitting process.

Another draft seemed to limit collocation charges to \$20 annually—a giveaway that does not seem to reflect proper stewardship of the public trust. Staff did some brief research and did not see other states giving away public land so freely. Washington State, for instance, has a schedule of fees and regulations in place that looks like a better balance protecting public land.

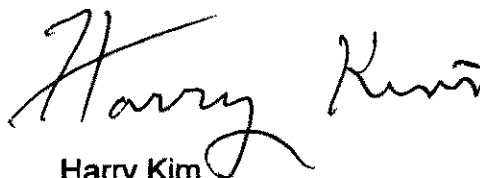
At an absolute minimum, we would ask that any bill that passes provide that an entity proposing the installation, construction, development, or improvement of broadband networks must file a written request to do so with the State and affected

Takashi Ohno
March 14, 2017
Page 3

county, and allow the counties to reject an application if the proposed installation might interfere with or overburden existing equipment.

But for a subject this big with so many long-term ramifications, it would be better to assure that these bills not become law without a good deal of further discussion and amendment. A very real danger to public safety could inadvertently result if, for instance, civil defense operations or emergency and first responder networks were compromised by the anticipated new installations.

Respectfully submitted,

A handwritten signature in black ink that reads "Harry Kim". The signature is written in a cursive style with a large, sweeping "H" and a long, trailing flourish at the end.

Harry Kim
Mayor

SB 1201 SD2

RELATING TO TECHNOLOGY

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

March 15, 2017

Chair Ohno and Members of the Committee:

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

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

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

We also request that the bill be amended on page 4, line 5 and page 5, line 20 by adding the term “*within the state’s designated space*” and page 19, line 21 and page 20, line 9 “*within the county’s designated space*” after the word “standards” to clarify that state and county collocation pole fees shall be limited to the use of the state or county’s designated poles and collocation space.

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

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

Thank you for the opportunity to testify.

**Testimony of Mobilitie, LLC
IN SUPPORT OF SB 1201 SD2, Relating to Technology
Before the House of Representatives Intrastate Commerce Committee
Wednesday, March 15, 2017 9:00 am
Conference Room 429, State Capitol**

Chair Ohno, Vice Chair Choy, Members of the Intrastate Commerce Committee:

Mobilitie supports SB 1201 SD2, which helps to facilitate the siting of small wireless facilities; specifies certain sites where small wireless facilities or small wireless facilities networks may be located, including conditions and maximum fees for location and co-location; and establishes an application process for co-located sites.

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

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

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

Thank you for the opportunity to testify.



March 14, 2017

Honorable Takashi Ohno
Chair, House Committee on Intrastate Commerce
Hawaii State Capitol
Room 332
Honolulu, HI 96813

Honorable Isaac W. Choy
Vice Chair, House Committee on Intrastate Commerce
Hawaii State Capitol
Room 404
Honolulu, HI 96813

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

Dear Chair Ohno and Vice Chair Choy:

On behalf of CTIA, the trade association for the wireless communications industry, I am writing in support of Senate Bill 1201 SD2, related to the deployment of small wireless facilities. The people of Hawaii continue to demand – at skyrocketing levels – access to wireless products and services. This is demonstrated by the fact that, according to the Federal Communications Commission (FCC), there are more wireless connections than there are people in Hawaii, representing a wireless penetration rate of over 100%.¹ The number of wireless subscribers in Hawaii has grown nearly 16% since 2010 amounting to over 1.4 million subscribers and 99.5% of Hawaiians have access to mobile broadband service.^{2,3} These demands from the wireless industry's customers – your constituents – require that wireless networks be updated today and readied for the next generation of wireless networks. Senate Bill 1201 SD2 is a needed mechanism to solve today's problem and help to realize the future.

Small wireless facilities – also known as small cells – are being widely deployed to accommodate this increased demand. Small cells are wireless antennas, typically no more than six cubic feet in volume, and associated equipment generally less than twenty-eight cubic feet, that are being installed on existing structures like utility poles, street lights and traffic signal poles. This global trend is sweeping the country. More than 250,000 small cells are expected to be installed over the next few years in the United States, about the number of traditional “macro” cell sites built over the last 30 years.

Small cells enhance capacity on existing 4G LTE wireless networks by efficiently using scarce spectrum and will be required for higher-frequency 5G spectrum. The benefits provided by 5G

¹ U.S. Census, Population Estimates, at <http://www.census.gov/data/tables/2016/demo/popest/state-total.html>, last accessed 3/14/2017.

² FCC, Voice Telephone Services Report: Status as of June 2015, August 2016, at <https://www.fcc.gov/wireline-competition/voice-telephone-services-report>, last accessed 3/14/2017.

³ Broadband Now, Broadband Internet in Hawaii, at: <http://broadbandnow.com/hawaii>, last accessed 3/14/2017.

are astounding. 5G networks will provide increased capacity to accommodate growing consumer demands and will connect 100 times more devices. Imagine a future where nearly everything is connected to ubiquitous wireless networks at speeds up to 100 times faster than today. Imagine communities that are smarter and more connected. Entire industries, from public safety to transportation, will be transformed.

In fact, Accenture recently published a study noting that 5G wireless networks could create as many as three million jobs and boost the U.S. GDP by nearly \$500 billion over the next seven years.⁴ More specifically, Hawaii communities – from small towns to big cities – that embrace the next-generation of wireless connectivity will realize significant economic benefits. For instance, 5G deployment in a community like North Kona may create over 300 jobs and increase GDP by \$50 million and a community like Honolulu may create nearly 3,500 jobs and increase GDP by \$570 million.⁵ That's the promise of the next-generation of wireless technology. America needs to lead in its deployment.

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

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

Finally, it is important to note that Senate Bill 1201 SD2 places no limitations on a locality's ability to deny a permit based on building, safety or electrical codes or standards. There is no removal of the locality's jurisdiction in this regard.

