



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 2644 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. Requires an applicant of a broadband-related permit seeking a state-granted or county-granted right to attach small cell or other broadband wireless communication devices to utility poles to comply with certain practices.

Department's Position:

The Department of Education supports SB2644 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.



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

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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

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

Monday, February 12, 2018
1:30 PM
State Capitol, Conference Room 414

in consideration of
SB 2644
RELATING TO BROADBAND SERVICE.

Chair Wakai, Vice Chair Taniguchi and Members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports the intent of SB 2644, to ensure that the Internet remains free and open in the State.

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 on SB 2644.

Written Statement of
Ani Menon
Director of Government & Community Affairs

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

February 12, 2018 1:30PM
State Capitol, Conference Room 414

COMMENTS FOR:

S.B. NO. 2644 RELATING TO BROADBAND SERVICE

To: Chair Wakai, Vice Chair Taniguchi, and Members of the Committee
Re: **Testimony providing comments for SB2644**

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to submit comments on SB2644. We believe this measure should be deferred in favor of Senate Bill 2088 that addresses the identical need to ensure a free and open Internet.

The concerns that may have inspired the proposed creation of a new chapter titled “Broadband Internet Access Service” are understandable in light of the Federal Communications Commission’s recent decision to repeal net neutrality rules.

Hawaiian Telcom maintains its publicized position that we do not interfere with the lawful online practices of our customers. It has never been our intention to have the capability to interfere with our customers’ access – we do not engage in paid prioritization, block lawful websites, throttle internet speed, or otherwise interfere with our customers’ lawful internet use. We do not impair or degrade lawful internet traffic, and instead focus our attention on delivering high speed internet access as Hawaii’s Technology Leader. Our full terms and conditions are accessible online at hawaiiantel.com.

Additionally, Sections 3 and 4 of this measure amend Hawaii Revised Statutes Sections 27-45 and 46-89 by requiring that an applicant for broadband-related permits comply with certain practices when seeking a state-granted right to attach broadband communication devices to utility poles. There are, however, Senate bills introduced that specifically address broadband infrastructure and the permitting and approval process. Sections 3 and 4 may be stricken from this measure and instead included in the bills specifically relating to broadband facilities.

Thank you for the opportunity to provide these comments.

Testimony before the Senate Committee on Economic Development, Tourism, and Technology

By Mindy E. Hartstein
Manager, Pole Infrastructure Enterprise Department
Energy Delivery
Hawaiian Electric Company, Inc.

February 12, 2018
1:30 p.m., Conference Room 414

Senate Bill SB2644
Relating to Broadband Service

Chair Wakai, Vice Chair Taniguchi, and Members of the Committee:

My name is Mindy E. Hartstein, and I am testifying on behalf of Hawaiian Electric Company, Inc. and its subsidiaries, Hawai'i Electric Light Company, Inc. and Maui Electric Company, Limited (collectively, the "Hawaiian Electric Companies" or "Companies") **in support of SB2644, with clarifying language that we offer as amendments.**

The Hawaiian Electric Companies support the expansion of infrastructure and technology in order to advance Hawai'i forward. Specifically related to the Hawaiian Electric Companies' role in supporting broadband deployment (fiber and wireless), the Companies understand its obligation to serve its electric customers in a safe and reliable manner, but also understand its assets (i.e. its utility poles, light poles and other infrastructure) are critical building blocks to the efficient and speedy deployment of broadband technology. The Companies recognize that the telecommunications industry, including customers they serve, are the Companies' customer in this regard, and the Companies take great pride and commitment in ensuring positive customer experiences for all.

The Companies have carved out a new department within Energy Delivery, the Pole Infrastructure Enterprise Department ("PIE"), which is tasked with (1) employing a modern, comprehensive pole infrastructure management system to process pole attachment requests for all of its poles, (2) developing core engineering/make-ready standards to ensure efficient and safe deployment of wireline and wireless attachments, (3) creating an enhanced online application and communication process for internal and external use. These standards and processes incorporate FCC guidelines, the NESC standards, G.O. 6 provisions, and best practices and standards in the utility industry.¹ This pole infrastructure management system will be identical throughout the Hawaiian Electric Companies' service territories and will serve to expedite the application process, standardize

¹ The Companies are utilizing CPS Energy's tested and adopted third-party attachment application process and standards as a starting point in developing its own attachment standards and processes. CPS Energy is a municipal electric utility in San Antonio, TX, who sits at the forefront of telecommunications deployment and development of attachment standards by an electric utility.

engineering standards, streamline the make-ready process and ensure proper pole loading and pole maintenance for public safety. It will further allow for accurate accounting of attachment requests and better monitoring and control of unauthorized attachments.

