

DAVID Y. IGE
GOVERNOR

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JO ANN M. UCHIDA TAKEUCHI
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TO THE HOUSE COMMITTEE ON
INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 14, 2018
9:00 a.m.

**TESTIMONY ON S.B. NO. 2704, S.D. 2, RELATING TO WIRELESS BROADBAND
FACILITIES.**

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

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2704, S.D. 2, Relating to Wireless Broadband Facilities. My name is Ji Sook “Lisa” Kim, and I am the Administrator of the Department’s Cable Television Division. The Department appreciates the intent of this bill, which is a companion to H.B. 2651, and provides the following comments.

This bill establishes a permitting, application, review, and approval process for wireless and communications service providers to install wireless facilities on state- or county-owned utility poles or to install associated utility poles in the rights of way. S.D. 2 amends this measure by, among other things, specifying that the State or a county may require a wireless provider to consider installing and operating small wireless facilities and utility poles in rural districts where economically feasible.

The Department strongly supports efforts to improve access to broadband services for Hawaii residents and to increase competition that may result in more

affordable services for consumers. The Department thus supports legislation that establishes uniform, streamlined permit and approval processes statewide that would expedite the deployment of infrastructure required for small wireless systems. The Department also continues to recognize the need to balance expedited deployment with protecting the public interest and thus defers to state and county asset owners and managers to comment on the bill's impact on their ability to manage, maintain, and preserve those public assets, to protect the public's safety, and to use those assets for their intended public purpose.

With respect to the State's broadband coverage, the Department notes that the Federal Communications Commission's 2018 Broadband Deployment Report to Congress reported that 99.9 percent of Hawaii's population has access to either: (1) fixed broadband at 25 megabits per second download speed and 3 megabits per second upload speed; or (2) mobile LTE service with a minimum advertised speed of 5 megabits per second download speed and 1 megabit per second upload speed. Although maps using provider data show wireless coverage in the State is widespread, and wireless providers have indicated in recent years that substantial sums have been invested in building infrastructure in Hawaii, the demand for wireless service capacity continues to grow. Furthermore, there continues to be a need for broadband access in rural areas of the State that do not present a market case for providers because of the cost of extending service to those areas.

In any legislation that allows the deployment of small cell facilities on public assets or in public rights of way, the Department thus respectfully requests that the Legislature consider including statutorily enforceable commitments to extend high-speed Internet access that can bridge the digital divide for residents in the unserved and underserved areas of the State. The Department acknowledges that in section 2, page 28, lines 10-14, S.D. 2 provides that "[t]he State or a county may require a wireless provider to consider installing and operating small wireless facilities and utility poles in rural districts, where economically feasible, particularly in neighbor island communities having low- or medium-density concentrations of residents." However, given that the difficult economics of providing service to unserved and underserved rural areas has left

these areas on the other side of the digital divide, a provision that essentially asks wireless providers to choose to provide service in rural districts “where economically feasible” is not likely to effectuate the installation and operation of small wireless facilities in those areas.

Thank you for the opportunity to testify on this bill.



**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
HOUSE COMMITTEE ON INTRASTATE COMMERCE
Wednesday, March 14, 2018
9:00 AM
State Capitol, Conference Room 429

in consideration of
SB 2704, SD2
RELATING TO WIRELESS BROADBAND FACILITIES.

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

The Department of Business, Economic Development and Tourism (DBEDT) supports the intent and provides comments on SB2704, SD2, which establishes a standardized permitting, application, review, and approval process to upgrade and support next generation wireless broadband infrastructure on state- or county-owned utility poles and light standards throughout the State.

DBEDT recommends the inclusion of language which ensures a level playing field for competitive communications service providers by creating a streamlined application process for collocation of small wireless facilities or small wireless facility networks.

Thank you for the opportunity provide testimony in support of SB2704, SD2.

DAVID Y. IGE
GOVERNOR



TODD NACAPUY
CHIEF INFORMATION
OFFICER

STATE OF HAWAII
OFFICE OF ENTERPRISE TECHNOLOGY SERVICES

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Testimony of
TODD NACAPUY
Chief Information Officer, State of Hawai'i

Before the

HOUSE COMMITTEE ON INTRASTATE COMMERCE

Wednesday, March 14, 2018

9:00 A.M.

State Capitol, Conference Room 429

SENATE BILL NO. 2704, SD2
RELATING TO WIRELESS BROADBAND FACILITIES

Chair Ohno, Vice Chair Choy and members of the committee:

I am Todd Nacapuy, Chief Information Officer for the State of Hawai'i and head of the Office of Enterprise Technology Services (ETS), testifying in **support** of the intent, and **providing comments** on SB 2704 SD2, Relating to Wireless Broadband Facilities, which establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State.

As a strong advocate of adopting new technologies beneficial to State government, we fully support deploying the next generation cellular broadband technologies for the many economic and competitive advantages cited in the bill. We offer these comments.

We have major concerns about expanding wireless locations, as proposed in this bill, to State and county properties, facilities, and buildings that support critical public safety and emergency communications activities. While the bill mentions "safe operations of public safety equipment" as one reason to deny such requests, there are many other issues related to access and sharing of communication resources that could compromise security and reliability of emergency operations. We recommend adding specific language below, where appropriate, to clearly protect those services:

"State and county poles, related structures, sites, and facilities that support public safety, law enforcement, and emergency communications shall be excluded from these small cell public access provisions."

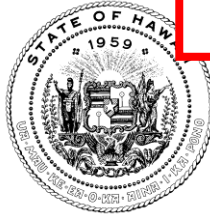
This language will ensure that non-government systems do not hamper, obstruct, or hinder existing and future public safety communications operations and plans. Those excluded locations are but a small fraction of government sites that commercial carriers could request access to.

The State, County, and Federal governments have invested hundreds of millions of dollars building and maintaining radio antennas, poles, towers, and ground facilities for statewide public safety, emergency, and disaster management services. To minimize radio signal interference, to maintain secure physical and electronic access to sites, and to effectively manage limited infrastructure resources such as electrical power, floor space, conduit capacity, and cooling, the statewide wireless broadband and radio microwave tower systems do not permit collocating commercial systems or installing them nearby. Further, many landowner leases, partner agreements, and use licenses specifically restrict use and occupancy to government and government partners, and exclude commercial use or access for those public safety reasons.

We request that this bill strongly cite the importance of safeguarding public safety communications infrastructure when considering the deployment of small cell wireless and future broadband systems.

Thank you for this opportunity to testify in support of the intent of SB 2704 SD2 and to provide comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



LATE

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

Before the Senate Committee on
INTRASTATE COMMERCE

**Wednesday, March 14, 2018
9:00am
State Capitol, Conference Room 429**

**In consideration of
SENATE BILL 2704,SD2
RELATING TO WIRELESS BROADBAND FACILITIES**

Senate Bill 2704, Senate Draft 2 proposes to establish a process to upgrade and support next generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. **The Department of Land and Natural Resources (Department) appreciates the intent of the measure, and offers the following comment on the measure.**

The Department notes that any user and occupier of State of Hawaii Public Trust Land will need to apply for a land or building disposition (use and occupancy agreement) in accordance with Chapter 171, Hawaii Revised Statutes.

Thank you for the opportunity to comment 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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March 12, 2018

Representative Takashi Ohno, Chair
Committee on Intrastate Commerce
Hawai'i State Capitol, Room 429
Honolulu, HI 96813

Dear Chair Ohno and Committee Members:

Re: SB 2704, SD 2 Relating to Wireless Broadband Facilities
Hearing Date: 03-14-18 – 9:00 am; House Conference Room 429

Thank you for this opportunity to comment on SB 2704, SD 2.

The history of attempts to pass legislation in Hawai'i concerning broadband technology is not all positive. In a very technical area, the feeling has been that the major players have attempted to take advantage of the community's desire for broadband, to create a playing field that is tilted unjustly in their direction. It therefore is necessary to approach this bill, and any other such legislation, with caution.

Having said that, I am told that the House version of the companion to SB 2704 has made great strides toward assuring that the public interest is properly balanced against the interests of the technology providers. Therefore, I would urge that the substance of SB 2704, SD 2, be replaced with HB 2651, HD 2, but with the following additional amendments:

1. Section 2—The definition of “applicable codes” should end before “enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this chapter”—that language quoted should be deleted;
2. Take utility easement out of the definition of “right of way”
3. I also would recommend narrowing the definition of “Broadband or wireless support structure” to delete “or capable of supporting.”
4. Section 4-(a) “The State or county shall not enter into an exclusive arrangement with any person for use of the right of way for the construction, operation, marketing, or maintenance of small broadband or wireless facilities or utility poles.”—take out “utility poles”—we already have pre-existing agreements about the use of utility poles with utility companies.
5. Section 4-(g) replace “return the right of way to its functional equivalence” to “same or better condition”. Add that their permit will be voided if the State or county needs to do the repairs and the provider fails to pay the assessed cost.

6. Section 5- delete "(4) The State or county shall not require the placement of small broadband or wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole";
7. Section 7: There does not seem to be any definition of what would constitute adequate notice, and that should be clarified.
8. Section 10(d): Delete the bond limit of \$200 per small broadband or wireless facility and the total bond limit of \$10,000 per county.
9. Add language to assure that the installed cellular equipment won't degrade our infrastructure's wind rating. If we're to have equipment mounted on light and traffic poles, we would want assurance that the additional equipment wouldn't de-rate them.
10. The 30 days to determine if the application is complete and 90 days to grant/deny a completed application may be too short. Please specify that they refer to 30 and 90 working days rather than calendar days
11. Section 9, Implementation creates two concerns. First, if laws must be adopted or modified "No later than January 1, 2019," does that mean that laws cannot be amended after that date? We certainly should not tie our hands in such a way.

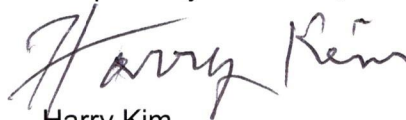
Second, Section 9 provides that "until such laws, regulations, or agreements are adopted, broadband or wireless providers may install and operate small broadband or wireless facilities and utility poles pursuant to this chapter." That would seem to give carte blanche to the providers to act precipitously before government can enact suitable standards. Such action should not be allowed.