In closing, since 2010, wireless providers have invested more than \$177 billion to improve their coverage and capacity to better serve Americans, with \$32 billion invested in 2015 alone.⁶ As stated above, more than 250,000 small cells are expected to be installed over the next few years in the United States. The regulatory and land use environment must allow for capital to be

⁴ "How 5G Can Help Municipalities Become Vibrant Smart Cities," Accenture Strategy, Jan 12, 2017. These estimates are based on expected benefits for the United States from next generation wireless networks and some smart city technologies. They are based on per capita application of the estimated national benefits to individual cities (e.g., the number of construction jobs are national averages assigned on a per-capita basis), and may vary depending on the individual city.

⁵ *Ibid.*

⁶ CTIA's Wireless Industry Summary Report, Year-End 2015 Results, 2015, <http://www.ctia.org/industry-data/ctia-annual-wireless-industry-survey>, last accessed 3/14/2017.

efficiently spent as capital tends to flow to places that are ready for investment. Senate Bill 1201 SD2 would send such a signal that Hawaii is ready for investment.

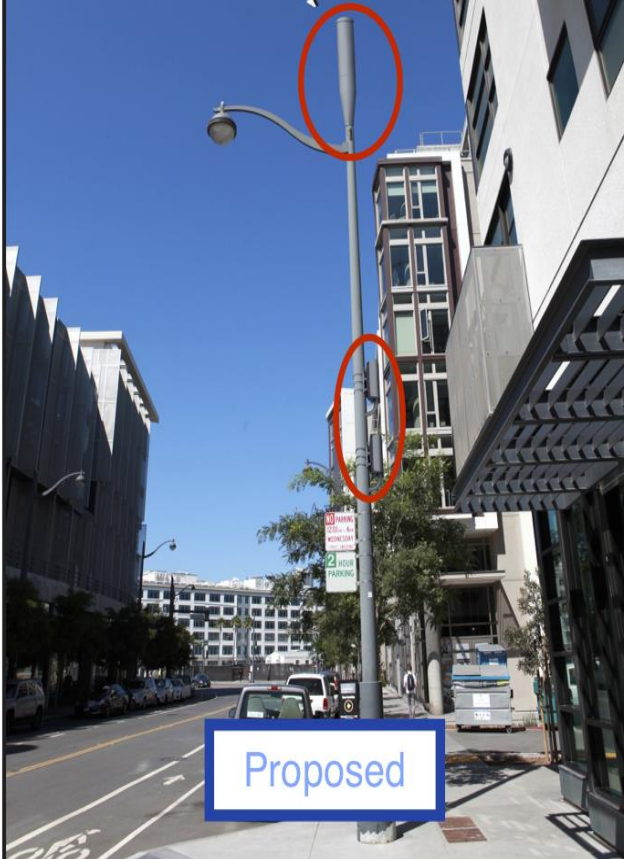
Thank you for the opportunity to submit testimony in support of Senate Bill 1201 SD2 and we strongly urge its approval.

Sincerely,

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

Bethanne Cooley
Director, State Legislative Affairs
CTIA

Example of a Small Cell



5G Benefits: Hawaii



• Honolulu

- nearly 3,500 jobs created
- over \$216 million in Smart City benefits
- \$571 million in estimated GDP growth

• Ewa

- over 2,600 jobs created
- over \$166 million in Smart City benefits
- \$426 million in estimated GDP growth

• North Kona

- over 300 jobs created
- Nearly \$10 million in Smart City benefits
- \$50 million in estimated GDP growth

Source: <https://www.ctia.org/press-releases/5g-powered-smart-city-solutions-will-produce-160-billion-in-benefits-and-savings-for-americans-by-2030>



Joyce Masamitsu
Director, Public Policy & Legal Affairs
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15505 Sand Canyon Avenue
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March 14, 2017

Honorable Takashi Ohno, Chair
House Committee on Intrastate Commerce
Hawaii State Capitol, Room 332
Honolulu, HI 96813

Honorable Isaac W. Choy, Vice Chair
House Committee on Intrastate Commerce
Hawaii State Capitol, Room 404
Honolulu, HI 96813

RE: SENATE BILL 1201, SD2 – Relating to Telecommunications-SUPPORT
Hearing date: March 15, 2017 at 9:00 am

Dear Chair Ohno, Vice Chair Choy and Committee Members:

On behalf of Verizon, I submit this testimony in STRONG SUPPORT of Senate Bill 1201 SD2 and offer a set of amendments as attached, much of which has been negotiated with parties that have expressed concerns with the legislation. The recommended amendments are explained below.

Modernizing the Legal Framework for Small Wireless Facilities

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

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

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

Because small wireless facilities are relatively new, most county or state existing legal frameworks require obtaining the same time-consuming discretionary permits as with a macro tower installation. SB 1201 SD2 would address this problem by creating a legal framework that streamlines the permitting process for small wireless facilities and provides for access to government utility and light poles. This legislation preserves state and local government authority to deny an application that does not meet building, electrical, health, safety and public right of way use permit requirements. Finally, SB 1201 SD2 fairly compensates the state and local government through reasonable and nondiscriminatory cost-based fees consistent with federal pricing standards. Such policy encourages wireless providers to invest in wireless broadband technology in order to bring its benefits to the people of Hawaii.

The 5G Benefits of SB 1201 SD2

The speedy deployment of wireless service and broadband through small wireless facilities is critical to meet current mobile user's data demands as well as the deployment of next generation wireless network: 5G. This new technology—spawned by the release of new “millimeter wave” spectrum—will be truly a game changer. 5G will be 100x faster than the current technology, 4G, and the spectrum has 1/10 the latency of 4G, making response time from a command nearly imperceptible to humans.

Together, ultra-fast speed and super low latency will power telemedicine, remote surgery, remote equipment operation, public safety communications, and enhance safety on the roads by allowing much better pre-crash sensing, enabling vehicles to sense imminent collisions and mitigate or even avoid adverse impacts of a collision. 5G technology will enable simultaneous connections from billions of independent devices and embedded sensors, from cellphones to home appliances to clothing, creating the internet of things (IoT) and enabling “smart city” solutions (such as intelligent lighting, intelligent traffic and smart meters).