SB2644 aims to create similar broadband deployment standards, application processes, and right of way requirements for State and county poles/facilities. The Companies encourage process planning for the State and county, similar to what the Companies are deploying internally. While the Companies support the intent of this bill and the expeditious, streamlined deployment of broadband for Hawai'i, ***the Companies wish to clarify that SB2644 only apply to State and/or county solely-owned poles and facilities, not utility poles jointly owned with the Companies or the Companies' own utility or light poles (collectively as the "Companies' Poles")***. There are situations where third-party attachers may request to attach to a Company Pole that is jointly owned with the State or county. The Companies do not wish third-party attachers to be subject to multiple sets of standards and processes when attaching to the Companies' Poles, which could cause delays in processing and confusion in standards. While the Companies recognize that the use of the Companies' Poles is critically fundamental to the speedy deployment of broadband infrastructure and desire to be the leader in providing pole infrastructure for broadband in Hawai'i, delivering safe and reliable electric energy to all end-users is paramount. We believe our standards and processes will ensure the most streamlined and effective deployment of broadband infrastructure on the Companies' Poles.

We offer clarifying language as follows:

[§127-45] Broadband-related permits; automatic approval.

On page 6, line 12:

- (a) The State shall approve, approve with modification, or disapprove all applications for broadband related permits within sixty days of submission of a complete permit application and full payment of any applicable fee; provided that this subsection shall not apply to a conservation district use application for broadband facilities, *nor apply to applications for broadband-related permits on poles or facilities jointly-owned with an investor-owned utility.*

On page 8, line 16:

- (i) Notwithstanding any law to the contrary, all broadband-related permits approved pursuant to this section that allow an applicant a state-granted right to attach small cell or other broadband wireless communication devices to *State and/or county solely-owned utility poles or facilities* shall be contingent upon the applicant complying with the practices set forth pursuant to chapter....

On page 9, line 1:

- (j) For the purposes of this section, "broadband related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, cable installation, tower construction, placement of broadband equipment in the road rights-of-way, and undersea boring, or the landing of an undersea communications cable *on State and/or county solely-owned poles or facilities*. The term does not include any county permit for which the

approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the county, nor does it apply to poles which are jointly-owned with an investor-owned utility.

[\$46-89] Broadband-related permits; automatic approval.

On page 11, line 10:

- (h) Notwithstanding any law to the contrary, all broadband-related permits approved pursuant to this section that allow an applicant a county-granted right to attach small cell or other broadband wireless communication devices to State and/or county solely-owned utility poles or facilities shall be contingent upon the applicant complying with the practices set forth pursuant to chapter....

On page 11, line 16:

- (i) For the purposes of this section, "broadband related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, cable installation, tower construction, placement of broadband equipment in the road rights-of-way, and undersea boring, or the landing of an undersea communications cable on State and/or county solely-owned poles or facilities. The term does not include any county permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the county, nor does it apply to poles which are jointly-owned with an investor-owned utility.

Thank you for the opportunity to testify on this matter.



TESTIMONY OF CHARTER COMMUNICATIONS

Senate Committee on Economic Development, Tourism, and Technology

Hawai'i State Capitol, Conference Room 414

RE: S.B. 2644

MONDAY, FEBRUARY 12, 2018

1:30 PM

Aloha Chair Wakai, Vice Taniguchi 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 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 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.

Mahalo for the opportunity to testify.



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

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February 12, 2018

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

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

RE: Opposition Senate Bill 2644 – Relating to Broadband Service

Committee Chair Wakai and Vice-Chair Taniguchi:

On behalf of AT&T, please accept this letter of opposition regarding Senate Bill 2644 – Relating to Broadband Service -- a bill that proposes to regulate internet service providers at the state level to ensure a free and open internet. While AT&T supports a free and open internet, these concerns are best addressed by federal legislation that will create nationwide consistency and not by a patchwork of likely inconsistent state legislation.

As a preliminary matter, the bill is narrowly and unnecessarily focused on the wireless industry. The wireless industry is already hypercompetitive, with at least four major companies providing service in the state of Hawaii. This means consumers already have the ability to leave a wireless company that does not follow the principles of net neutrality; principles that AT&T has followed since the 2010 Open Internet Order.



While history has shown that the internet will remain free and open even without regulation, AT&T supports appropriately tailored federal legislation to ensure internet openness and to end the uncertainty from over a decade of FCC rule changes. The nature of the internet is inherently interstate, a web of interconnected networks that spans across state, and even national borders. Accordingly, any such legislation must be adopted by Congress to ensure a consistent approach across all states. Hawaii should urge its congressional delegation to craft federal open internet legislation.

For more than a decade, under both Republican and Democratic administrations, AT&T has consistently made clear that we provide broadband service in an open and transparent way.

- We do not block websites.
- We do not censor online content.
- We do not throttle or degrade internet traffic based on content.
- We do not unfairly discriminate in our transmission of internet traffic.

These are legally enforceable commitments that are published on our website and readily available for consumers to review.