Better language might be:

No later than _____, 2019, the State and each county shall adopt or modify laws, regulations, and agreements for lands within its jurisdiction that make available rates, fees, and other terms that comply with this chapter to wireless providers. After that date, in the absence of laws, regulations, and agreements that comply with this chapter and until such laws, regulations, or agreements are adopted, wireless providers may install and operate small wireless facilities and utility poles pursuant to this chapter.

Thank you for your consideration.

Respectfully submitted,



Harry Kim
Mayor, County of Hawai'i

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello

Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



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COUNTY OF MAUI
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March 13, 2018

TO: The Honorable Glenn Wakai, Chair
Senate Committee on Economic Development, Tourism, and Technology
The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Riki Hokama
Councilmember

SUBJECT: **HEARING ON MARCH 14, 2018; TESTIMONY IN OPPOSITION TO SB 2704, SD1, RELATING TO WIRELESS BROADBAND FACILITIES**

Thank you for the opportunity to testify in **opposition** to this measure. The purpose of this bill is to establish a process to upgrade and support next generation wireless infrastructure throughout the State and establish a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county-owned utility poles, or install associated utility poles, in the right of way.

I **oppose** this measure for the following reasons:

1. While the improvement of Hawaii's wireless broadband services may be beneficial, it should not be accomplished by infringing on the counties' ability to decide the use of their property. Each individual county should make the decision on how its utility poles and rights of way are used, not the State.
2. This measure imposes restrictions and requirements on the counties with an expectation for results without State assistance. If the State wants to support Hawaii's growing technological needs, it should do so in other ways. It should provide grants and work with the counties to develop local technology companies, and it should partner with schools to encourage students to consider exploring technology-related professions.

For the foregoing reasons, I **oppose** this measure.

Sincerely,

A handwritten signature in cursive script that reads "Riki Hokama".

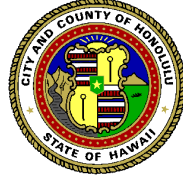
RIKI HOKAMA
Councilmember

LATE

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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
WEDNESDAY, MARCH 14, 2018; 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: COMMENTS ON SB2704, SD2

Thank you very much for considering this important measure and for the amendments you made to HB2651. The City and County of Honolulu (City) continues to recognize the need for the installation of small cell infrastructure to facilitate the deployment of 4G and 5G technology, as demonstrated by the City's approval of over 60 installations on Oahu to date. The City appreciates the amendments made to HB2651 by the Committees on Intrastate Commerce and Consumer Protection and Commerce and provides comments on this bill.

Public Safety Concerns Not 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 existing City utility poles and light standards ("poles") are able to bear the additional weight of small cell equipment, particularly because this added equipment was not included in the original design, sizing, and selection of the poles. Also, the City must ensure that the equipment does not pose a hazard or obstruction to pedestrians, bicyclists, motorists, and/or people maintaining or repairing other pole-mounted equipment, components, or lines. To this end, the City is concerned with the following:

- Prohibition on regulation of deployment: Page 11, lines 6 to 10, which states that the State and the counties shall not prohibit, regulate, or charge for the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities. This provision

expressly prohibits the City from reviewing, inspecting, and regulating the deployment of small cells, which severely limits the City's ability to protect the public and ensure that small cells are installed in a safe manner. The City supports the removal of this provision as in HB2651, HD2.

- Prohibits governmental discretion: Page 12, lines 6 to 12: which expressly prohibit the State and a county from exercising discretion with respect to the construction or modification of small wireless facilities in the right of way. The State and the City must be able to exercise discretion where appropriate to protect public safety.
- Prohibits requiring an application for replacing equipment: Page 21, line 20 to page 21, line 9 prohibit the City from requiring a permit for the replacement of small cell equipment with other small cell equipment that is substantially similar or the same size or smaller. Limiting the City's ability to review all equipment on its poles negatively impacts public safety. For example, this language does not allow the City to review "replacement" equipment if it is the same size and weight. The City would not know whether the "replacement" equipment interferes with public safety equipment.
- Insufficient review time: The City supports reviewing applications in a timely manner; however it should not be required to expedite review in such a fashion that compromises public safety. This measure subjects the City to unreasonably short time frames. While the City appreciates that this measure requires the City to evaluate the timeframes one year after the enactment of this bill, this provision does not consider that the carriers will submit lots of applications as soon as possible, thereby overwhelming City staff while it tries to implement the mandates of this bill while responding to submitted applications within the specified timeframes. To that end, the City is concerned with the following:
 - Upon initial submission, the City reviews and notifies the carrier in writing as to the completeness of the application. If incomplete, the City is required to notify the carrier as to why the application is incomplete and document the missing information within ten days. The burden should remain with the carrier to submit a complete application. This section unfairly shifts that burden to the City or reviewing entity. Ten days is an insufficient amount of time for the City to review an application for completeness, content, and compliance with applicable standards, regulations, requirements or practices. The City prefers the 30-day period as allowed in HB2651, HD1 and HD2.
 - After a complete application is submitted, the City only has 60 days to complete its review and either approve or deny the application. This is an

insufficient amount of time for the reviewing City agencies. This measure does not provide funds for the hiring of additional staff to ensure compliance with this time frame nor does it take into consideration the number of individual pole installations contained in any one application, or the scope of work involved in the review process by each affected agency. The City requests amending the language to provide 90 days to complete the review process once a complete application is received. Similarly, allowing the City only 30 days to review a resubmitted application that was previously denied is also an insufficient amount of time. The City requests 90 days to review any resubmitted application as is in HB2651, HD1 and HD2.

- Allowing the carrier to consolidate small cell equipment installations anywhere on Oahu, also results in insufficient review time for the City. While the City supports consolidating applications where appropriate, this language allows a carrier to submit an application for sites on opposite sides of the island. This greatly increases the time required to review and inspect each installation within an application. Accordingly, this provision should be removed or amended to allow consolidated applications within a limited distance in a contiguous area as well as limit the number of poles per consolidated application. The City believes that 25 poles within a two square mile radius is appropriate, as in HB2651, HD1 and HD2.
- Actual pole condition report not required: In our review process, the City requires that the carrier submit a report on the actual condition of each pole on which a carrier seeks to install small cell equipment because the conditions of each pole differ. The current draft does not include such a requirement. Without this requirement, carriers are able to submit generic information for each pole so long as the equipment is the same. This does not address public safety concerns because the generic information is not an accurate representation of what the actual pole is able to bear.
- Implementation Requirements Could Conflict with Other Provisions: The language on page 15, lines 8 to 16 require the State and county councils to adopt or modify laws, regulations, and agreements for lands within its jurisdiction to comply with this measure. In the absence of these compliant laws, regulations, and agreements, the carriers are able to install and operate small cell equipment. This appears to circumvent all of the safety provisions in this measure. The City respectfully asks that this section be removed or amended to clarify that the intent of this section is not to circumvent laws, ordinances, and agreements in place for public safety.

Fees

This measure interferes with the City's ordinance establishing rates for the installation of telecommunications equipment. Section 28-12.2, Revised Ordinances of Honolulu (ROH) establishes the rate for such equipment at \$1,000 per month. The fee language should be deleted as there is already an established City fee schedule and this provision is unnecessary.

In committee hearings on the companion measure, HB2651, your Committee and the Committee on Consumer Protection and Commerce noted that the fee schedules for attachments to county-owned infrastructure have generally been set by the counties. HB2651, HD2 deleted the fee provisions, allowing the State and the counties to set their own fee schedules. The City strongly agrees with these comments from the House committees and respectfully requests that your committee consider such an amendment. Currently, the City Council is considering RES18-43, which establishes the pole attachment fee at \$2,500 to \$4,000 per pole depending on the pole's location. The applicant associated with this resolution, Mobilitie, is proposing to install small cell equipment on behalf of Sprint, and has agreed to pay these rates.

Further, this measure limits the amount the City may charge for application review to \$100 per pole or \$100 per application batch. Reviewing an application involves visiting each pole for inspection. This fee would not cover the time and materials expense of travel to each pole in an application batch that potentially includes a multitude of poles located across the island of Oahu. RES18-34 also establishes a one-time application fee of \$500 per application per pole, which the applicant, Mobilitie also agreed to pay.

The City also believes that shifting the burden to the City to prove that fees are cost-based and do not exceed the actual, direct, and reasonable costs for the applicant's use of the pole are inappropriate. This burden should remain with the party raising the issue of the appropriateness of fees. If a carrier brings a lawsuit against another party, the carrier would be required to satisfy the burden of proof with respect to the claim. Similarly, the burden should remain with the carrier bringing a complaint about the appropriateness of a fee.

Visual Blight is Only Partially Addressed:

This bill does not allow the State or the City to regulate and prevent "Franken-poles" from emerging in the most picturesque communities. Instead, the City and the State are only able to require concealment in a "historic district." (see page 14, lines 4 to 13) Although many carriers present visually appealing photos of equipment integrated into the utility poles of other jurisdictions, this bill prohibits the State and a county from

requiring similar designs everywhere except in historic districts. The City respectfully requests that your Committee amend this measure to allow the State and counties to require that all carriers make all reasonable attempts to ensure that the equipment installed on poles and facilities is done in a manner that is context sensitive and minimizes visual blight.

Impact on Affordable Housing:

The City is also concerned that language on page 15, lines 8 to 16, may have an unintended consequence of increasing the costs of housing. The language requires the City to adopt or amend existing ordinances regulating the development of real property to ensure that development of new property or redevelopment of existing real property provides accommodations for the deployment of small cell technology. The addition of such a requirement imposes additional costs on developers, which will cause housing prices to increase. Further, there do not appear to be any requirements that the carriers bear any of these additional costs, resulting in a windfall to the carrier at the expense of the prospective homeowner. The City prefers the position taken by your Committee in HB2651, HD1, which removed this provision.