SB 1201 SD2 seeks to deliver a state policy framework that strikes the right balance in encouraging ongoing investment in wireless broadband data technology that consumers, business and government increasingly demand, while maintaining the state's and local governments' oversight of the public rights-of-way.

Recommended Amendments

Several interested parties have expressed support for the intent of the bill but lodged certain concerns. Verizon has spoken with most of them in an effort to address the specific concerns while trying to ensure that the purpose of the bill is retained. In that spirit, Verizon recommends adoption of the attached amendments to SB 1201 SD2. For example, Verizon recommends deleting the repeal of Act 151 from this bill. This bill is about modernizing the legal framework regarding small wireless facilities in light of the current framework designed for large macro towers. This bill seeks to streamline the process required for, and speed the deployment of, fixed and mobile wireless services, including mobile broadband. Repealing Act 151 could impact the deployment of broadband projects, the reason that Act was adopted in the first place, making that purpose not germane to this bill.

Verizon has some other substantive amendments it will be happy to discuss during the hearing on SB 1201 SD2.

Mahalo for your consideration.

A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

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

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

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

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

~~(4) Repealing those sections of Act 151, Session Laws of Hawaii 2011, relating to exemptions for broadband service and broadband technology from state and county permitting requirements, that have been codified within the Hawaii Revised Statutes.~~

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

"§27- Siting of small wireless facilities and small

wireless facilities networks. (a) The State shall not prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks, except as provided in this section; provided that this section shall not be construed to obviate or otherwise waive the right of the State to require a license, franchise, or other agreement to access the right of way more broadly to install wireline broadband backhaul facilities, or to attach coaxial or fiber-optic cable between poles. Small wireless facilities and small wireless facilities networks shall be deemed permitted uses not subject to zoning review, and no special use or conditional use permit shall be required, for their location on:

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

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

(c) Wireless providers shall have the right to co-locate small wireless facilities on state utility poles, state

structures, and light standards. The State may require building permits or other nondiscretionary permits for the co-location of small wireless facilities and small wireless facilities networks; provided that permits are of general applicability. The State shall receive applications to process and issue permits and approvals in accordance with applicable law, including section 27-45 and chapter 269, and subject to the following requirements:

- (1) Applicants shall not be required to perform any services, including restoration work not directly related to the co-location, to obtain approval for applications;
- (2) Applications may be denied only if the application does not meet applicable laws or rules regarding construction in the public rights-of-way or building or electrical codes or standards; provided that codes and standards are of general applicability. The State shall document the basis for any application denial, including the specific code provisions or standards on which the denial was based; and
- (3) An applicant for a small wireless facilities network involving no greater than twenty-five individual small wireless facilities of a substantially similar design shall be permitted, upon request by the applicant, to

file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of a small wireless facilities network instead of filing separate applications for each individual small wireless facility, provided however, that denial of any site or sites within a consolidated application shall not affect other sites submitted in the same application.

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

(e) The State shall authorize but shall not require a wireless provider or wireless provider's licensed contractor to apply for or obtain a permit to:

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

~~(f) Except as provided in this chapter or as required by section 440G-8 or federal law, the State shall not adopt or enforce any regulations on the placement or operation of wireless facilities in the right of way where the entity is already authorized by a franchise or other authorization to operate throughout the right-of-way, and shall not regulate wireless communications services or impose or collect fees on wireless communications services unless expressly required by state or federal statute."~~

SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is amended by adding eleven new definitions to be appropriately inserted and to read as follows:

"Co-location" means the installation, mounting, maintenance, modification, operation, or replacement of wireless facilities on a tower, utility pole, light standard, or other structure ~~existing on the effective date of this Act for the purpose of transmitting or receiving radio frequency signals for communications purposes.~~

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

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

"Micro wireless facilities" means small wireless facilities that are no larger in dimension than twenty-four inches long, fifteen inches in width, twelve inches in height, and that has an exterior antenna, if any, no longer than eleven inches.

"Small wireless facilities" means wireless facilities that meet the following qualifications:

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

- (2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:
- (A) Twenty-eight cubic feet for co-locations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;
 - (B) Twenty-one cubic feet for co-locations on all pole structures, including but not limited to light poles, traffic signal poles, and utility poles, that can support fewer than three providers;
 - (C) Thirty-five cubic feet for non-pole co-locations that can support at least three providers; or
 - (D) Twenty-eight cubic feet for pole co-locations that can support at least three providers.

"Small wireless facilities network" means a collection of interrelated small wireless facilities designed to deliver wireless communications service. "Small wireless facilities network" does not include wires or cables used for wireline backhaul or coaxial or fiber-optic cable between utility poles, or that is otherwise not immediately adjacent to ~~and-or~~ directly associated with a particular antenna.

"Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric

service, lighting, traffic control, signage, or similar functions.

"Wireless communications service" means any wireless service using licensed or unlicensed spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided using wireless facilities. "Wireless communications service" does not include wireline backhaul service.

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

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

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

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

(3) Authorized in accordance with chapter 269 to provide facilities based telecommunications services in the State, and builds, installs, operates, or maintains facilities and equipment used to provide wireless service.

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

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

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

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the

districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

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

- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and
- (12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

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

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

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

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

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

section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

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

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

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

(e) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition,

no zoning ordinance shall provide for the elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.

