



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/12/2018

Time: 01:30 PM

Location: 414

Committee: Senate Economic Development,
Tourism, and Technology

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 2611 RELATING TO PUBLIC UTILITIES.

Purpose of Bill: 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.

Department's Position:

The Department of Education supports SB2611 which will ensure effective operation of internet services as part of supporting continued equal, free, and unrestricted internet access in the State of Hawaii.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

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

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

Monday, February 12, 2018
1:30 p.m.

**TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE GLENN WAKAI, 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In the Matter of Restoring Internet Freedom in WC Docket No. 17-108 (“FCC Order” or “the Order”), in which the FCC repealed Title II utility regulation of broadband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
ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY

February 12, 2018
1:30 p.m.

MEASURE: S.B. No. 2611
TITLE: RELATING TO PUBLIC UTILITIES.

Chair Wakai, Vice Chair Taniguchi, 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 takes no position regarding the intent to provide increased regulatory authority over internet service providers ("ISPs") in Hawaii.

However, the Commission notes that there are federal preemption issues with regards to regulating 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.”¹ 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, under federal rules, it appears the Commission is preempted from exercising regulatory authority or oversight of 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 exempt telecommunications providers should that be in the public interest, as provided in Hawaii Revised Statutes § 269-16.9.

Thank you for the opportunity to testify on this measure.

¹ Report and Order on Remand, Declaratory Ruling, and Order, adopted on February 26, 2015, and released on March 12, 2015, in GN Docket No. 14-28 (“FCC 15-24”) at paragraph 431 (footnote omitted).

² FCC 15-24 at paragraph 433 (footnote omitted).

JAN 19 2018

A BILL FOR AN ACT

RELATING TO PUBLIC UTILITIES.

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

1 SECTION 1. Section 269-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "telecommunications
3 carrier" or "telecommunications common carrier" to read as
4 follows:

5 ""Telecommunications carrier" or "telecommunications common
6 carrier" means any person that owns, operates, manages, or
7 controls any facility used to furnish telecommunications
8 services for profit to the public, or to classes of users as to
9 be effectively available to the public, engaged in the provision
10 of services, such as voice, data, image, graphics, and video
11 services, that make use of all or part of their transmission
12 facilities, switches, broadcast equipment, signalling, or
13 control devices[-] and shall include internet service
14 providers."

15 SECTION 2. Section 269-16.9, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:



1 "(a) Notwithstanding any provision of this chapter to the
2 contrary, the commission, upon its own motion or upon the
3 application of any person, and upon notice and hearing, may
4 exempt a telecommunications provider or a telecommunications
5 service from any or all of the provisions of this chapter,
6 except the provisions of section 269-34, upon a determination
7 that the exemption is in the public interest[-]; provided that
8 the commission shall not exempt internet service providers from
9 the provisions of this chapter. In determining whether an
10 exemption is in the public interest, the commission shall
11 consider whether the exemption promotes state policies in
12 telecommunications, the development, maintenance, and operation
13 of effective and economically efficient telecommunications
14 services, and the furnishing of telecommunications services at
15 just and reasonable rates and in a fair manner in view of the
16 needs of the various customer segments of the telecommunications
17 industry. Among the specific factors the commission may
18 consider are:

19 (1) The responsiveness of the exemption to changes in the
20 structure and technology of the State's
21 telecommunications industry;



S.B. NO. 2611

- 1 (2) The benefits accruing to the customers and users of
- 2 the exempt telecommunications provider or service;
- 3 (3) The impact of the exemption on the quality,
- 4 efficiency, and availability of telecommunications
- 5 services;
- 6 (4) The impact of the exemption on the maintenance of
- 7 fair, just, and reasonable rates for
- 8 telecommunications services;
- 9 (5) The likelihood of prejudice or disadvantage to
- 10 ratepayers of basic local exchange service resulting
- 11 from the exemption;
- 12 (6) The effect of the exemption on the preservation and
- 13 promotion of affordable, universal, basic
- 14 telecommunications services as those services are
- 15 determined by the commission;
- 16 (7) The resulting subsidization, if any, of the exempt
- 17 telecommunications service or provider by nonexempt
- 18 services;
- 19 (8) The impact of the exemption on the availability of
- 20 diversity in the supply of telecommunications services
- 21 throughout the State;



S.B. NO. 2611

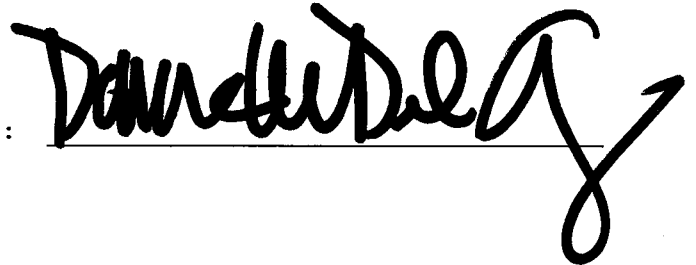
- 1 (9) The improvements in the regulatory system to be gained
- 2 from the exemption, including the reduction in
- 3 regulatory delays and costs;
- 4 (10) The impact of the exemption on promoting innovations
- 5 in telecommunications services;
- 6 (11) The opportunity provided by the exemption for
- 7 telecommunications providers to respond to
- 8 competition; and
- 9 (12) The potential for the exercise of substantial market
- 10 power by the exempt provider or by a provider of the
- 11 exempt telecommunications service."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "Dan Claitor", is written over a horizontal line. The signature is highly cursive and extends to the right with a long, sweeping tail.

S.B. NO. 2611

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.

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