Community Concerns:

This measure expressly prohibits the State or City from requiring the carriers or operators to provide information to the communities in which the small cell equipment is installed. (see page 16, lines 5 to 17) While the City appreciates that for consolidated applications, the applicant must publish notice of the permit in a newspaper of general circulation in the county impacted, this provision does not allow for a higher level of community engagement. (see page 20, lines 9 to 13). Residents have a right to know and ask questions about the equipment being installed near or right in front of their homes.

To that end, the City is requiring carriers and operators to make presentations at Neighborhood Board meetings so that affected residents are able to learn about proposed installations, gather information, and ask pertinent questions. The small cell carriers or operators are the only entities able to answer questions about their equipment and operation. Mobilitie has agreed and has already begun to make presentations to each Neighborhood Board that have been identified for small cell equipment installation(s). The City respectfully requests that your Committee amend this measure to require notice to the affected communities as in HB2651, HD2.

Interference with City Uses of its Own Poles:

The City is concerned that this measure may preclude future uses of its own poles. Carriers and operators should not be able to use all of the structural capacity on

a City owned pole, such that the City cannot use the pole for its own purposes without first replacing it with a pole of a higher capacity. While the City appreciates that this measure allows the City to reserve capacity on its own poles for up to twelve months, we do not feel that this is sufficiently long enough to anticipate future technology that may require installation on City-owned poles. (see page 16, lines 5 to 10 and page 24, line 10 to page 25, line 3.

For example, the City is in the process of converting its light poles to utilize LED lights with advanced controls functions. This requires the City to install additional equipment on its existing light poles without the need to acquire and install new poles of higher structural capacity. If a carrier or operator installs equipment that effectively imposes structural loading to the maximum load carrying capacity of the existing pole, the City would be precluded from installing its own LED lights and controls. The City is unable to anticipate all future uses and the need to install additional equipment of its own on each pole, and therefore requests that this measure be amended to allow the City to reserve capacity on its poles for its own future uses.

The City thanks your Committee and the Committee on Commerce and Consumer Protection for recognizing this issue and prefers the language in HB2651, HD1 and HD2 on this issue.

Indemnification:

The City believes that indemnification of the State and the counties is very important and supports an indemnification requirement. However, we oppose the prohibition on requiring a carrier or operator to obtain insurance naming the City as an additional insured. The City believes that it should not have to cover any costs associated with any injury or harm caused by or resulting from small cell installations, and should be named in the carriers' or operators' insurance policies.

The City agrees that carriers should be required to obtain bonds to provide for the removal of abandoned or improperly maintained equipment, restoration of the right of way, and recoupment of past due fees. However, the City believes that \$200 per small wireless facility up to a maximum of \$10,000 per county, regardless of the number of installations in that county is very low. Carriers will likely install more equipment in the City compared with other counties. The bonding requirements should be adjusted to reflect that difference in equipment installed. The \$10,000 maximum means that a carrier would only have to obtain a bond for 50 poles. The City has already given conditional approval for over 60 poles. The carriers have also stated that they each intend to place equipment on at least 100 poles in the City. We respectfully request that the bond maximum amounts be deleted.

Repairs to the Right of Way:

If a carrier damages a sidewalk or other part of the right of way and fails to make the required repairs, the language on page 14, line 10 to page 11, line 7 allows the City to complete the required repairs and charge the applicable party the reasonable, documented cost of the repairs "within a reasonable time". The City requests that a shot clock be imposed on the carriers to complete required repairs to the right of way. The City is held to specific time frames for reviews and responses. It seems only appropriate that carriers be held to a similarly specific time frame. The House Committee on Consumer Protection and Commerce imposed a 30-day timeframe on the carriers, which the City supports.

Requiring Installation After Permits are Approved:

The City supports the provisions that require a carrier to install equipment within one year after the permit is granted. We are concerned that carriers or operators may submit permits for the sole purpose of reserving space and precluding other carriers from installing their equipment. The language on page 17, lines 4 to 12 addresses this concern.

Thank you for your consideration of this testimony. We prefer the amendments made to HB2651 by your Committee and the Committee on Consumer Protection and Commerce. The City continues to believe that the deployment of 4G and 5G technology is important as demonstrated by the approval of over 60 installations on Oahu to date and looks forward to continuing to work with small cell carriers, operators, and the Legislature on this important issue.



March 12th, 2018

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

Honorable Isaac W. Choy
Vice Chair, House Intrastate Commerce Committee
Hawaii State Capitol
Room 406
Honolulu, Hawaii 96813

RE: Support for SB 2704 SD2 – Wireless Broadband Facilities

Dear Chair Ohno and Vice Chair Choy,

On behalf of CTIA, the trade association for the wireless communications industry, I am writing to express strong support for SB 2704 SD2. The legislation creates a critical framework to promote job creation, economic investment and opportunity throughout Hawaii and we strongly support its passage.

The people of Hawaii continue to demand – at increasing levels – access to wireless products and services. This is demonstrated by the fact that there are more wireless devices in Hawaii than there are people.¹ In addition, nearly half of Hawaii residents live in wireless-only households.² These demands from the wireless industry's customers – your constituents – require that wireless networks be both updated to meet the existing demand and readied for the next generation of wireless networks.

Specifically, the existing rules governing wireless networks are designed for wireless facilities that can be as tall as 200 feet. Tomorrow's networks will be augmented by new small cell technology, often the size of a shoebox, which will be placed on structures such as utility poles and streetlights. These capacity additions are critical to keep up with exploding consumer demand on an increasing number of devices and these new networks need new and predictable rules. SB 2704 SD2 establishes an updated common sense framework to meet this immediate need and facilitate millions in new investment in Hawaii.

¹ FCC, Voice Telephone Services Report: Status as of December 31, 2016, at <https://www.fcc.gov/wireline-competition/voice-telephone-services-report>, last accessed 3/11/2018.

² CDC, National Center for Health Statistics, https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201712.pdf, last accessed 3/11/2018.



These small cells will help unlock new 5G services from remote healthcare solutions to autonomous cars. 5G networks will provide needed new capacity to accommodate growing consumer demands and help connect 100 times more devices. In a few short years, nearly everything will be connected to ubiquitous wireless networks at speeds up to 100 times faster than today, thanks to the framework established by SB 2704 SD2. Hawaii's communities will be smarter and more connected, and entire sectors, from public safety to tourism, to transportation, will be transformed.

Accenture has found that 5G and small cell deployments will provide tremendous economic benefits. Specifically, Accenture estimates that wireless operators will invest as much as \$275 billion nationwide over seven years creating up to three million jobs and adding approximately \$500 billion to the U.S. GDP through direct and indirect potential benefits.³ More specifically in Hawaii, 5G deployment in a community like Honolulu may create over 3,500 jobs and increase GDP by over \$571 million, and a community like Hilo may create over 400 jobs and increase GDP by \$66 million.⁴

Furthermore, a report published by Deloitte illustrates how other industries are leveraging today's wireless platform for innovation and growth, and how increased wireless deployment will spur even more advancements in these key economic sectors⁵:

- **Energy.** Wireless-enabled smart grids could create \$1.8 trillion for the U.S. economy—saving consumers hundreds of dollars per year.
- **Health.** Wireless devices could create \$305 billion in annual health system savings from decreased costs and mortality due to chronic illnesses.
- **Public Safety.** Improvements made by wireless connectivity can save lives and reduce crime. A one-minute improvement in emergency response time translates to a reduction of 8% in mortality.
- **Transportation.** Wireless powered self-driving cars could reduce emissions by 40-90%, travel times by nearly 40% and delays by 20% – and translate to \$447 billion per year in savings, and, more important, 21,700 lives saved.

That's the promise of the next-generation of wireless technology. Hawaii has an opportunity to be a leader in its deployment.

In closing, over the past two years, fourteen states – representing over 1/3 of the U.S. population – have enacted statewide small cell legislation both streamlining the process for small cell deployment and imposing reasonable fees for access to the infrastructure in the public rights-of-way. Several more states are considering legislation this session as you are. Appropriate siting

³ "How 5G Can Help Municipalities Become Vibrant Smart Cities," Accenture Strategy, Jan 12, 2017, https://newsroom.accenture.com/content/1101/files/Accenture_5G-Municipalities-Become-Smart-Cities.pdf, last accessed 3/11/2018.

⁴ *Ibid.*

⁵ Deloitte, "Wireless Connectivity Fuels Industry Growth and Innovation in Energy, Health, Public Safety, and Transportation," http://www.ctia.org/docs/default-source/default-document-library/deloitte_20170119.pdf, last accessed 3/11/2018.



and land use regulation will facilitate and encourage capital investment because capital tends to flow to places that are ready for investment. Enactment of SB 2704 SD2 will send a signal that Hawaii is ready for investment.