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

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

(1) Small wireless facilities and small wireless facilities networks shall be deemed permitted uses ~~not subject to zoning review~~, and no special use or

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

- (A) All public rights-of-way and property;
- (B) All land in the rural or agricultural districts pursuant to chapter 205; and
- (C) All land in the urban district pursuant to chapter 205;

(2) Small wireless facilities and small wireless facilities networks may require special use or conditional use permits where such facilities are located in the conservation district pursuant to chapter 205;

(3) Wireless providers shall have the right to co-locate small wireless facilities on county-owned utility poles, structures, and light standards, as defined in section 27-41.1. Any county may require building permits or other nondiscretionary permits for the co-location of small wireless facilities and small wireless facilities networks; provided that permits are of general applicability. A county shall receive applications to process and issue permits and approvals in accordance with applicable law, including section 46-89 ~~and chapter 269~~, and subject to the following requirements:

- (A) Applicants shall not be required to perform any services, including restoration work not directly related to the co-location, to obtain approval for applications;
- (B) Applications may be denied **only** if the application does not meet applicable laws or rules regarding construction in the public rights-of-way or building or electrical codes or standards; provided that codes and standards are of general applicability. A county shall document the basis for any application denial, including the specific code provisions or standards on which the denial was based; and
- (C) An applicant for a small wireless facilities network involving no greater than twenty-five individual small wireless facilities of a substantially similar design shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of a small wireless facilities network instead of filing separate applications for each individual small wireless facility **provided however, that denial of any site**

or sites within a consolidated application shall not affect other sites submitted in the same application;

- (4) A wireless provider or a wireless provider's licensed contractor may co-locate small wireless facilities and small wireless facilities networks on county structures, utility poles, and light standards located within the land identified in paragraph (1)(A) to (C) subject to reasonable rates, terms, and conditions, if such rates, terms, and conditions are required by the county ~~for similar types of commercial use~~. County utility pole co-location requests shall be processed in the same manner as permit applications under paragraph (3). The annual recurring rate to co-locate a small wireless facility on county structures, utility poles, and light standards shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission pursuant to title 47 United States Code section 224(d); provided that if the Federal Communications Commission adopts a rate formula for small wireless facility attachments, that rate formula shall apply;

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

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

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

~~(6) Except as provided in this chapter or as required by section 440G 8 or federal law, a county shall not adopt or enforce any regulations on the placement or operation of wireless facilities in the right of way where the entity is already authorized by a franchise or other authorization to operate throughout the right of way, and shall not regulate wireless communications services or impose or collect fees on wireless communications services unless expressly required by state or federal statute.~~

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

~~SECTION 5. Act 151, Session Laws of Hawaii 2011, section 2, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, as amended by section 1 of Act 193, Session Laws of Hawaii 2016, is repealed.~~

~~["SECTION 2. Beginning January 1, 2012, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect~~

~~eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:~~

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

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

~~A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of~~

~~Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure."]~~

~~SECTION 6. Act 151, Session Laws of Hawaii 2011, section 3, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, is repealed.~~

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

- ~~(1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement;~~
- ~~(2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and~~

~~(3) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.~~

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

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

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

SECTION 8. This Act shall take effect on July 1, 2050.

Report Title:

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

Description:

Specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act. Provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location. ~~Repeals those sections of Act 151, Session Laws of Hawaii 2011, that have been codified within the Hawaii Revised Statutes.~~ Effective 7/1/2050. (SD2)

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

**TO THE HOUSE COMMITTEE ON
INTRASTATE COMMERCE**

**TESTIMONY REGARDING
SB1201 SD 2 RELATING TO TECHNOLOGY**

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

**March 15, 2017
9:00 AM**

TO THE HONORABLE TAKASHI OHNO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

I appreciate the opportunity to submit testimony on behalf of Charter Communications, the overall corporate parent of Oceanic Time Warner Cable, regarding both our company and pending legislation concerning small cell deployment.

At the outset, I want to highlight Oceanic's commitment to robust broadband deployment in Hawaii. Oceanic is the single largest provider of high-speed broadband and video throughout the state. We currently have deployed over 2,900 Wi-Fi hotspots throughout the Islands, with a commitment to provide an additional 1,000 hotspots by 2020. Oceanic has also committed to raise our base or floor-level broadband speed to 60 MBs by May of this year. Additionally, Oceanic is also planning to introduce by May Spectrum Internet Assist, our low-cost broadband program for low-income families and seniors, which at 30MBs, will be the fastest program of its kind offered by any broadband provider, and we believe will have a tremendous positive impact on the communities we serve in Hawaii.

We are concerned that SB 1201 SD2 would create an uneven playing field between cable and telecommunications providers in the state by crafting special rules for the placement of small wireless facilities in the public rights-of-way. Access to public rights-of-way should be equitable for all occupiers. SB 1201 SD2 would do nothing to spur wireless broadband deployment, which are already advancing in the current regulatory environment. There is no evidence that this legislation is needed or that it will advance a legitimate public policy goal.

In order to access the public rights-of-way Charter, as a cable operator, is required to obtain a franchise, which involves a lengthy vetting process with DCCA. We are also subject to stringent safety and other obligations, including the requirement to pay franchise fees in Hawaii of 5% of gross revenue for occupancy and use. This equates to millions of dollars each year in payments.

This legislation is intended largely to allow unfranchised entities to circumvent the right-of-way authorization process, bypassing the procedure applicable to cable providers.

Cable operators should not be treated discriminatorily simply because we use the public rights-of-way to offer video/cable service, and our customers should not have to pay for us to use the public rights-of-way when others do not. Direct Broadcast Satellite companies like Dish Network and DirecTV already enjoy an advantage because they are not subject to any state or local regulation applicable to cable operators. Absent the exclusion of wireline backhaul from the definition of “small wireless facilities network” that was introduced in SB1201 SD2, this legislation would go one step further, allowing companies that are building a series of *wireline* networks to circumvent the processes applicable to cable providers simply because they deliver content to customers over a wireless device like a mobile phone.

The expedited process contemplated by this legislation does not apply only to the antennas themselves. The definition of “small wireless facilities” in SB 1201 SD2, for example, appears to include all “associated equipment”, which seems to encompass “cable runs for the connection of power and other services.” Use of the term “associated equipment” for the provision of “other services” was a clear example of the bill’s effort to broaden its application beyond the stated purpose of wireless facility deployment and cover all uses of the public rights-of-way, including a series of wireline connections between wireless antenna sites.