In addition to making these longstanding enforceable commitments, AT&T has long supported and continues to support a legislative solution in Congress that would make these core consumer protections permanent, while preserving incentives to invest and innovate. Congressional action ensures uniformity of the rules that regulate the internet. Attempts by individual states to pass disparate legislation can result in a patchwork of possibly inconsistent state laws that would be virtually impossible to implement. Instead, we need strong and permanent rules across the internet ecosystem to help create a stable regulatory environment that encourages investment in next generation technologies and the delivery of innovative services.

I have included an open letter from AT&T Chairman and CEO Randall Stephenson published recently in the New York Times, the Los Angeles Times, USA Today, and the Wall Street Journal. As expressed in Mr. Stephenson's letter, AT&T is calling on Congress to end the debate once and for all by writing new laws that govern the internet and protect consumers across all states.

The internet has thrived, and Hawaiians have benefitted from all of the great innovations and technological advancements that were made under balanced framework first established by the Clinton Administrations and that remained in place for all but two years over the last two decades. AT&T fully supports Congress adopting basic rules of the road to permanently ensure that the internet remains an open and flourishing platform for all users. That action needs to be taken by



Congress, so that consumers can expect and rely on rules that will stand up to the changes of political winds and elections of new administrations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bob Bass", enclosed in a thin black rectangular border.

Bob Bass

AT&T



Consumers Need an Internet Bill of Rights

Government rules for the internet have been debated for nearly as long as the internet has existed, even before a professor coined the term "net neutrality" 15 years ago.

The internet has changed our lives and grown beyond what anyone could have imagined. And it's done so, for the most part, with very few—but often changing—rules. Regulators under four different presidents have taken four different approaches. Courts have overturned regulatory decisions. Regulators have reversed their predecessors. And because the internet is so critical to everyone, it's understandably confusing and a bit concerning when you hear the rules have recently changed, yet again.

It is time for Congress to end the debate once and for all, by writing new laws that govern the internet and protect consumers.

Until they do, I want to make clear what you can expect from AT&T.

AT&T is committed to an open internet. We don't block websites. We don't censor online content. And we don't throttle, discriminate, or degrade network performance based on content. Period.

We have publicly committed to these principles for over 10 years. And we will continue to abide by them in providing our customers the open internet experience they have come to expect.

But the commitment of one company is not enough. Congressional action is needed to establish an "Internet Bill of Rights" that applies to all internet companies and guarantees neutrality, transparency, openness, non-discrimination and privacy protection for all internet users.

Legislation would not only ensure consumers' rights are protected, but it would provide consistent rules of the road for all internet companies across all websites, content, devices and applications. In the very near future, technological advances like self-driving cars, remote surgery and augmented reality will demand even greater performance from the internet. Without predictable rules for how the internet works, it will be difficult to meet the demands of these new technology advances.

That's why we intend to work with Congress, other internet companies and consumer groups in the coming months to push for an "Internet Bill of Rights" that permanently protects the open internet for all users and encourages continued investment for the next generation of internet innovation.

A handwritten signature in blue ink that reads "Randall Stephenson".

Randall Stephenson
AT&T Chairman and CEO





**Testimony of
Gerard Keegan
CTIA
In Opposition to Hawaii Senate Bill 2088 and Senate Bill 2644**

Before the Hawaii Senate Committee on Economic Development, Tourism & Technology

February 12, 2018

Chair Wakai, Vice-Chair Taniguchi, 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 2088 and Senate Bill 2644. CTIA and its member companies support a free and open internet. To further that goal, we believe that a national regulatory framework with generally applicable competition and consumer protections at the federal and state levels is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem.

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 public utilities and reign in the then unchecked practices of huge monopolies, 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. After the 2015 Order, the FCC launched a yearlong investigation of wireless providers' free data offerings, which allow subscribers to consume more data from certain services and content without incurring additional costs. The risk of FCC enforcement cast a dark 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 internet services, for 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 network management practices to consumers and internet entrepreneurs. If a broadband provider fails to make the required disclosures, or does not live up to its commitments, 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. 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 traffic in an anticompetitive manner, 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. And as mentioned above, the FCC cited extensive evidence showing the unprecedented decline in broadband infrastructure investment. Hawaii needs more broadband investment not less. Both bills work against this policy, and SB 2644 compounds the problem by tying small cell permitting to compliance with net neutrality principles, a concept whose enforcement is unclear, likely unworkable, and ultimately unnecessary. Other bills in Hawaii now seek to encourage and incentivize mobile broadband deployment. That is and should be the goal, without creating unworkable obstacles.

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 stands ready to work with Congress should it choose to adopt rules for the internet ecosystem that promote 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 these bills due to the strong consumer protections currently in place and national wireless providers agreeing not to block or throttle lawful content. It would also be premature in light of the recent state Attorneys General legal action on this issue. For these reasons, we respectfully ask that you not move SB 2088 and SB 2644. Thank you for the opportunity to submit testimony.