

SB2611

Measure Title: RELATING TO PUBLIC UTILITIES.

Report Title: Public Utilities Commission; Internet Service Providers;
Regulatory Authority

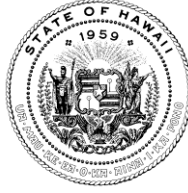
Description: Provides the Public Utilities Commission with explicit authority to regulate internet service providers by amending the definition of telecommunications carrier to include an internet service provider.

Companion: [HB2682](#)

Package: None

Current Referral: ETT, CPH

Introducer(s): DELA CRUZ



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
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**TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Friday, February 23, 2018
11:00 a.m.

**WRITTEN TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE**

SENATE BILL NO. 2611 – RELATING TO PUBLIC UTILITIES.

DESCRIPTION:

This measure provides the Public Utilities Commission (“Commission”) with explicit authority to regulate internet service providers by amending the definition of telecommunications carrier to include internet service providers. The House companion to this bill is HB2682.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) offers comments on this bill.

COMMENTS:

On December 14, 2017, the Federal Communications Commission (“FCC”) adopted (and on January 4, 2018, released) its Declaratory Ruling, Report and Order, and Order In the Matter of Restoring Internet Freedom in WC Docket No. 17-108 (“FCC Order” or “the Order”), in which the FCC repealed Title II utility regulation of broadband

internet service, commonly known as “net neutrality.” The FCC Order, at paragraphs 194 to 204, asserts federal preemption of any state or local regulation to the contrary. The State of Hawaii has joined a lawsuit led by the State of New York against the FCC over the Order. However, until the resolution of that lawsuit, this bill may be premature.

If this committee decides to pass this measure at this time, even though the lawsuit regarding the FCC Order is still pending, then the Consumer Advocate respectfully suggests some additions to the bill to further its intent. This bill proposes to amend Hawaii Revised Statutes (“HRS”) sections 269-1 and 269-16.9 in order to effectuate Commission regulation of internet service providers. However, as set forth in HRS section 269-16.85, the Legislature deemed retail intrastate telecommunications services as fully competitive and exempted telecommunications carriers from most types of cost and service regulation. Therefore, if the Legislature’s intent is for robust Commission regulation of internet service providers, then the Legislature may need to also amend HRS section 269-16.85 to re-regulate telecommunications carriers to some greater extent. If, however, it is not the Legislature’s intent to have full and robust regulation of internet service providers, additional guidance as to the type and extent of regulation would be informative.

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 23, 2018
11:00 a.m.

MEASURE: S.B. No. 2611

TITLE: RELATING TO PUBLIC UTILITIES.

Chair Baker and Members of the Committee:

DESCRIPTION:

Provides the Public Utilities Commission with explicit authority to regulate internet service providers by amending the definition of telecommunications carrier to include an internet service provider.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission notes that there are significant federal preemption issues with regards to regulating internet service providers (“ISPs”). Pursuant to Hawaii Administrative Rules (“HAR”) §§ 6-80-1 and 6-80-2, the application of HAR Chapter 6-80 is limited to intrastate telecommunications services. Conversely, the U.S. Federal Communications Commission’s (“FCC”) declaratory ruling 15-24 established that although broadband services may include an intrastate component, “broadband Internet access service is jurisdictionally interstate for regulatory purposes.”

The FCC further announced its “firm intention to exercise [its] preemption authority to preclude states from imposing obligations on broadband services that are inconsistent with the carefully tailored regulatory scheme” adopted in FCC 15-24.2. Thus, because of these federal mandates, it appears the Commission would face significant preemption

issues in trying to exercise regulatory authority or oversight of internet service providers (“ISPs”).

The Commission further notes that should increased regulation be required for ISPs, additional funding would be required to cover the staffing requirement for both rulemaking, rate case adjudication, and investigative/enforcement activities.

Finally, the Commission is concerned with language in the bill that would limit the Commission’s ability to issue an exemption to an ISP, if determined to be in the public interest. The Commission should retain the discretion to issue exemptions should that be in the public interest, as provided in Hawaii Revised Statutes § 269-16.9. Should the Committee prefer to pass this measure, the Commission requests that this provision be removed from the bill.

Thank you for the opportunity to testify on this measure.