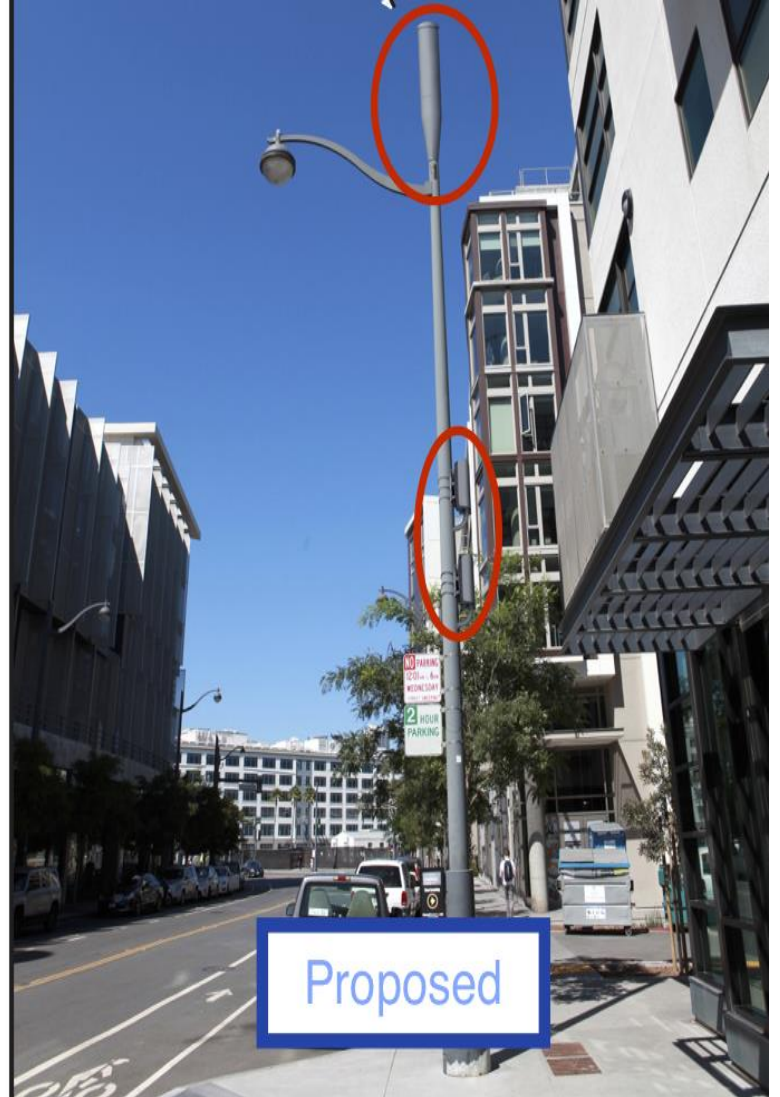
Thank you for the opportunity to submit testimony in support of SB 2704 SD2. CTIA strongly urges its approval.

Sincerely,

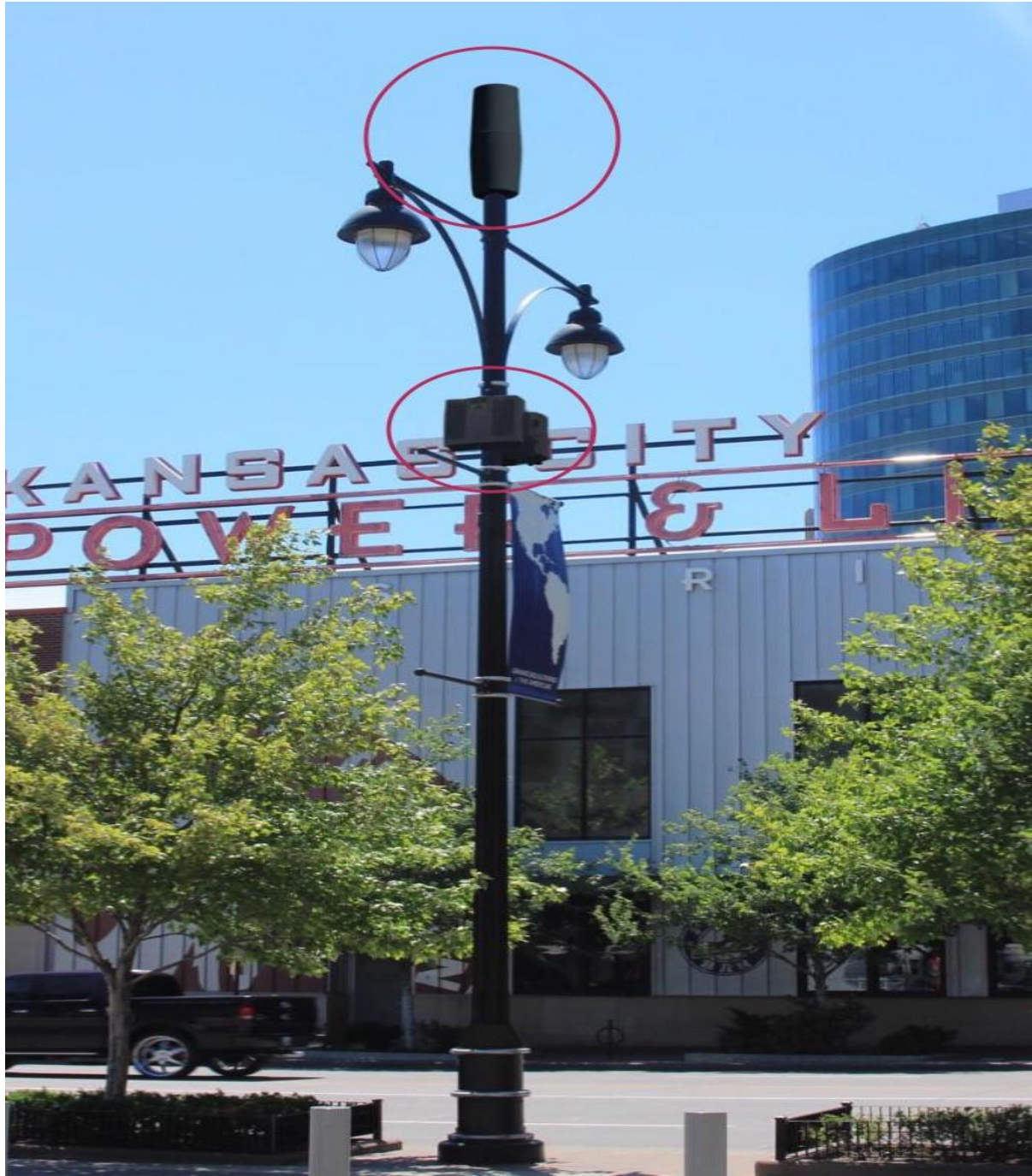
Bethanne Cooley
Senior Director, State Legislative Affairs
CTIA



Small Cell Examples









5G Economic Benefits: Hawaii



• Honolulu

- Over 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

• Pearl City

- Over 440 jobs created
- Over \$14 million in Smart City benefits
- \$73 million in estimated GDP growth

• Hilo

- Over 400 jobs created
- Nearly \$13 million in Smart City benefits
- \$66 million in estimated GDP growth

• Kailua

- Over 360 jobs created
- Over \$11 million in Smart City benefits
- \$59 million in estimated GDP growth

• North Kona

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

Improving Communities Across America, from small towns to big cities.

✓ \$275B New Wireless Investment



✓ 3 Million New American Jobs



✓ \$500B Contribution to GDP



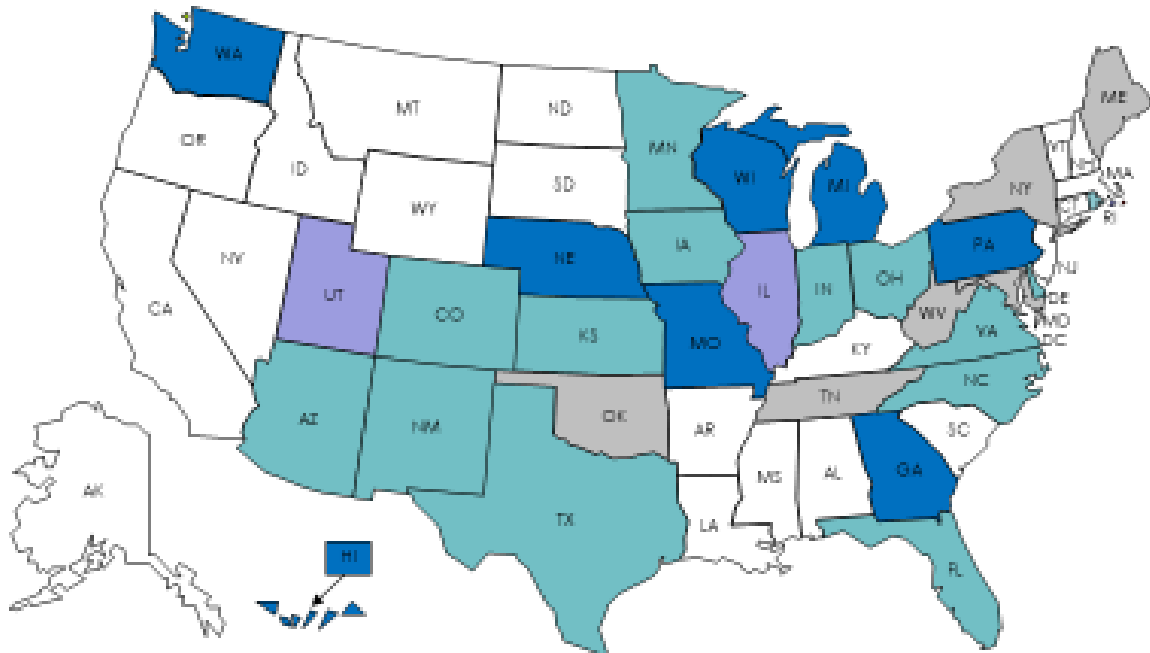
✓ \$160B in Smart Community Benefits & Savings
by reducing energy usage, decreasing traffic congestion and reducing fuel costs



Source: <http://www.pcm.accent.ee.com/news/newsroom-from-accent-ee-technology-division-economic-and-social-impact-of-5g-in-hawaii>



State Small Cell Legislative Activity



Key

- Enacted Small Cell Legislation
- Pending/Carryover Legislation from 2017 Session
- 2018 Introduction
- Pending Governor signature (as of 3/8/18)

Puerto Rico



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

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March 14, 2018

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 406

Honolulu, HI 96813

RE: Support Senate Bill 2704 SD2 – Relating to Wireless Broadband Facilities

Dear Committee Chair Ohno and Vice-Chair Choy:

On behalf of AT&T, please accept this letter of support for Senate Bill 2704 SD2 – Relating to Wireless Broadband Facilities – a bill that will promote the installation of small cell wireless facilities to improve wireless networks.



Consumers and businesses are using their mobile devices more than ever before to connect to everyone and everything around them. According to the CDC's January-June 2017 National Health Interview Survey, 48.3% of Hawaii residents now use wireless services exclusively for their communication needs. Indeed, AT&T has nationally experienced a 250,000% increase in data usage on our network since 2007. Additionally, as streaming video continues to become more prominent and new applications and services are introduced, data usage will continue to grow exponentially.