This bill also gives wireless providers the right to co-locate their wireless facilities on State and county utility poles, structures and light standards (including street light poles), bypassing the procedures and conditions currently imposed on cable providers.

The bill is also unfair with regard to payment for the use of the public rights-of-way. The expedited wireless process severely limits fees while cable operators pay millions of dollars in franchise fees each year (not to mention cable’s provision of valuable public, educational and government programming and other obligations that flow from our cable authorization). We think reduced fees for wireless services would be appropriate but only if the Legislature were willing to consider a comprehensive reform of all fees and obligations required of cable and telecommunications providers for access to the public rights-of-way.

Finally, it is important to note that requiring underlying right-of-way authority also ensures better coordination among the entities within the public rights-of-way (electric, telephone, cable) when plant and network are installed, repaired or replaced. Entities that are allowed to place equipment in the public rights-of-way without such authority can easily jeopardize the network and services of other providers.

SB 1201 SD2 makes significant changes to the current process for public right-of-way access and creates an uneven playing field. We ask the Committee to hold consideration of the bill until it and all interested stakeholders have had an opportunity to study and review the implications of this bill and provide stakeholders, like Charter, an opportunity to more fully detail issues and concerns. Any effort to consider this issue should be the subject of much deeper consideration and broader study rather than moving quickly to pass unnecessary legislation that could result in unintended consequences.

However, in the event the Committee decides to pass this measure, we ask that the Committee consider and incorporate the amendments included in the attached proposed amendments to SB1201 SD2, which seek to further address fundamental concerns of disparate treatment among providers of like services, as described in greater detail above. We note that several of the amendments proposed by the Senate represent significant strides toward addressing some of these concerns and we ask that the Committee consider avoiding changes, beyond the scope of these proposed amendments, which might reverse those improvements. The attached draft also narrows the repeal of Act 151 to repeal only Section 2, as Section 2 is unnecessary and is somewhat inconsistent with portions of HRS Chapters 27 and 46.

A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

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

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

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

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

- (1) Establishing limits on the State's and counties' authority to prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks;

- (2) Specifying certain sites where small wireless facilities or small wireless facilities networks may be located, including conditions and maximum fees for location and co-location;
- (3) Establishing an application process for co-location; and
- (4) Repealing ~~those~~ sections of Act 151, Session Laws of Hawaii 2011, relating to certain exemptions for broadband service and broadband technology from state and county permitting requirements, that have been ~~codified within the Hawaii Revised Statutes~~ established in Act 151, as amended.

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

“§27- **Siting of small wireless facilities and small wireless facilities networks.** (a) The State shall not prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks, except as provided in this section; provided that this section shall not be construed to confer authorization for the installation, placement, maintenance or operation of a communications facility, other than a small wireless facility, or the provisions of a communications service, in the right-of-way. ~~obviate or otherwise waive the right of the State to require a license, franchise, or other agreement to access the right of way more broadly to install wireline broadband backhaul facilities, or to attach coaxial or fiber optic cable between poles.~~ Small wireless facilities and small wireless facilities networks shall be deemed permitted uses, and no special use or conditional use permit shall be required, for their location on:

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

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

(c) Wireless providers shall have the right to co-locate small wireless facilities on state utility poles, state structures, and light standards. The State may require building permits or other permits for the co-location of small wireless facilities and small wireless facilities networks; provided that permits are of general applicability. The State shall receive applications to process and issue permits and approvals in accordance with applicable law, including section 27-45 and chapter 269, and subject to the following requirements:

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

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

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

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

(e) The State shall ~~authorize but shall~~ not require an ~~application, nor any permits or fees, wireless provider or wireless provider's licensed contractor to maintain apply for or obtain a permit for~~to:

(1) ~~Maintain, repair, or the~~ replacement of ~~the provider's~~ small wireless facilities and small wireless facilities networks with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities; or

(2) ~~the i~~Installation, placement, maintenance~~ain~~, operation~~e~~, or replacement of micro wireless facilities that are suspended on ~~messenger~~ cables that are strung between existing utility poles in compliance with national safety codes.

(f) Except as provided in this chapter or as ~~specifically authorized required~~ by section 440G-8 or federal law, the State ~~shall~~may not (1) adopt or enforce any regulations on the placement or operation of wireless facilities in the right-of-way ~~by any provider authorized by law, other than as granted by this chapter, to operate in the right-of-way, or (2) where the entity is already authorized by a franchise or other authorization to operate throughout the right of way,~~

~~and shall not~~ regulate any wireless communications services or impose or collect any taxes, fees, or charges on wireless communications services ~~unless not specifically expressly required by state or federal statute~~ authorized under applicable law.”

SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is amended by adding eleven new definitions to be appropriately inserted and to read as follows:

“Co-location” means the installation, mounting, maintenance, modification, operation, or replacement of wireless facilities on or adjacent to a tower, utility pole, light standard, or other structure existing on the effective date of this Act for the purpose of transmitting or receiving radio frequency signals for communications purposes.

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

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

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

“Small wireless facilities” means wireless facilities that meet the following qualifications:

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

- (2) All other wireless equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:
- (A) Twenty-eight cubic feet for co-locations on all non-pole structures, including but not limited to buildings and water tanks, that can support fewer than three providers;
- (B) Twenty-one cubic feet for co-locations on all pole structures, including but not limited to light poles, traffic signal poles, and utility poles, that can support fewer than three providers;
- (C) Thirty-five cubic feet for non-pole co-locations that can support at least three providers; or
- (D) Twenty-eight cubic feet for pole co-locations that can support at least three providers.

“Small wireless facilities network” means a collection of interrelated small wireless facilities designed to deliver wireless communications service. “Small wireless facilities network” does not include wires or cables used for wireline backhaul or coaxial or fiber-optic cable between utility poles, or that is otherwise not immediately adjacent to and directly associated with a particular antenna.

