

# SB2644

Measure Title: RELATING TO BROADBAND SERVICE.

Report Title: Broadband Internet Access Service; Protections; Net Neutrality

Description: Requires a provider of broadband internet access services to be transparent with network management practices, performance, and commercial terms of its broadband internet access services. Prohibits a provider of broadband internet access services from blocking lawful websites, impairing or degrading lawful internet traffic, engaging in paid prioritization, or interfering with or disadvantaging users of broadband internet access services. (SD1)

Companion: [HB2256](#)

Package: None

Current Referral: ETT, CPH

Introducer(s): BAKER, GABBARD, GALUTERIA



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2644, S.D. 1, RELATING TO BROADBAND SERVICE.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

**DATE:** Friday, February 23, 2018

**TIME:** 11:00 a.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**

(For more information, contact Bryan C. Yee,  
Deputy Attorney General, at 586-1180)

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Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to (1) impose transparency requirements on broadband internet access service providers in this State by requiring them to publicly disclose certain types of information regarding network management practices, performance, and commercial terms of its services; and (2) prohibit broadband internet access service providers from blocking lawful websites, impairing or degrading lawful internet traffic, engaging in paid prioritization, or interfering with end users.

The prohibitions on blocking, impairment, paid prioritization, and interference may be subject to a preemption challenge. Subsection (b) on page 5, line 1, to page 6, line 5, attempts to regulate broadband internet access service in the State by prohibiting these practices. These prohibitions are inconsistent, however, with the declaratory order recently issued by the Federal Communications Commission that purports to establish a federal deregulatory regime for broadband internet access providers.

*Restoring Internet Freedom*, Declaratory Ruling, Report and Order, WC Docket No. 17-108, FCC 17-166 (released on Jan. 4, 2018) ("Order").

The FCC considered and expressly disapproved of regulations prohibiting blocking (§263), throttling (§263), paid prioritization (§253), and interference (§246).

The prohibitions on blocking, impairment, paid prioritization, and interference in this bill

are inconsistent with these provisions of the Order. Therefore, portions of this bill may be subject to a preemption challenge.

We note that this area of the law is developing rapidly and future developments may affect the risk of a legal challenge to this bill. The Order itself will not take effect until publication in the Federal Register, which is anticipated to occur within a short time. Moreover, the Order is subject to judicial review and has already been challenged in court; Hawai'i is one of twenty-one states that filed a petition for review of the Order in the United States Court of Appeals for the District of Columbia Circuit. *Petition for Protective Review, New York, et al., Petitioners v. Federal Communications Commission, et al., Respondents*, Case No. 18-1013. The federal courts could ultimately overturn the Order; however, there are no guarantees in litigation and any judicial ruling may occur years from now.

The transparency requirements in subsection (a) on page 4, lines 11-19, may escape a preemption challenge, however, because the transparency requirements in this bill are consistent with the Order. See Order at ¶215.

We are not recommending that this bill be held on legal grounds, and simply want to ensure that the Committee is informed of the possible legal risk.

Thank you for the opportunity to comment.



## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE  
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Statement of  
**LUIS P. SALAVERIA**  
Director

Department of Business, Economic Development and Tourism  
before the

### SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

Friday, February 23, 2018  
11:00 AM  
State Capitol, Conference Room 229

in consideration of  
**SB 2644 SD1**  
**RELATING TO BROADBAND SERVICE.**

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

The Department of Business, Economic Development and Tourism (DBEDT) supports SB 2644 SD1, to ensure that the Internet remains free and open in the State and any provider of broadband internet service in the State uphold the principles of net neutrality.

While DBEDT believes strongly in the preservation of the principles of net neutrality and a free and open Internet, we recognize that the Federal Communication Commission's recent repeal of the Obama-era net neutrality rulings may result in Congressional action and/or States' legal challenges.

Thank you for the opportunity to offer testimony in support of SB 2644 SD1.



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

**Date:** 02/23/2018

**Time:** 11:00 AM

**Location:** 229

**Committee:** Senate Commerce, Consumer  
Protection, and Health

**Department:** Education

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

**Title of Bill:** SB 2644, SD1 RELATING TO BROADBAND SERVICE.

**Purpose of Bill:** Requires a provider of broadband internet access services to be transparent with network management practices, performance, and commercial terms of its broadband internet access services. Prohibits a provider of broadband internet access services from blocking lawful websites, impairing or degrading lawful internet traffic, engaging in paid prioritization, or interfering with or disadvantaging users of broadband internet access services. (SD1)

**Department's Position:**

The Department of Education supports SB 2644, SD1 which ensures equal, free, and unrestricted Internet access in the State of Hawaii. Access to the Internet and information enables the Department to continue providing educational content and technology experiences to our students.