With this increased demand and pressure on the mobile network, small cell wireless facilities can help deliver faster download speeds, improved call quality, and a better overall wireless experience to Hawaii's residents, while also preparing our networks for 5G investment and deployment.

Senate Bill 2704 SD2 will create a framework to facilitate the deployment of small cell technology in Hawaii by wireless companies, providing access to the rights-of-way for a reasonable fee and a fair and predictable application review process, while preserving the ability of local governments to deny an application based on building, safety, or electrical codes or standards.

Please support Senate Bill 2704 SD2.



Respectfully submitted,

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

Bob Bass

AT&T



LATE

Jesús G. Román
VP of Government Affairs
Pacific & North Central Market
15505 Sand Canyon Avenue
Irvine, CA 92618

March 13, 2018

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce
Twenty-Ninth Legislature
Regular Session of 2018

RE: SB 2704, SD2 – RELATING TO WIRELESS BROADBAND FACILITIES
Hearing Date – March 14, 2018 at 9:00 a.m.

Dear Chair Ohno, Vice Chair Choy and Member of the Committee on Intrastate Commerce:

Mahalo for the opportunity to submit testimony on behalf of Verizon Wireless in STRONG SUPPORT of SB 2704, SD2 – Relating to Wireless Broadband Facilities. Wireless broadband services are a significant and growing part of the nation’s economy and will have a demonstrably positive impact on productivity in nearly every industry. As an essential part of the technology economy, the state must be ahead of the national curve by ensuring a robust and advanced wireless broadband network.

Current demands on the wireless networks have exploded over the past five years. The advent of unlimited data has provided consumers the ability to use mobile broadband anywhere, anytime, without the aid of WiFi, and consumers are using the wireless network constantly to stream high definition video, to play music and to apply for jobs, do homework, and just about all internet needs. The wireless infrastructure available in Hawaii is unable to adequately meet the growing demand for capacity and quality of service that consumers have become accustomed to and which they deserve.

But the existing challenges with providing a quality mobile broadband customer experience will only become more challenging. New technologies like 4K High Definition Video, Augmented Reality layered on smart phone apps (for example, PokeMan Go), Virtual Reality, among many others, put additional strain and demands on mobile broadband networks.

This is true for the existing 4G LTE network. But as carriers embark on the deployment of the fifth and generation of advanced wireless broadband technology, 5G, consumer demand for these services will continue to increase, along with the demand for ultrafast speeds, low latency (responsiveness of the network) and connection to the Internet of Things. Because of the propagation characteristics of a certain type of spectrum that will be a big part of 5G (millimeter wave), which covers short distances; a different type of infrastructure is needed. In addition to the large macro towers currently in use, wireless carriers must add a relatively new type of cellular transmittal system known as small wireless facilities or “small cells.”

As the name indicates, small cells are the latest wireless broadband transmittal systems and are much smaller than existing macro towers. Although the designs may vary slightly as required to support the network in a particular area, small cells typically consist of a small antenna, radios (that process the spectrum) and support equipment mounted on utility poles, street lights or other host structures. The small cells are essential to meeting consumer demand for 4G LTE and to deploy 5G.

Because small cells are relatively new, the state and county agencies do not have existing permitting processes to allow deployment of small cells in a timely manner. Instead, the agencies rely upon antiquated permitting processes which can take more than 18-24 months for approval. The current permitting processes may have been needed for macro towers, which are visibly obtrusive and can occupy an area of 700 square feet or more, but can provide coverage for up to a 10-mile radius. On the other hand, because small cells are much smaller and visibly unobtrusive, but require a greater number because of the limited propagation area, a much simpler process is needed for effective and timely deployment.

SB 2704, SD2 would provide a clear and appropriate permitting process by which carriers can upgrade the existing wireless broadband infrastructure and set the platform for 5G technology, subject to appropriate local control. Specifically, SB 2704, SD2 makes deployment of small cells on state and county utility poles a permitted use and sets the framework for a statewide process to approve small cells in a reasonable time and at cost based rates. The bill allows for the submission of a single permit application for a batch of small cells that are similar in form and structure, to expedite processing. ***Importantly, this legislation preserves state and local government control with the authority to deny an application that does not meet building, electrical, health and safety requirements.***

Revisions to SB 2704, SD2

Verizon has worked with almost every stakeholder interested in SB 2704, SD2 in an attempt to recommend a bill that is balanced and delivers on the policy framework necessary to rapid deployment of wireless broadband internet access infrastructure. In so doing, we have had multiple meetings with CTIA, AT&T, T-Mobile, Sprint, Charter, C&C of Honolulu, HECO, Hawaiian Telephone, Hawai'i Lodging & Tourism Association, various economic development boards, and several other stakeholders. The result of those meetings was an agreement by several stakeholders to support the SD2 version of SB 2704. We believe this version strikes the right balance between the important policy goals of encouraging ongoing investment in wireless broadband technologies statewide to stimulate the technology economy and meet the demand of Hawaii residents and visitors, while maintaining the state and county agencies' oversight of host facilities in the right of way.

However, based on the current version of the House companion bill, we believe certain potential recommendations for revisions to SB 2704, SD2 are not consistent with the overall intent of bill and are, in fact, opposite of the intent. Below is a summary of only a few of the revisions and policy implications for your consideration.

The revision that reduces the dimensions to 6 cubic feet.

These dimensions are so restrictive that virtually all current typical small cell designs are foreclosed. And while 5G facilities are expected to be smaller than 4G LTE small cells, the dimensions of the most effective 5G installation is still evolving.

There are no existing 4G LTE small cells that Verizon typically deploys that fit the 6 cubic foot specification, which if adopted, would create a situation where the definition of small wireless facility robs the bill of its original intent and meaning. In addition to setting the foundation for the next generation of wireless broadband, this bill seeks to address the current capacity issues with wireless broadband provided with 4G LTE. Throughout the nation, the design specifications for small wireless facilities used for 4G LTE service, recognized by the Federal

Communications Commission and numerous states that have adopted similar legislation, are as written in the bill as introduced. It is the fundamental linchpin of the bill.

The dimensions of small wireless facilities currently in SB 2704 are taken from the FCC's *First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*. That amendment was entered into to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA). 54 U.S.C. § 306108 (formerly codified at 16 U.S.C. § 470f). The FCC, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (NCSHPO) agreed to the dimensions to account for the limited potential of small wireless antennas and associated equipment to affect historic properties.

The agreement establishes exclusions from the Section 106 review process for small wireless facilities that do not exceed the dimensions. According to the FCC, "these new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country."

Exclusion of wireline backhaul.

Verizon does not oppose excluding wireline backhaul from the provisions of the bill, as this bill is not intended to streamline the permitting process for the deployment of fiber or wireline backhaul. SB 2704, SD1 took revisions, including defining wireline backhaul, to address this concern. The companion bill, however, defines wireline backhaul so broadly as to include virtually any use of wires in a small cell installation. Small cells use fiber from the antenna to a demarcation point that is either at the base of the pole or nearby. That demarcation point is where wireline backhaul begins. Under the House bill's language, small cell installations would effectively be carved out of the small cell bill.

Limitation on the City from regulating the deployment of small cells except as provided in the bill.

Section -3 of SB 2704, SD2 states except "as provided in this chapter, the State or any county shall not prohibit, regulate, or charge for the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities." This provision thus expressly authorizes the State or county to regulate, and charge for small cells attachments in accordance with the process provided in the bill. Yet, the HD2 version of the House bill removed this section. The bill establishes a policy framework for the state and counties to follow based upon the State's compelling interest in accelerating the deployment of advanced wireless broadband internet access. Removing this provision would rob the bill of its main purpose by turning the bill into simple guidelines. Among other reasons, this provision is needed to ensure consistent statewide policy.

The deletion of this provision when juxtaposed against the inclusion in HD1 of the following language in section -9(b), which appears to only protect cable providers, bolsters the need for retaining the language:

- (b) Except as provided in this chapter with respect to the small broadband or wireless facilities subject to the permit, rate, and fee requirements established

herein or specifically required pursuant to chapter 440G or federal law, the State and each county shall not adopt or enforce any regulations or requirements or charge additional rates or fees on the placement or operation of communications facilities in the right of way where the entity is already authorized by a franchise or authorization other than that granted in this chapter to operate throughout the right of way, and the State shall not regulate or charge fees for the provision of communications services, unless expressly authorized by applicable law.

Requirement of a cable franchise

HD2 of the House bill requires any wireless provider or affiliate thereof, to obtain a cable franchise subject to the provisions of chapter 440G. This would include payment of a cable franchise fee. This provision, like that of section -9(b) appears designed to protect the monopoly position cable companies currently enjoy in Hawaii. The provision is not consistent with the intent of this bill and is in any event, unlawful.

It is also misplaced for legal, policy, and technological reasons. The cable franchise model was never intended to apply to deployment of wireless facilities, even if the provider of those facilities offers video programming. Congress explicitly exempted video services provided by radio communications from regulation.¹ The FCC has also ruled that the definition of “cable system” requires delivery of programming to subscribers **by wire**, and that does not include transmission by radio.²

Moreover, 47 USC section 332 of the Communications Act prohibits states from raising barriers to entry, and franchising is a form of entry regulation. Section 332 preempts state and local jurisdictions from imposing entry regulation on CMRS providers.³ The offering of an over-the-top streaming video service also would not require a broadband provider to obtain a cable franchise, because streaming video is not a “cable service” and Internet access service is not a “cable service” provided over a “cable system” subject to cable regulation.⁴ Furthermore, the FCC has determined for competitive cable entrants that a local franchising authority’s jurisdiction “applies only to the provision of cable services over cable systems,” and does not extend to other services.⁵

A flat fee schedule, such as the 5% of an attacher’s gross revenues that would result from adoption of this provision, intrudes on the FCC’s authority to specify circumstances in which attachment fees may be fair, unreasonable, and/or a barrier to entry, as Congress intended in

¹ 47 U.S.C. § 571(a)(1).

² *Definition of a Cable Television System*, 5 FCC Rcd 7638, ¶ 7 (1990).

³ 47 U.S.C. § 332(c)(3).