“Utility pole” means a pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions.

“Wireless communications service” means any wireless service using licensed or unlicensed spectrum, including the use of wi-fi, whether at a fixed location or mobile, provided using wireless facilities. “Wireless communications service” does not include wireline backhaul service.

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

~~(1) The structure or improvements on, under, or within which the equipment is co-located;~~

(12) Wireline backhaul facilities; or

(23) Coaxial or fiber-optic cable between utility poles or that is otherwise not immediately adjacent to and directly associated with a particular antenna.

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

(1) A provider of wireless communications service;

(2) A wireless telecommunications service provider, as defined in section 269-16.93(d); or

(3) Authorized in accordance with chapter 269 to provide facilities based telecommunications services in the State, and builds, installs, operates, or maintains facilities and equipment used to provide wireless service.

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

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

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

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner.

Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices.

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

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

- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and
- (12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

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

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

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

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

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

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

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

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

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

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

(g) Neither this section nor any other county law, ordinance, or rule shall prohibit the co-location of small wireless facilities or small wireless facilities networks, as defined in section 27-41.1, except as provided in this section; provided that [nothing set forth in this section shall be construed to authorize any person to \(1\) offer communications service, or \(2\) install, place, maintain, or operate communications facilities, other than small wireless facilities, in the public rights of way. ~~this section shall not be construed confer authorization for the installation, placement, maintenance or operation of a communications facility, other than a small wireless facility, or the provisions of a communications service, in the right-of-way to obviate or otherwise waive the right of the county or State to require a license, franchise, or other agreement to access the right-of-way more broadly to install wireline backhaul facilities, or to attach coaxial or fiber optic cable between utility poles, or that is otherwise not immediately adjacent to and directly associated with a particular antenna:~~](#)

- (1) Small wireless facilities and small wireless facilities networks shall be deemed permitted uses, and no special use or conditional use permit shall be required, for their location on:
 - (A) All public rights-of-way and property;
 - (B) All land in the rural or agricultural districts pursuant to chapter 205; and
 - (C) All land in the urban district pursuant to chapter 205;
- (2) Small wireless facilities and small wireless facilities networks may require special use or conditional use permits where such facilities are located in the conservation district pursuant to chapter 205;
- (3) Wireless providers shall have the right to co-locate small wireless facilities on county-owned utility poles, structures, and light standards, as defined in section 27-41.1. Any county may require building permits or other permits for the co-location of small wireless facilities and small wireless facilities networks; provided that permits are of general applicability. A county shall receive applications to process and issue permits and approvals in accordance with applicable law, including section 46-89 and chapter 269, and subject to the following requirements:
 - (A) Applicants shall not be required to perform any services, including restoration work not directly related to the co-location, to obtain approval for applications;
 - (B) Applications may be denied if the application does not meet applicable laws or rules regarding construction in the public rights-of-way or building or electrical codes or standards; provided that codes and standards are of

general applicability. A county shall document the basis for any application denial, including the specific code provisions or standards on which the denial was based; and

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

(4) A wireless provider or a wireless provider's licensed contractor may co-locate small wireless facilities and small wireless facilities networks on county structures, utility poles, and light standards located within the land identified in paragraph (1)(A) to (C) subject to reasonable rates, terms, and conditions, if such rates, terms, and conditions are required by the county for similar types of commercial use. County utility pole co-location requests shall be processed in the same manner as permit applications under paragraph (3). The annual recurring rate to co-locate a small wireless facility on county structures, utility poles, and light standards shall not exceed the rate produced by applying the formula adopted by the Federal Communications Commission pursuant to title 47 United States Code section 224(d); provided that if the Federal Communications Commission adopts a rate formula for small wireless facility attachments, that rate formula shall apply;

(5) ~~Counties shall authorize but shall not require an application, nor any permits or fees, for a wireless provider or wireless provider's licensed contractor to apply for or obtain a permit to:~~

(A) ~~the Maintain, repair, or replacement of the provider's small wireless facilities and small wireless facilities networks with facilities that are substantially the same, or smaller, in size, weight, and height as the existing facilities;~~ or

(B) ~~the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on messenger cables that are strung between existing utility poles in compliance with national safety codes; and~~

(6) ~~Except as provided in this chapter or as required by section 440G-8 or federal law, a county may not (1) adopt or enforce any regulations on the placement or operation of communications facilities in the rights-of-way by any provider authorized by law, other than as granted in this chapter, to operate in the rights-of-way or (2) regulate any communications services or impose or collect any taxes, fees, or charges not specifically authorized under applicable law.~~

~~shall not adopt or enforce any regulations on the placement or operation of wireless facilities in the right-of-way where the entity is already authorized by a franchise or other authorization to operate throughout the right-of-way, and shall not regulate wireless communications services or impose or collect fees on wireless communications services unless expressly required by state or federal statute.~~

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

SECTION 5. Act 151, Session Laws of Hawaii 2011, section 2, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, as amended by section 1 of Act 193, Session Laws of Hawaii 2016, is repealed.

~~[“SECTION 2. Beginning January 1, 2012, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:~~

- ~~(1) — Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:~~
 - ~~(A) — On existing or replacement utility poles and conduits; and~~
 - ~~(B) — Using existing infrastructure and facilities;~~

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

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

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

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

~~SECTION 6. Act 151, Session Laws of Hawaii 2011, section 3, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, is repealed.~~

~~[STRICKEN MATERIAL SHOWN IN SB1201 SD2, SECTION 6 REMOVED FOR READABILITY]~~

SECTION 67. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 78. This Act shall take effect on July 1, 2050.