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](http://www.hawaiipublicschools.org).

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**Testimony of  
Gerard Keegan  
In Opposition to Hawaii Senate Bill 2644 SD1**

**Before the Hawaii Senate Committee on Commerce, Consumer Protection, and 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 2644 SD1. CTIA and its member companies support a free and open internet. To further that goal, we believe that a national regulatory framework with uniform and generally applicable competition and consumer protections is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem. CTIA and its member companies also support a federal legislative solution to enshrine open internet principles. CTIA, however, respectfully opposes SB 2644 SD1.

The mobile wireless broadband marketplace is competitive and continuously changing. It is an engine of innovation, attracting billions of dollars in network investment each year, and generating intense competition to the benefit of consumers. From the beginning of the Internet Age in the 1990s, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment, and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC took a much different approach, applying 80-year-old common-carrier mandates meant for traditional monopoly public utilities, despite the fact that internet



services are nothing like public utility offerings such as water or electricity or even landline telephone service.

In 2017, the FCC's *Restoring Internet Freedom Order* reversed that 2015 decision, finding that application of those 1930s utility-style rules to the internet services of today actually harms American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from \$32.1 billion in 2014 to \$26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

The FCC's overbroad prohibitions on broadband providers harmed consumers in other ways, too—particularly with respect to innovation. For example, after the 2015 Order, the FCC launched a yearlong investigation of wireless providers' free data offerings, which allow subscribers to consume more data without incurring additional costs. The risk of FCC enforcement cast a shadow on mobile carriers' ability to innovate, compete and deliver the services that consumers demanded. In addition, the inflexible ban on paid prioritization precluded broadband providers from offering one level of service quality to highly sensitive real-time medical applications and a differentiated quality of service to email messages. The FCC's 2017 *Restoring Internet Freedom Order* takes a different path – one that will benefit consumers and enable new offerings that



support untold varieties of technological innovations in health care, commerce, education, and entertainment.

Based on the way some people have talked about the *Restoring Internet Freedom Order*, you might think that the FCC eliminated federal rules that had always applied to internet services and that the federal government has left consumers without any protections. But that is just not the case. The internet was not broken before 2015, and it will not break because of the FCC's most recent decision.

The FCC has simply restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand. In fact, there have been virtually no instances in which U.S. mobile broadband providers blocked traffic or prevented consumers from going where they wanted to on the internet. The truth is that, in a competitive market like wireless, mobile broadband providers have no incentive to block access to lawful internet services, and if they did, their customers would simply switch providers.

Further, the FCC's *Restoring Internet Freedom* clearly provides consumers with legal protections that complement the competitive forces in play. First, the FCC retained the "transparency" rule that was adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2015 decision, which requires broadband providers to publicly disclose extensive information about their performance, commercial terms of service, and network management practices to consumers and internet entrepreneurs. If





a broadband provider fails to make the required disclosures, it will be subject to enforcement by the FCC.

Second, by restoring to the FCC's pre-2015 view that broadband internet access is an information service and not a utility-style common carrier service like landline telephone service, the FCC restored the Federal Trade Commission's jurisdiction over broadband offerings. The FTC is the nation's lead consumer protection agency, but the 2015 decision had stripped away its authority over broadband providers. The FTC has broad authority to take action against any business whose actions are deceptive or unfair, including enforcing what providers have agreed not to do. This authority extends beyond broadband providers and includes authority over so-called edge providers. The nation's leading broadband providers have told consumers that they will not block or throttle lawful internet traffic, and the FTC will be there to make sure they live up to those promises.

Third, the Department of Justice and FTC enforce federal antitrust laws, which, as the *Restoring Internet Freedom Order* emphasizes, preclude anticompetitive network management practices. For example, a broadband provider may not anticompetitively favor its own online content or services over the content or services of third parties, or enter into an agreement with other broadband providers to unfairly block, throttle, or discriminate against specific internet content.