⁴ *See Office of Consumer Counsel v. Southern New England Telephone Co.*, 515 F. Supp. 2d 269, 279 n.6 (2007); 47 U.S.C. § 522(6); *see also Cable Modem Order*, ¶¶ 60 *et seq.*

⁵ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, ¶¶ 121-122 (2007), *pet. for review denied*, *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008).

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce
March 13, 2018

47 USC sections 224, 253 and 332 of the Communications Act, and thus preempts state imposition of such fees on wireless providers.

Finally, this proposal ignores significant distinctions between cable TV model and small cells deployment and therefore is unworkable for small cells: Wireless small cells will be deployed on a completely different scale than use of ROW to deploy cable TV services. Cable franchises generally authorize digging trenches and construction throughout the local franchising authority's (LFA) jurisdiction to lay cable in order to serve all or most customer locations in the LFA. Small cells will be deployed in targeted areas to meet demand and may never require disruption to streets or ROW. Most small cell installations will lease fiber from the cable companies or wireline telephone companies who have already deployed fiber or will deploy the fiber needed and upon which they will pay a franchise fee, likely partly recovered on the lease payment charged.

Elimination of fees language

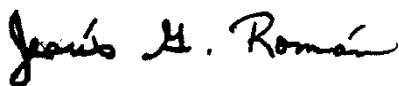
The HD2 version of the House bill eliminates one of the three key pillars of the bill, the establishment of cost recovery based rates not to exceed \$40. Without cost-recovery based fees, wireless providers will be unable to deploy small cells statewide in any meaningful degree. Failure to include a cost recovery based rate undermines the policy goal to be achieved by this bill. As FCC Chairman Wheeler stated, "If siting for a small cell takes as long and costs as much as siting for a cell tower, few communities will ever have the benefits of 5G." Heeding Chairman Wheeler's warning, thirteen other states have already passed state-wide legislation most of which limit the per pole annual fee to between \$5-50. Several other states are also currently considering legislation.

June 30, 2020 sunset

The HD2 version of the House bill sunsets the bill only 18 months after January 1, 2019, the presumptive effective date of the law, should it pass. The deployment of wireless facilities for the purposes of providing advanced mobile broadband internet access and the deployment of 5G cannot be accomplished in 18 months. Indeed, 5G is still being invented and while Verizon and other carriers have announced initial deployments as soon as the second half of 2018, meaningful deployment of 5G small cells will take years. It appears that the policy determination behind a sunset is to incentivize speedier deployment, but that is precisely the policy framework intended by the bill balanced against experience. This new policy framework should not be subject to any sunset.

We appreciate your proactive approach in supporting the rapid deployment of wireless broadband technology to meet the state's important policy objectives and strongly feel that the language in SB 2704, SD2 would achieve those objectives.

Mahalo,



Jesús G. Román



Jesús G. Román
VP of Government Affairs
Pacific & North Central Market
15505 Sand Canyon Avenue
Irvine, CA 92618

March 13, 2018

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce
Twenty-Ninth Legislature
Regular Session of 2018

RE: SB 2704, SD2 – RELATING TO WIRELESS BROADBAND FACILITIES
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This is true for the existing 4G LTE network. But as carriers embark on the deployment of the fifth and generation of advanced wireless broadband technology, 5G, consumer demand for these services will continue to increase, along with the demand for ultrafast speeds, low latency (responsiveness of the network) and connection to the Internet of Things. Because of the propagation characteristics of a certain type of spectrum that will be a big part of 5G (millimeter wave), which covers short distances; a different type of infrastructure is needed. In addition to the large macro towers currently in use, wireless carriers must add a relatively new type of cellular transmittal system known as small wireless facilities or “small cells.”

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The agreement establishes exclusions from the Section 106 review process for small wireless facilities that do not exceed the dimensions. According to the FCC, "these new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country."

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Requirement of a cable franchise

HD2 of the House bill requires any wireless provider or affiliate thereof, to obtain a cable franchise subject to the provisions of chapter 440G. This would include payment of a cable franchise fee. This provision, like that of section -9(b) appears designed to protect the monopoly position cable companies currently enjoy in Hawaii. The provision is not consistent with the intent of this bill and is in any event, unlawful.

It is also misplaced for legal, policy, and technological reasons. The cable franchise model was never intended to apply to deployment of wireless facilities, even if the provider of those facilities offers video programming. Congress explicitly exempted video services provided by radio communications from regulation.¹ The FCC has also ruled that the definition of “cable system” requires delivery of programming to subscribers **by wire**, and that does not include transmission by radio.²

Moreover, 47 USC section 332 of the Communications Act prohibits states from raising barriers to entry, and franchising is a form of entry regulation. Section 332 preempts state and local jurisdictions from imposing entry regulation on CMRS providers.³ The offering of an over-the-top streaming video service also would not require a broadband provider to obtain a cable franchise, because streaming video is not a “cable service” and Internet access service is not a “cable service” provided over a “cable system” subject to cable regulation.⁴ Furthermore, the FCC has determined for competitive cable entrants that a local franchising authority’s jurisdiction “applies only to the provision of cable services over cable systems,” and does not extend to other services.⁵

A flat fee schedule, such as the 5% of an attacher’s gross revenues that would result from adoption of this provision, intrudes on the FCC’s authority to specify circumstances in which attachment fees may be fair, unreasonable, and/or a barrier to entry, as Congress intended in

¹ 47 U.S.C. § 571(a)(1).

² *Definition of a Cable Television System*, 5 FCC Rcd 7638, ¶ 7 (1990).

³ 47 U.S.C. § 332(c)(3).

⁴ *See Office of Consumer Counsel v. Southern New England Telephone Co.*, 515 F. Supp. 2d 269, 279 n.6 (2007); 47 U.S.C. § 522(6); *see also Cable Modem Order*, ¶¶ 60 *et seq.*

⁵ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd 5101, ¶¶ 121-122 (2007), *pet. for review denied*, *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008).

Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair
Members of the House Committee on Intrastate Commerce
March 13, 2018

47 USC sections 224, 253 and 332 of the Communications Act, and thus preempts state imposition of such fees on wireless providers.

Finally, this proposal ignores significant distinctions between cable TV model and small cells deployment and therefore is unworkable for small cells: Wireless small cells will be deployed on a completely different scale than use of ROW to deploy cable TV services. Cable franchises generally authorize digging trenches and construction throughout the local franchising authority's (LFA) jurisdiction to lay cable in order to serve all or most customer locations in the LFA. Small cells will be deployed in targeted areas to meet demand and may never require disruption to streets or ROW. Most small cell installations will lease fiber from the cable companies or wireline telephone companies who have already deployed fiber or will deploy the fiber needed and upon which they will pay a franchise fee, likely partly recovered on the lease payment charged.

Elimination of fees language

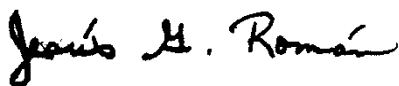
The HD2 version of the House bill eliminates one of the three key pillars of the bill, the establishment of cost recovery based rates not to exceed \$40. Without cost-recovery based fees, wireless providers will be unable to deploy small cells statewide in any meaningful degree. Failure to include a cost recovery based rate undermines the policy goal to be achieved by this bill. As FCC Chairman Wheeler stated, "If siting for a small cell takes as long and costs as much as siting for a cell tower, few communities will ever have the benefits of 5G." Heeding Chairman Wheeler's warning, thirteen other states have already passed state-wide legislation most of which limit the per pole annual fee to between \$5-50. Several other states are also currently considering legislation.

June 30, 2020 sunset

The HD2 version of the House bill sunsets the bill only 18 months after January 1, 2019, the presumptive effective date of the law, should it pass. The deployment of wireless facilities for the purposes of providing advanced mobile broadband internet access and the deployment of 5G cannot be accomplished in 18 months. Indeed, 5G is still being invented and while Verizon and other carriers have announced initial deployments as soon as the second half of 2018, meaningful deployment of 5G small cells will take years. It appears that the policy determination behind a sunset is to incentivize speedier deployment, but that is precisely the policy framework intended by the bill balanced against experience. This new policy framework should not be subject to any sunset.

We appreciate your proactive approach in supporting the rapid deployment of wireless broadband technology to meet the state's important policy objectives and strongly feel that the language in SB 2704, SD2 would achieve those objectives.

Mahalo,



Jesús G. Román



TESTIMONY OF CHARTER COMMUNICATIONS

House Committee on Intrastate Commerce

Hawai'i State Capitol, Conference Room 429

RE: S.B. 2704, S.D.2

WEDNESDAY, MARCH 14, 2018

9:00 AM

Aloha Chair Ohno, Vice Chair Choy 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. 2704, S.D.2.

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, is 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.

As a connectivity and customer service company, Charter embraces new technology like 5G and the deployment of wireless facilities and continues to advance new products and services that meet the ever growing needs of our customers.

Presently, wireless companies are not precluded from acquiring right-of-way ("ROW") authority to attach antennas or other wireless infrastructure. Case in point is Resolution 18-34 that is before the Honolulu County Council. Wireless providers currently have the authority to request attachment rights for both utility and county owned poles as well as the ability to work with counties on attachments for other structures.

S.B. 2704, S.D.2 goes far beyond just collocating an antenna or receiver on a utility pole. A 5G network requires wireline backhaul to connect these antennas and to carry broadband and other communications traffic from the antennas to central distribution facilities. These 5G networks therefore look almost identical to traditional cable communications systems and it would be unfair, unjust and unreasonable to regulate this type of network differently than cable systems.

Additionally, we believe S.B. 2704, S.D.2 would create an uneven playing field between cable and telecommunications providers in the state by crafting special rules for the placement of wireless facilities in the public ROW. Whereas Charter has made assurances in our communities through our franchise agreements for the right to use and occupy the ROW.

We are also subject to stringent safety requirements and other obligations, including the requirement to pay franchise fees of up to 5% of gross annual revenues for occupancy and use of the ROW. This equates to millions of dollars each year in payments.