**Testimony of
Gerard Keegan
CTIA
In Opposition to Hawaii Senate Bill 2611**

Before the Hawaii Senate Committee on Commerce, Consumer Protection & Health

February 23, 2018

Chair Baker, Vice-Chair Tokuda, and members of the committee, on behalf of CTIA, the trade association for the wireless communications industry, I submit this testimony in opposition to Hawaii Senate Bill 2611. Over the past decade, mobile broadband services have flourished in the United States and in Hawaii due in part to a national regulatory framework. Hawaii's competitive mobile marketplace and its consumers are best served by ensuring internet service providers (ISPs) can continue to operate within that national framework and not fragmented, state-by-state regulation as proposed in SB 2611.

The wireless industry's competitive nature has spurred an unprecedented period of innovation and consumer adoption of mobile broadband services. This period was ushered in by Congress' decision in 1993 to create a national regulatory framework for wireless. This national framework allowed wireless carriers to offer innovative services and options, like national service plans, which significantly lowered the cost of wireless services and provided more consumers with greater access to wireless.

The national framework has also allowed the wireless industry to quickly respond to ever-changing consumer demands. Since 2003, CTIA's Consumer Code for Wireless Service has been an integral part of delivering superior customer service to wireless consumers. The Code – which is followed in all 50 states – has helped consumers make



informed decisions when selecting wireless service and has contributed to the continued competitiveness within the wireless industry. The wireless industry regularly reviews and updates the Code to ensure it reflects current consumer demands. This type of pro-consumer initiative, which allows carriers to respond to consumers in all 50 states, has served consumers well, has operated within the national framework, and does not raise the regulatory risks proposed in SB 2611.

SB 2611 proposes to allow the Hawaii Public Utilities Commission to regulate ISPs, thus changing the regulatory regime for providers that has delivered benefits to consumers. State-by-state regulation of ISPs will create regulatory uncertainty as broadband is an interstate service not bound by state lines. This type of fragmented regulatory scheme may lead to reduced investment in broadband networks and could hinder innovation in the state. Wireless carriers are planning to deploy 5G, the next generation of wireless services. SB 2611 is unnecessary and creates uncertainty, risking the investment and innovation that will be derived from 5G.

In closing, Hawaii should not impose a new state regulatory regime for ISPs that will create uncertainty and may hamper investment and innovation. Hawaii should be encouraging certainty to ensure the state and its citizens realize the benefits from 5G. For these reasons, we respectfully request that you not move SB 2611. Thank you for your consideration.



COLLEGE OF SOCIAL SCIENCES
HAWAII ENERGY POLICY FORUM
UNIVERSITY OF HAWAI'I AT MĀNOA

Hawaii Energy Policy Forum

Jeanne Schultz Afuvai, Hawaii Inst. for Public Affairs
David Bissell, Kauai Island Utility Cooperative
Michael Brittain, IBEW, Local Union 1260
Jade Butay, Hawaii Dept of Transportation
Caroline Carl, Hawaii Energy
Albert Chee, Island Energy Services
Elizabeth Cole, The Kohala Center
Kyle Datta, Ulupono Initiative
Richard DeGarmo, Hawaii Gas
Mitch Ewan, UH Hawaii Natural Energy Institute
Jay Fidell, ThinkTech Hawaii
Carl Freedman, Haiku Design & Analysis
Matthias Fripp, REIS at University of Hawaii
Ford Fuchigami, Ofc of Hawaii State Governor
Will Giese, Inter-Island Solar Supply
Dale Hahn, Ofc of US Senator Brian Schatz
Michael Hamnett, SSRI at University of Hawaii
Senator Lorraine Inouye, Hawaii State Legislature
Randy Iwase, Public Utilities Commission
Darren Kimura, Energy Industries
Representative Chris Lee, Hawaii State Legislature
Gladys Marrone, Building Industry Assn of Hawaii
Stephen Meder, UH Facilities and Planning
Sharon Moriawaki, UH Public Policy Center
Rocky Mould, Ofc of Climate Change
Aina Naniolo, Ofc of US Congresswoman Colleen Hanabusa
Ron Nelson, Defense Logistics Energy Agency
Dean Nishina, Division of Consumer Advocacy
Denise Oda, US Department of Agriculture
Stan Osserman, HCATT
Melissa Pavlicek, Hawaii Public Policy Advocates
Randy Pereira, Hawaii Government Employees Assn
Fredrick Redell, Maui County Energy Office
Rick Rocheleau, UH Hawaii Natural Energy Institute
Ross Roley, PACOM
Will Rolston, Hawaii County, Research & Development
Peter Rosegg, Hawaiian Electric Companies
Scott Seu, Hawaiian Electric Companies
Carlyn Shon, Hawaii State Energy Office, DBEDT
Joelle Simonpietri, Simonpietri LLC
Ben Sullivan, Kauai County
Lance Tanaka, Par Hawaii
Maria Tome, Public Utilities Commission
Kirsten Turner, Ofc of US Representative Tulsi Gabbard
Alan Yamamoto, Ofc of US Senator Mazie Hirono