Finally, the FCC made clear in the 2017 *Restoring Internet Freedom Order* that generally applicable state laws relating to fraud, taxation, and general commercial dealings apply to broadband providers just as they would to any other entity doing



business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework to broadband internet access services. This ruling reaffirmed the FCC's 2015 decision that states and localities may not impose requirements that conflict with federal law or policy, but may otherwise enforce generally applicable laws. Thus, Hawaii remains empowered to act under its UDAP statute.

In short, Hawaii consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing Hawaii state law. On the other hand, state-specific net neutrality rules imposed on broadband providers would harm consumers, and would – along with other state and local mandates – create a complex “patchwork quilt” of requirements that would be unlawful.

The FCC's 2017 *Restoring Internet Freedom Order* explains that broadband internet access is an inherently interstate and global offering. Internet communications delivered through broadband services almost invariably cross state lines, and users pull content from around the country and around the world – often from multiple jurisdictions in one internet session. Any attempt to apply multiple states' requirements would therefore be harmful to consumers for the same reasons the FCC's 2015 rules were harmful, in addition to the fact that those requirements will be at best different and at worst contradictory.

These problems multiply in the case of mobile broadband: questions will arise over whether a mobile wireless broadband transmission is subject to the laws of the state



where users purchased service, where they are presently located, or even where the antenna transmitting the signal is located. State-by-state regulation even raises the prospect that different laws will apply as the user moves between states. For example, a mobile broadband user could travel through multiple states during a long train ride, even the morning commute, subjecting that rider's service to multiple different legal regimes even if the rider spent that trip watching a single movie. Such a patchwork quilt of disparate regulation is untenable for the future success of the internet economy.

Moreover, the FCC found broadband-specific state laws would be unlawful. The *Restoring Internet Freedom Order* exercised the agency's preemption powers under the U.S. Constitution and federal law. It held that state or local laws that impose net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible.

Ultimately, Congress may decide to modify the existing federal regulatory framework for broadband internet access, and some members of Congress have already introduced legislation addressing these matters. CTIA has called on Congress to enact legislation for the internet ecosystem that promotes a free and open internet while enabling the innovation and investment we need for tomorrow. Nevertheless, today, state-by-state regulation of broadband internet access services would harm consumers and conflict with federal law.

In closing, it would be unnecessary to pass state legislation on this issue due to the strong consumer protections currently in place and national wireless providers agreeing



not to block or throttle lawful content. Accordingly, we respectfully ask that you not move SB 2644 SD1.



## TESTIMONY OF CHARTER COMMUNICATIONS

**Senate Committee on Commerce, Consumer Protection, and Health**

**Hawai'i State Capitol, Conference Room 229**

**RE: S.B. 2644, S.D.1**

**FRIDAY, FEBRUARY 23, 2018**

**11:00 AM**

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

I am Myoung Oh, Director of State Government Affairs, here on behalf of Charter Communications in **opposition** to S.B. 2644.

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

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

Charter supports an Open Internet and we believe that S.B. 2644, S.D.1 is unnecessary. Charter does not slow down, block, or discriminate against lawful content. Instead, we extend customer-friendly practices of "no data caps or usage-based billing." We do not interfere with the online activities of our customers and have no plans to change our practice.

We believe legislation, if any, should be guided by Congress and be nationally uniform, flexible and technology-neutral, while also providing clear rules of the road for companies. Privacy regime should apply to all sectors of the internet ecosystem. This includes national legislation that better defines the roles of the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) that is consistent and comprehensive.

The Open Internet has broad bi-partisan support and Congress has clear constitutional authority to permanently protect the open internet. At the time of this testimony, there are already efforts by the FCC make its Net Neutrality repeal official, when it will publish the revocation order, dubbed "Restoring Internet Freedom," in the Federal Register.

As such, we ask the Committee to defer the S.B. 2644, S.D.1 to allow for uniform legislation and consistent guidance.

Mahalo for the opportunity to testify.



**SB-2644-SD-1**

Submitted on: 2/20/2018 10:19:56 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Support	No

Comments:

As a user and Spectrum customer I urge you to support this bill. Spectrum is way off base on this one. The people of Hawaii need this to become law.

lynne matusow

**SB-2644-SD-1**

Submitted on: 2/21/2018 4:12:39 AM

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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tim Orden	Individual	Support	No

Comments:

I wholly support this bill and it's intent. Mahalo