Charter believes S.B. 2704, S.D.2 is intended largely to allow unfranchised entities to circumvent the ROW authorization process, by bypassing the procedure applicable to Charter. Access to public rights-of-way should be equitable for all occupiers. We look forward to continuing to provide our current and new services, but it should not be treated discriminatorily, and our customers should not have to pay to use the public ROW when others do not. A review of the ROW regime requires serious and thoughtful analysis. If the intent is to change the payment structure for access to the right of way, it must do so fairly and with parity for all service providers and consider all unintended consequences.

With respect to rural deployment, Charter continues to expand access and close the digital divide to unserved and underserved communities. Small cell technology is not a viable solution for rural broadband deployment and wireless providers have made no commitment to build out rural areas of this state; whereas, obligations placed on Charter includes not only rural deployment but also many others community and investment responsibilities.

-) Access to low-income broadband service to: (1) households with children that have a student participating in the National School Lunch Program ("NSLP") and (2) senior citizens age 65 and older who are eligible and receive from the federal government Supplemental Security Income ("SSI") benefits.
-) Deploy at least 1,000 new public WiFi access points throughout Hawai'i by 2020.
-) Invest \$10 million to build out to unserved and underserved areas in Hawai'i.
-) Abide by 25 homes-per-mile requirement for build out extensions.
-) Increase broadband speed and enhancements.
-) Provide energy efficient set-top-boxes.

In closing, if the Committee is inclined to pass the bill, Charter respectfully prefers H.B. 2651. H.D.2 with clarifying amendments.

Mahalo for the opportunity to testify.

Written Statement of
Ani Menon
Director of Government & Community Affairs

**HOUSE COMMITTEE ON
INTRASTATE COMMERCE**

March 14, 2018 9:00AM
State Capitol, Conference Room 429

IN SUPPORT OF:

S.B. NO. 2704 SD2 RELATING TO WIRELESS BROADBAND FACILITIES

To: Chair Ohno, Vice Chair Choy, and Members of the Committee
Re: **Testimony in support of SB2704 SD2**

Aloha Honorable Chair, Vice Chair, and Committee Members:

Thank you for this opportunity to testify in support of SB2704 SD2. Hawaiian Telcom supports the development of a robust broadband network throughout the State, and believes that SB2704 SD2 – in its current language - establishes an effective, technology neutral solution for communication service providers to increase capacity and meet the demand for data by Hawaii residents.

Hawaiian Telcom has invested close to one billion dollars in broadband infrastructure to increase connection speeds, network capacity, and develop a robust broadband network Statewide. We are designated as “critical infrastructure” by our State and federal governments and institutions including the military, hospitals, schools, and hotels. Hawaiian Telcom also manages the next generation platform that provides 911 emergency services Statewide. We are leaders in the development and deployment of the wireline backhaul infrastructure that enables the 4th generation Long Term Evolution (4G LTE) technology, and are continuously investing in our robust next generation fiber network.

Consumer demand for broadband connectivity is growing exponentially. Addressing this growth is like addressing traffic congestion on our freeways – it is necessary to consider the entire ecosystem and deploy a variety of solutions to decrease congestion and optimize network performance. In order to provide consumers with seamless broadband connectivity in the face of skyrocketing demand, our State’s broadband infrastructure must include a variety of technology including WiFi hotspots, fixed wireless solutions, fiber connections to homes and businesses, wireless cell sites, and backhaul networks that connect to Transpacific fibers where all internet traffic is aggregated into and out of our State.

SB2704 SD2 addresses the difficulties in deploying some of these broadband alternatives, including wireless infrastructure. It also increases competitive options for communications

services, improves the communications network, and promotes public safety, job growth, and education.

The unprecedented growth in mobile broadband consumption has created an urgent need for communications service providers to add capacity to existing and new broadband infrastructure throughout the State. SB2704 SD2 establishes the necessary policy and permitting framework incentivizing communications service providers to invest in our State's broadband infrastructure.

Thank you for the opportunity to testify in support of SB2704 SD2.



LATE

Maui Hotel & Lodging
ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 2704 SD 2

Relating To Wireless Broadband Facilities

COMMITTEE ON INTRASTATE COMMERCE

Wednesday, March 14, 2018, 9:00am

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 185 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 2704 SD 2**, which establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State. Establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way. Effective 7/1/2050. Applies to permit applications filed with the State or county after 12/31/2018.

MHLA believes that this measure would modernize Hawaii's legal and policy framework to facilitate the expeditious deployment of small cells, the foundational element to high speed video-streaming facilitating wireless broadband internet access to meet the growing demands of our communities and our visitor industry.

With the advent of unlimited data plans across all wireless carriers, traffic across wireless networks has exploded and continues to exponentially grow; keeping ahead of this demand with current infrastructure is becoming increasingly challenging. Small cell technology is the essential form of wireless infrastructure needed to deliver improved 4G LTE service. Increasing network capacity is even more critical if the residents and visitors of Hawaii are to benefit from the next generation of wireless technology, 5G.

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.

Thank you for the opportunity to testify.

SB-2704-SD-2

Submitted on: 3/13/2018 8:57:55 AM

Testimony for IAC on 3/14/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

Good morning, my name is Melodie Aduja. I serve as Chair of the Oahu County Committee ("OCC") Legislative Priorities Committee of the Democratic Party of Hawaii. Thank you for the opportunity to provide written testimony on **SB2704 SD2**, relating to Small Wireless Facilities; Wireless Facilities; Broadband; Economic Development; State-owned and County-owned Utility Poles; and Permits.

The OCC Legislative Priorities Committee is in favor of **SB2704 SD2** and supports its passage.

SB2704 SD2 is in alignment with the Platform of the Democratic Party of Hawai'i ("DPH"), 2016, as it (1) establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State, and (2) establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way, effective 12/31/2018.

Specifically, the DPH Platform states that improvements to infrastructure are critical to providing a healthy base to the Hawaiian economy. As such, State and county governments have a key role to play in setting reasonable standards for industry and trade. (Platform of the DPH, P. 1, Lines 50, 44-45 (2016)).

"We recognize that the responsible use and development of technology in all its manifestations offers immense potential for our community, government, including institutions of higher education and business sectors. We encourage synergistic research, development, commercialization and educational programs to promote technological proficiency and innovation. In particular we support Science, Technology, Engineering and Math (STEM) initiatives in our public, private and charter schools as these prepare the next generation to address the needs of our state. We also support programs that facilitate incubator, i.e. start-up, opportunities for new and promising technologies, and encourage the local retention of our intellectual resources.(Platform of the DPH, P. 3, Lines 149-156 (2016)).

Given that **SB2704 SD2** (1) establishes a process to upgrade and support next generation wireless broadband infrastructure throughout the State, and (2) establishes a permitting, application, review, and approval process for wireless service providers to install wireless facilities on state or county owned utility poles, or install associated utility poles, in the right of way, effective after 12/31/2018, it is the position of

the OCC Legislative Priorities Committee to support this measure.

Thank you very much for your kind consideration.

Sincerely yours,

/s/ Melodie Aduja

Melodie Aduja, Chair, OCC Legislative Priorities Committee

Email: legislativepriorities@gmail.com, Text/Tel.: (808) 258-8889

Warren Cho - TESTIMONY

March 12, 2018

Organization: Individual

Position: Oppose SB2704 SD2

Present at Hearing: Yes

Re: Hearing before the House Committee Intrastate Commerce March 14, 2018

To The Honorable Takashi Ohno, Chair;
The Honorable Isaac W. Choy, Vice-Chair; and members of
House Committee on Intrastate Commerce

My name is Warren Cho and I am Director of Hawaii as a Medical Consultant helping physicians increase their revenue by \$100K or more per year, while complying with current federal mandates. I am writing to share my position to OPPOSE SB 2704 SD2.

Why is 5G so especially outrageous to the public?

1. 5G would greatly extend FCC's current policy of the MANDATORY IRRADIATION OF THE PUBLIC without adequate prior study of the potential health impact and assurance of safety.
2. 5G would IRRADIATE EVERYONE, including the most vulnerable to harm from radiofrequency radiation: pregnant women, unborn children, young children, teenagers, men of reproductive age, the elderly, the disabled, and the chronically ill.
3. 5G would likely rely on the 1996 Telecommunications Act to continue to deny state and local governments and municipalities the right to bar the installation of wireless technology on environmental/health grounds. This Act may be the greatest offense to local rule of all time.
4. 5G would likely rely on the FCC's current outdated, excessively permissive, and thus widely criticized, radiation-exposure guidelines that enable many parties to make false claims of safety for wireless products. Those guidelines are based primarily on a 30-year-old analysis by the National Council on Radiation Protection and Measurements (NCRP) many years before the emergence of most of the digital wireless technology in use today. And the FCC's proposed move to 5G would offer no further study of safety, even though the new study by the National Toxicology Program at National Institute of Health(NIH) has already found those same FCC guidelines unprotective.
5. 5G would set a goal of irradiating all environments, including the insides of homes, whether single family homes, townhouses, or apartments, ending any remnant of the notion that "your home is your castle" in which you are supposed to be safe and to have a measure of control of your environment. Specifically, the proposed 5G Technology would blast through walls of any kind just as the current wireless technologies do. The result would be to drive even more people out of their homes than are already being displaced by the current wireless technologies.

6. 5G would force cell antennas onto residential streets, bringing the radiation threat even more up close and personal to the public.
7. 5G would bypass all current biomedical studies endeavoring to determine if radiofrequency radiation is a factor in the explosive growth of major health conditions -- such as autism, ADHD (attention deficit hyperactivity disorder), and Alzheimer's disease -- that are ruining the lives of so many people, from their youngest years to their oldest years.
8. 5G would increase the prospect for the continued explosion of health care costs, with a further worsening of the national debt, and with no clear assignment of responsibility to the providers of the harmful radiation. In short, 5G would continue to export to society the costs of the harm that wireless products cause.
9. 5G would totally ignore the rapidly growing international biomedical research literature that demonstrates that radiofrequency radiation adversely affects human health at levels far below the current FCC exposure guidelines. And the adverse impact on animal, insect, and plant health, too, would continue to be ignored.