Report Title:

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

Description:

Specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act. Provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location. Repeals those sections of Act 151, Session Laws of Hawaii 2011, [relating to certain exemptions for broadband permitting](#)~~that have been codified within the Hawaii Revised Statutes~~. Effective 7/1/2050. (SD2)

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

LATE



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Intrastate Commerce
Wednesday, March 15, 2017 at 9:00 A.M.
Conference Room 429, State Capitol**

RE: SENATE BILL 1201 SD2 RELATING TO TECHNOLOGY

Chair Ohno, Vice Chair Choy, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent** of SB 1201 SD2, which specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act; provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks; describes the application process and rates for co-location; repeals those sections of Act 151, Session Laws of Hawaii 2011, that have been codified within the Hawaii Revised Statutes. .

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

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

Thank you for the opportunity to testify.



**Testimony before the House Committee on
Intrastate Commerce**

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

**Wednesday, March 15, 2017
9:00 a.m., Conference Room 429**

**Senate Bill 1201 SD2
Relating to Technology**

Chair Ohno, Vice Chair Choy, and Members of the Committee:

My name is Paul Nakagawa, and I am testifying on behalf of the Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively, the “Hawaiian Electric Companies”) in support of the intent of SB 1201 SD2.

While we support and encourage the deployment of high-speed broadband infrastructure in Hawaii, and, as an active participant in, the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the State’s broadband initiative, we have strong concerns as a result of our interpretation of SB 1201 SD2 as written. Specifically, it is unclear if the reference to **“state utility poles, state structures, and light standards”** is poles, structures, and light standards solely owned by the state or jointly owned with other entities. Similarly, it is unclear if the reference to **“county-owned utility poles, structures, and light standards”** is poles, structures, and light standards solely owned by the county or jointly owned with other entities. In our discussions with several different stakeholders of this measure, the consensus is that poles solely or jointly owned by the Hawaiian Electric Companies should not be included in this measure. Therefore, we propose the following amendments for clarification and to support this intent:

1. The proposed amendment to SECTION 2, Chapter 27, Hawaii Revised Statutes, §27- Siting of small wireless facilities and small wireless facilities networks, subsection (c), on page 4, line 3 of SB1201 SD2 should be amended to read: **“(c) Wireless providers shall have the right to co-locate small wireless facilities on state utility poles, state structures, and light standards~~[-]~~, provided such utility poles, structures, and light**

standards are not solely owned by or jointly owned with an investor-owned electric utility.”

2. The proposed amendment to SECTION 2, Chapter 27, Hawaii Revised Statutes, §27- Siting of small wireless facilities and small wireless facilities networks, subsection (d), on page 5, line 12 of SB1201 SD2 should be amended to read: ***“(d) A wireless provider or a wireless provider’s licensed contractor may co-locate small wireless facilities and small wireless facilities networks on state structures, state utility poles, and light standards located within the land identified in subsection (a)(1) to (3), subject to reasonable rates, terms, and conditions if such rates, terms, and conditions are required by the State for similar types of commercial use^[.], and provided such structures, utility poles, and light standards are not solely owned by or jointly owned with an investor-owned electric utility.”***

3. The proposed amendment to SECTION 4, Section 46-4, Hawaii Revised Statutes, §46-4 County zoning, subsection (g), paragraph (3), on page 18, line 3 of SB1201 SD2 should be amended to read: ***“(3) Wireless providers shall have the right to co-locate small wireless facilities on county-owned utility poles, structures, and light standards, as defined in section 27-41.1^[.], provided such poles, structures, and light standards are not solely owned by or jointly owned with an investor-owned electric utility.”***

4. The proposed amendment to SECTION 4, Section 46-4, Hawaii Revised Statutes, §46-4 County zoning, subsection (g), paragraph (4), on page 19, line 18 of SB1201 SD2 should be amended to read: ***“(4) A wireless provider or a wireless provider’s licensed contractor may co-locate small wireless facilities and small wireless facilities networks on county structures, utility poles, and light standards located within the land identified in paragraph (1)(A) to (C) subject to reasonable rates, terms, and conditions, if such rates, terms, and conditions are required by the county for similar types of commercial use^[.], and provided such structures, utility poles, and light standards are not solely owned by or jointly owned with an investor owned electric utility.”***

We appreciate the support of the Legislature in hearing and understanding our concerns as we continue to work together with the stakeholders to address these issues.

Thank you for the opportunity to testify on this matter.



LATE

Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 1201 SD2

Relating To Technology

COMMITTEE ON INTRASTATE COMMERCE

Wednesday, March 15, 2017, 9:00 am

Conference Room 429

Dear Chair Ohno, Vice Chair Choy, and Members of the Committee,

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

MHLA is **in support of** SB 1201 SD2, which specifies that the State and counties cannot prohibit, regulate, or charge for the co-location of small wireless facilities or small wireless facilities networks beyond the provisions of this Act. Provides various state and county zoning rules and classifications regarding the co-location of small wireless facilities and small wireless facilities networks. Describes the application process and rates for co-location. Repeals those sections of Act 151, Session Laws of Hawaii 2011, that have been codified within the Hawaii Revised Statutes.

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

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

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



LATE

March 14, 2017

The Honorable Tahashi Ohno
Chair, Intrastate Commerce Committee
Hawaii State Capitol, Room 332

Re: SUPPORT SB 1201 SD2 – Wireless Infrastructure

Dear Representative Ohno,

On behalf of TechNet, which represents the nation's leading technology companies, I write to express support for SB 1201 SD2, which will streamline the time-consuming and expensive permitting process for deploying new wireless technologies like small cells, which are designed to enhance the existing 4G LTE network and create the foundation for 5G.

Breakthroughs in wireless technology have revolutionized communications in our country and have enabled America's innovation economy to flourish. Because we live in a digital world, it is critical for policymakers to embrace policies that recognize the benefits of new technology and to promote ongoing investment in new innovations, especially in the wireless space. Small cells are designed to deliver increased capacity to improved mobile broadband capabilities. These small cells are the building blocks for 5G and will provide up to 100 times faster than speeds we have today. Speeds at this level will power smart city solutions which will enable towns and cities to reduce energy usage, traffic congestion – even lower fuel costs.