Testimony of John Cole
Chair, Electricity Working Group
Hawaii Energy Policy Forum

To the
Senate Committee on Commerce, Consumer Protection, and Health

February 23, 2018 at 11:00 am in Conference Room 229

OFFERING COMMENTS ON SB 2611, RELATING TO PUBLIC UTILITIES.

Chair Baker, Vice-Chair Tokuda, and Members of the Committee,

I am John Cole, Chair of the Electricity Working Group of the Hawaii Energy Policy Forum (Forum). The Forum, created in 2002, is comprised of over 40 representatives from Hawaii's electric utilities, oil and natural gas suppliers, environmental and community groups, renewable energy industry, and federal, state and local government, including representatives from the neighbor islands. Our vision and mission, and comprehensive "10 Point Action Plan" serves as a guide to move Hawaii toward its preferred energy goals and our support for this bill.

SB 2611 gives the Hawaii Public Utilities Commission authority to regulate internet service providers by amending the definition of telecommunications carrier to include internet service provider.

The Forum offers the following comments:

Although the forum supports net neutrality, it does not take a position on whether this bill is necessary or appropriate, but would like to state its strong conviction that any additional regulatory duties given to the Commission must be accompanied by sufficient additional funding and staff positions necessary to effectively carry out those duties.

Thank you for the opportunity to testify.

This testimony reflects the position of the Forum as a whole and not necessarily of the individual Forum members or their companies



Bob Bass
*President of External and
Legislative Affairs, Hawaii*

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February 23, 2018

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

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

RE: Senate Bill 2611 – Relating to Public Utilities

Committee Chair Baker and Vice-Chair Tokuda:

On behalf of AT&T, please accept this letter raising concerns regarding Senate Bill 2611 – Relating to Public Utilities -- a bill that proposes to change the definition of telecommunications carrier or telecommunications common carrier to include internet service providers thereby making an internet service provider a public utility subject to the jurisdiction of the Hawaii Public Utilities Commission.

The internet has thrived, and Hawaiians have benefitted from innovations and technological advancements under a regulatory framework that did not subject internet service providers to regulation as a public utility.

SB 2611 proposes to reverse that trajectory of innovation by subjecting internet service providers to the jurisdiction of the Hawaii Public Utilities Commission, a



regulatory body whose jurisdiction is limited to intrastate services within the state of Hawaii. As a result, this proposal will lead to uncertainty for internet service providers because the nature of the internet is inherently interstate, a web of interconnected networks that spans across state, and even national borders. That uncertainty will likely lead to reduced investment and innovation in the state of Hawaii at a time when internet service providers are investing and planning to invest hundreds of millions of dollars to expand broadband service across Hawaii including the upcoming deployment of 5G wireless technology. A technology that will provide significantly faster wireless broadband speeds in terms of gigabits per second and not megabits per second.

Investment will be negatively impacted by uncertainty surrounding the design and attempted implementation of the new regulatory framework that will require additional time, and expense, involving Hawaii PUC proceedings and rulemakings instead of companies investing to bring the best technology and broadband networks to Hawaii.

Hawaii needs a stable environment that encourages investment in next generation technologies and the delivery of innovative products and services, not a regulatory regime designed for landline telephone service.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bob Bass", written over a thin vertical line.

Bob Bass

AT&T

SB-2611

Submitted on: 2/20/2018 10:16:16 AM

Testimony for CPH on 2/23/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

This is an imporrant bill which will provide that net neutrality lives in hawaii.