Please view California Democrat Governor Jerry Brown Veto the 5G Senate Bill 649
<https://www.mercurynews.com/2017/10/16/california-gov-jerry-brown-vetoes-bill-easing-permits-on-cell-phone-towers/>

Environmental Health Trust (EHT) 5G Scientific Overview of Human Health Risks
<https://ehtrust.org/key-issues/cell-phoneswireless/5g-networks-iot-scientific-overview-human-health-risks/>

Genetics & Neurological Effects
http://www.bioinitiative.org/report/wp-content/uploads/pdfs/section_1_table_1_2012.pdf

In closing, with the small cell towers on every street of America, NO ONE human being is immune, exempt, pardoned or safe from this deadly EMF & RFR. The 30Ghz-300Ghz millimeter waves of radiation will be severely damaging the heart rate variability, bacterial affects, antibiotic resistance, immune system affects, Teratogenic effects, altered gene expression, and cataracts. And the long list of adverse biological effects, including:

- DNA Single and Double Strand Breaks
- Oxidative Damage
- Disruption of Cell Metabolism
- Increased Blood-Brain Barrier Permeability
- Melatonin Reduction
- Disruption of Brain Glucose Metabolism
- Generation of Stress Proteins

Respectfully Yours,
Warren Cho

SB-2704-SD-2

Submitted on: 3/10/2018 11:31:34 PM

Testimony for IAC on 3/14/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lois J Young	Individual	Oppose	No

Comments:

Aloha Chairman and Committee Members,

Thank you for your dedication to our state motto: the life of land is perpetuated in righteousness.

I AM IN STRONG OPPOSITION TO SB2704

I love today's technology and the many advances made toward better communication and quick responses. Unfortunately along with the technology comes ELECTRO-MAGNETIC FREQUENCIES (EMF) aka RADIATION which are known to cause cancer, tumours, seizures, headaches, tiredness.

EMF are found in anything SMART, phone, refrigerators, computers, ipads, wi-fi, tv.

Tho we were concerned about a nuclear fallout in Hawaii, we should be even more concerned about the damaging effects of EMFs aka RADIATION in our own backyard. We must have studies done on the effects it will have on our population and full proof the system from further damaging our health.

<http://www.saferemr.com/2017/08/5g-wireless-technology-millimeter-wave.html>

<https://ehtrust.org/key-issues/cell-phoneswireless/5g-networks-iot-scientific-overview-human-health-risks/>

Above you'll find a few sites that may influence your decision on holding off in advancing 5G because of unknown and known health risks.

Until studies have been implemented, I urge you to OPPOSE SB 2704.

Sincerely,

Lois Young

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LATE



HAWAI'I LODGING & TOURISM
ASSOCIATION

Testimony of

Mufi Hannemann
President & CEO
Hawai'i Lodging & Tourism Association

Committee on Intrastate Commerce
March 14, 2018

Senate Bill 2704 SD2: Relating to Wireless Broadband Facilities

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

The nearly 700 members of the Hawai'i Lodging & Tourism Association, the largest private-sector visitor industry organization in the state, join in expressing our support for Senate Bill 2704 SD2, which would pave the way for the development of 5G wireless services to enhance the islands' digital infrastructure.

From the perspective of HLTA, digital communications have come to play an essential role in the success of the state's top industry. This connectivity is everywhere we turn, from issuing vital information to our visitors, booking flights and hotel reservations, unlocking hotel rooms or renting cars, fulfilling the communication needs of modern business travelers, demands for expanded WiFi, or the instantaneous posting of daily vacation photos and videos on the web.

But the high consumption levels of wireless data are testing the limits of our existing wireless network. Better 4G LTE and 5G are the answers to this demand. The foundation of better service and the next generation of wireless broadband, 5G, lies in the deployment of critical digital infrastructure, including small cells. As it stands, Hawai'i requires the navigation of a complex regulatory process that discourages private investment in this infrastructure. S.B. 2704 would correct this by streamlining the process to accommodate a rapid build-out of the necessary 4G LTE wireless network and 5G. This is an essential step in ensuring our tourism industry remains among the best in the world and that our visitors and residents alike enjoy the latest advancements in technology and connectivity.

We urge to you to give this measure your favorable consideration and thank you for the opportunity to testify.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

LATE

**HEARING BEFORE THE HOUSE COMMITTEE ON INTRASTATE COMMERCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 429
WEDNESDAY, MARCH 14, 2018 AT 9:00 A.M.**

To The Honorable Takashi Ohno, Chair;
The Honorable Isaac W Choy, Vice Chair; and
Members of Committee on Intrastate Commerce;

TESTIMONY IN SUPPORT OF SB2704 RELATING TO WIRELESS BROADBAND FACILITIES

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing share our support of SB2704.

The purpose of SB2704 is to support the current 4G LTE network and to lay the groundwork for new wireless connectivity in Hawaii. There is a growing demand for faster and more reliable wireless networks in Hawaii with the increased usage of wireless devices. Local businesses, residents, and our visitors expect the best network available, but this cannot be achieved without small wireless facilities. Also broadband linkages are very important for market expansion, both to domestic and international markets. Many businesses and residents are already reporting that while 4G networks are offered, they are still experiencing times of very slow access, which hampers operational performance as well. Further, as more businesses are using cloud based services and storage, these speeds become more and more important. We support this bill as it will streamline the process and remove regulatory obstacles for the deployment of small wireless facilities and provide the required groundwork to get 5G up and running.

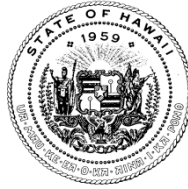
We appreciate the opportunity to testify on this matter and therefore ask that this bill be passed.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



Testimony by:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

LATE

LATE

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 14, 2018
9:00 a.m.
State Capitol, Room 429

**S.B. 2704, S.D. 2
RELATING TO WIRELESS BROADBAND FACILITIES**

House Committee on Intrastate Commerce

The Department of Transportation (DOT) supports this bill that proposes to expedite the installation of wireless broadband infrastructure. However, DOT has concerns over some of the requirements.

H.B. 2651, H.D. 2 appears to require DOT to perform upgrades to poles to support wireless infrastructure within a specified timeframe. The cost for the work cannot be recovered by the minimal fee structure proposed. DOT believes this cost should not be borne by the Department. Also, timeframes for delivery of upgrades should consider manufacturing and delivery from the continental US.

DOT is required to collect fair market value for users of the Federal Aid system. If DOT is not allowed to charge this value, we may be in violation of the requirements of our Federal Aid program.

The State supports reviewing permit applications in a timely manner; however, it should not be required to expedite review that would compromise public safety. Thirty days is an insufficient amount of time for the State to review the initial application for completeness, content, and compliance with applicable standards, regulations, requirements or practices.

We recommend maintaining that any work within the Highways Division right-of-way still requires the entity to obtain the Highways Permit under Section 264-6, HRS. This allows the Highways Division to verify that all new infrastructure within the right-of-way meet current safety and design standards, and coordinate work with other entities and highways projects to minimize impacts to safety and traffic flow.

DOT's Airports Division expresses concerns that this bill could impact existing contracts if applied to Airports properties. Airports has recently entered into an exclusive contract with Boingo Wireless, Inc. to provide wireless and DAS cellular-connect services at

Hawaii airports. Allowing others to provide service within the Airports properties will violate the intent of the contract, and would negatively affect Airports revenues.

Therefore, we respectfully request that Airports properties be excluded from this bill.

Thank you for the opportunity to provide testimony.

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AIRPORT CONCESSIONAIRES COMMITTEE

Honorable Takashi Ohno, Chair
Committee On Intrastate Commerce
House of Representatives
Hawaii State Legislature

LATE TESTIMONY

Hearing: March 14, 2018 , 9:00 a.m.; Room: 429

Re: SB 2704, SD2 – Relating to Wireless Broadband Facilities

Dear Chair Ohno and Committee Members:

My name is Peter Fithian and I am testifying on behalf of the Airport Concessionaires Committee which represents most of the concession operators at Hawaii's airports. Airport Concessions historically on average have provided 50% to 75% of the airport operating revenues.

Our Committee opposes the present form of the bill unless "public airports are exempted". Our proposed amended language is at the end of this testimony.

Unless, there is such an exemption this bill in our opinion will conflict with "exclusive rights" granted to the Wifi/Das Concession Operator at our public airports and its ability to 1) recapture over \$13 million in ongoing and planned improvements; and 2) pay minimum guaranteed rents or percentage of gross revenues, whichever is greater, that helps to support our public airports operations and ongoing improvements.

As you know, our public-airports-system is "self-sustaining" and depends on special fund revenues to support its operations and improvements from concession operators and others. Cell carriers and others are free to negotiate with the Wifi/Das Operator and/or DOT to provide their services at our public airports in keeping with federal guidelines and operational and safety necessities.

It should also be noted that FAA guidelines in return for federal grant monies "require by periodic audit" that our public airports collect "fair market rents/payments" from users of public airport properties and facilities.

Thank you for allowing us to testify.

SUGGESTED AMENDED LANGUAGE IN "BOLD CAPS AND UNDERLINED"

"CHAPTER

WIRELESS BROADBAND AND COMMUNICATIONS NETWORKS

§ -1 **Applicability.** (a) Subject to subsection (b), this chapter shall only apply to activities of a wireless or communications service provider to deploy small wireless facilities and to modify or replace utility poles associated with small wireless facilities. Except as to the State or county permitting authority related to utility poles, this chapter shall not be construed to apply to:

(1) Utility poles or other utility infrastructure solely owned by investor owned utility companies; or

(2) Investor owned utility companies' utility poles in which the State or county has an ownership interest.

(b) Notwithstanding any other provision to the contrary, this chapter shall not apply to state and county poles, related structures, sites, or facilities that support public safety, law enforcement, or emergency communications AND ANY AIRPORTS WHOSE OPERATIONS OR IMPROVEMENTS ARE SUBJECT TO ANY TYPE OF LEGISLATIVE APPROPRIATION.

Public Airport

Jim Star