The patchwork of rules and processes at the local level are dictating your state's wireless future. The legislature is best equipped to chart the course here. Establishing an innovation-friendly policy framework such as SB 1201 SD 2 is critical for the future of Hawaii and is why TechNet encourages you to support SB 1201 SD 2.

If you have any questions or concerns regarding our position, please do not hesitate to email me at lbennett@technet.org or (916) 769-1769.

Sincerely,

Laura Bennett
Executive Director

cc: Senator Wakai

LATE TESTIMONY

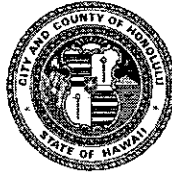
OFFICE OF THE MAYOR CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

ROY K. AMEMIYA, JR.
MANAGING DIRECTOR

GEORGETTE T. DEEMER
DEPUTY MANAGING DIRECTOR



CITY AND COUNTY OF HONOLULU
BEFORE THE COMMITTEE ON INTRASTATE COMMERCE
WEDNESDAY, MARCH 15, 2017; 9:00 AM

TO: THE HONORABLE TAKASHI OHNO, CHAIR
THE HONORABLE ISAAC W. CHOY, VICE CHAIR
AND MEMBERS OF THE COMMITTEE ON INTRASTATE COMMERCE

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

SUBJECT: OPPOSITION TO SB1201, SD2 RELATING TO TECHNOLOGY

The City supports the widespread deployment of 4G and 5G technology on City-owned poles; but opposes SB1201 SD2, as drafted. Our opposition is based on the following concerns:

Public Safety Concerns are Not Adequately Addressed

The City must emphasize that the installation of small cell infrastructure should not adversely impact or compromise public safety. Thus, it is important to ensure that City light standards and utility poles are able to bear the weight of additional broadband equipment, particularly because the added equipment was not likely included in the original design, sizing, and selection of the light standards and utility poles. The City also needs to ensure that the small wireless facilities are securely attached to the City's light standards, structures, and utility poles.

It is equally important to ensure that the installed equipment does not pose a hazard or obstruction to pedestrians, bicyclists, motorists, and people maintaining or repairing other pole mounted equipment, components, or lines. Finally, the equipment must not be placed in sensitive locations that compromise the provision of emergency services or otherwise impact homeland security. Accordingly, the City strongly opposes the language on page 4, lines 3 to 5 and on page 18, lines 3 to 6, which give wireless providers the **right** to place equipment on our poles, structures, and light standards.

This measure does not ensure that a county has sufficient room to deny the placement of equipment on its property due to safety concerns, and/or interference with present or future operations, particularly in the event of an emergency or disaster.

Equipment can be Placed on Any County Structure

This measure allows small wireless facilities and small wireless facilities networks to be placed on any State or county-owned building, utility pole, light standard, and water tower. The State and the counties must be able to retain control over their structures. The wireless carriers should not be allowed to circumvent the City's processes to ensure public safety.

Liability for Injuries and Damages is not Described

The State and the counties should be held harmless for any injuries or damage that result from the installation of small wireless facilities or small wireless facilities networks on State or county-owned property. Language should be added that specifically places any resulting liability on the wireless carriers who have created injury or damage.

Future City Uses of City Property May Be Precluded

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

Visual Blight is Not Addressed

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

The City is also very concerned about adverse visual impacts resulting from the installation of the small cell equipment, especially in our most historic and picturesque areas. This measure does not address this issue. Please see the attached photos that illustrate what could result if wireless carriers are not required to shroud or conceal the equipment to be installed on City and State poles.

Minimize Adverse Impact on Public Use of the Right of Way

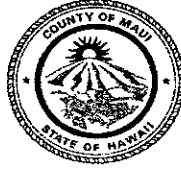
This bill currently does not must ensure that adverse impact to the public from the installation, repair, and maintenance of any equipment installed on City property is

minimized. The equipment placed on City property will involve trenching in the public right-of-way. The City would like to ensure that trenching is minimized and that each wireless carrier that wishes to install equipment on City-owned property does not require trenching and re-trenching of the same area. Similarly, the installation, repair, and maintenance of the equipment should be done at times of the day that minimize adverse impacts to vehicular and pedestrian traffic.

Conclusion

The City has been actively working with the industry and stakeholders to come up with language that addresses the City's concerns. The City looks forward to continuing to collaborate with all interested parties. Thank you for your consideration of this testimony in opposition to SB1201 SD2 as drafted.

ALAN M. ARAKAWA
MAYOR



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E-mail mayors.office@mauicounty.gov

OFFICE OF THE MAYOR
Ke ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

March 14, 2017

TESTIMONY OF ALAN M. ARAKAWA
MAYOR
COUNTY OF MAUI

BEFORE THE HOUSE COMMITTEE ON INTRASTATE COMMERCE

Wednesday, March 15, 2017
9:00 am - Conference Room 429

SB1201, SD2 RELATING TO TECHNOLOGY.

Honorable Takashi Ohno, Chair
Honorable Isaac W. Choy, Vice Chair
Honorable Members of the House Committee on Intrastate Commerce

Thank you for this opportunity to COMMENT on SB1201, SD2.

While the County of Maui supports the intent of the bill, we have some significant concerns. We join with the other counties in their objections to some of the language. For example, we object to placing any of these devices on water tanks as specifically stated on page 8 line 16. All county water tanks are required to have double fencing around each tank thus securing the facility from access without escort. It would be imprudent and costly to allow a small wireless facility on our tanks because if there is access needed on a weekend or after hours, someone would have to be paid overtime to accompany the technicians to the secured site. In fact, ANY secured structure or facility should be exempted from this bill. This is just one of several issues that the County of Maui has with the current language.

I would like to note that the industry has said that they are willing to work with the counties to come up with the language upon which all parties can agree. To date, there has only been one attempt at this type of discussion but we look forward to further talks so that we may support this bill in the near future.

Mahalo for the opportunity to submit this testimony.

Sincerely,

Alan M. Arakawa
Mayor, County of Maui