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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Wednesday, March 20, 2019
2:15 p.m.
State Capitol, Conference Room 329**

**On the following measure:
S.B. 553, H.D. 1, RELATING TO BROADBAND SERVICE INFRASTRUCTURE**

Chair Takumi and Members of the Committee:

My name is Ji Sook “Lisa” Kim, and I am the Cable Administrator of the Department of Commerce and Consumer Affairs’ (Department) Cable Television Division. The Department offers comments on this bill.

The purposes of this bill are to: (1) establish a broadband service infrastructure grant program, to be administered by the Department of Business, Economic Development, and Tourism (DBEDT), to award grants to applicants to extend infrastructure used to provide broadband service to unserved and underserved areas of the State; and (2) appropriate funds.

In today’s world, access to affordable, high-speed broadband services is essential to fully participate in our economy and society. The Department thus strongly supports legislation that can improve access to broadband services for Hawaii residents, particularly in the unserved and underserved rural areas across our state, so that all of our residents may benefit equally from the services and opportunities afforded

by access to high-speed internet. The proposed grant program could help bridge the broadband gap to rural areas where broadband deployment would otherwise be cost prohibitive for providers because of the excessively high cost to install infrastructure to serve only a small number of subscribers in those areas.

Efforts to date, using funding through the Federal Communications Commission's (FCC) Connect America Fund (CAF) program, have been successful in extending infrastructure and access to unserved census blocks. However, given the breadth of the rural broadband gap, many residents remain, and will remain for an indeterminate time, without access to any wired internet service or with service well below any speed threshold currently used to define "broadband-level" service. A grant program that will provide financial incentives to providers to extend their infrastructure into rural, high-cost service areas would assist in extending service to those areas. The proposed program appears to target a need that is not currently being addressed by the FCC's CAF program.

The Department believes that the current bill provides a good starting framework and offers the following comments for the Committee's consideration:

1. Section -6(b)(1) on page 8, lines 6-10 allows a broadband service provider to submit a written challenge disputing an applicant's certification "that no other federal or state programs provide funding for a proposed project for which program support is sought"; however, no such certification is required for applications under section -5. For clarity, the Department suggests that the Committee include such a certification requirement under section -5.
2. The proposed grant scoring system requires that the highest priority be given to specific listed criteria, including the "[l]ength of time the applicant has been providing broadband services in the State" under section -6(d)(3) on page 9, lines 13-14. To promote competition in the State, it may be better to remove this criterion given that another criterion on page 9, lines 10-12 reasonably qualifies an applicant by giving substantial weight to "[t]he experience, technical ability, and financial wherewithal of the applicant in successfully deploying and providing broadband service[.]"

3. Section -6(e), page 10, line 20 to page 11, line 8 provides that in awarding grants, DBEDT shall not consider “any new or additional regulatory obligations beyond those required under applicable law, including but not limited to open access network requirements or any rate, service, or other obligations beyond the speed requirements required by this chapter.” The Department suggests that, at a minimum, this section be amended to allow for consideration of the Governor’s net neutrality policy directive set forth in Executive Order No. 18-02, issued in February 2018, which directs the State’s executive agencies to contract only with internet service providers adhering to net neutrality principles and which further directs the State Procurement Office to add net neutrality provisions to, and procurement requirements for, telecommunications and internet service contracts.

Thank you for the opportunity to testify on this bill.



Charter Communications
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hawai'i State Capitol, Conference Room 329
Wednesday, March 20, 2019
2:15 PM

Supports with Amendments

S.B. 553, S.D.2, H.D.1 Relating to Broadband Service Infrastructure

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee.

Thank you for scheduling a hearing on this measure. Senate Bill 553, Senate Draft 2, House Draft 1 (S.B. 553, S.D.2, H.D.1), establishing the broadband service infrastructure grant program to award grants to applicants to extend deployment of facilities used to provide broadband service to unserved and underserved areas of the State.

Like many part across the country, Hawai'i is not immune to the challenges of remote access to broadband. Access to broadband in unserved and underserved areas in Hawai'i would enhance economic development, education, health care, and emergency services in the State.

In the furtherance of ensuring public funds are used carefully for broadband infrastructure, we believe private funding should be derived and be solely from private sources, and that other public forms of funding should not be used in conjunction with the broadband infrastructure grant program. The eligibility criteria to allow the use of any federal or state funding, to secure additional state funding under the grant program would risk this program to being a public good using public funds partnership. This would defeat the purpose and intent of this measure as means of creating a true public private partnership. (PPP).

As such, we respectfully request the following amendments be entered into the measure on page

5, lines 6-17:

§ -4 Eligible applicants. To become eligible for a grant, an applicant for a grant:

...

(2) Shall commit to paying a minimum of twenty per cent of the project costs out of the applicant's own funds and may not provide a minimum matching amount from any funds derived from federal or state government grants, loans, or subsidies; and

...

Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Wednesday, March 20, 2019
2:15 p.m.
State Capitol, Conference Room 329

In consideration of
SB 553, SD2, HD1
RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

Chair Takumi, Vice Chair Ichiyama and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) provides **comments** on SB553, SD2, HD1 which establishes the broadband service infrastructure grant program to award grants to applicants to extend deployment of facilities used to provide broadband service to unserved and underserved areas of the State. We have the following comments:

1. The current language of the bill severely restricts who can apply to the grant program. To create a level playing field, the restriction on an applicant receiving funds from other federal or state grant or loan programs should be removed. There are many federal rural grant programs that seek matching state funding. This program could help augment those federal programs.
2. Eligible applicants should also include partnerships between government agencies and non-governmental entities to encourage partnerships to implement broadband infrastructure in support of telehealth, agriculture and disaster recovery.
3. We have the following suggested changes:

Page 5

Lines 8-10 (1) [~~May not receive funds under any other federal or state government grant or loan program for projects covered by an application;~~]

Lines 14-17 - (3) May be any non-governmental entity or a non-governmental entity in partnership with a governmental agency, with demonstrated experience in providing broadband service, broadband service infrastructure, or other communications service to residential and business customers within the State.

Page 8

Lines 6-10 (1) Disputing an applicant's certification that a proposed project area is an unserved area or underserved area, ~~or that no other federal or state programs provide funding for a proposed project for which program support is sought; and~~

Page 9

Lines 13-14 - (3) Length of time the applicant has been providing broadband services and broadband service infrastructure in the State;

Page 10

Lines 12-14 - (9) The extent to which the project does not duplicate any existing broadband service infrastructure in the proposed project area with speeds higher than 25Mbps downstream and 3Mbps upstream; and

Page 12

Lines 16-20 - (2) [~~Shall not~~] May include third-party audit requirements, letter of credit, security fund, performance bond obligations, or any other financial commitment to secure performance other than those expressly specified in this chapter; and

Page 13

Lines 6-13 - [~~SECTION 3. Within one hundred eighty days of the approval of this Act, the department of business, economic development, and tourism shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to implement the broadband service infrastructure grant program including the submission, review, and approval of applications, and the administration of projects funded, including rules for grant agreements memorializing the award of funds.~~]

4. DBEDT appreciates the intent of the bill provided that it does not replace priorities included in the Executive Budget.

Thank you for the opportunity to testify on this measure.

Written Statement of
Ani Menon
Director of Government & Community Affairs

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

March 20, 2019 2:15PM
State Capitol, Conference Room 329

COMMENTS FOR:

S.B. NO. 553 HD1 RELATING TO BROADBAND SERVICE INFRASTRUCTURE

To: Chair Takumi, Vice Chair Ichiyama and Members of the Committee

Re: **Testimony providing comments for SB 553 HD1**

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

Thank you for this opportunity to submit comments on Senate Bill 553 HD1. The intent of this bill is to establish a broadband infrastructure grant program. Hawaiian Telcom supports this intent with the following comments.

As this bill is currently written, it would be difficult for Hawaiian Telcom to qualify as an eligible applicant under Section 4, Eligible applicants. We recommend that the eligibility criteria be widened to include applicants who receive federal funds.

Additionally, we provide the following suggested amendments to clarify the language of this bill.

1. §1 Definitions, Page 4
 - a. Expand the definition of “underserved area” to include areas where less than 50% of the customers in the census block have access to minimum upload and download speeds.
 - i. “Underserved area” means a project area without access to broadband service with minimum speeds of at least fifty megabits per second downstream and five megabits per second upstream, or where less than 50% of the customers in a census block have access to the minimum upload and download speeds.
2. §4 Eligible applicants, Page 5
 - a. Remove subsection (1) that disallows applicants who receive funds under other federal or state government grants or loan programs from being eligible.
 - b. Narrow eligibility criteria, specifically (3), to include only Eligible Telecommunications Carriers (ETC) as defined by the FCC or some sort of approved communications service provider, not just any non-governmental entity who can potentially have no proven experience in providing and maintaining broadband services and infrastructure in Hawaii.

3. §6 Review of applications, approval, Pages 7-11
 - a. In relation to subsection (b), applicants or broadband service providers concerned about proposed projects within or directly adjacent to existing project areas currently have no way of knowing which area is served, unserved, or underserved.
 - b. In relation to subsection (d)(2), Lines 10-12, insert language referencing the maintenance and operation of broadband infrastructure as this is as important as its initial deployment.
 1. (2) The experience, technical ability, and financial wherewithal of the applicant in both successfully deploying and providing broadband service, and operating and maintaining broadband infrastructure;
 - c. The language of subsection (d)(4) is ambiguous, yet based on the scoring system, is given substantial weight. For example, there is no explanation of how “deploy[ing] broadband service infrastructure in an economically feasible manner” is to be assessed.

Hawaiian Telcom is the only service provider who has submitted bids for and won federal Connect America Funds (CAF) to connect rural communities throughout Hawaii. CAF is the Federal Communications Commission’s major reform to the Universal Service Fund (USF) to accelerate broadband deployment in unserved areas across the nation. We are committed to enabling Hawaii’s rural communities with integrated communications, including high-speed internet, data, video entertainment, and local and long distance voice services.

Just this past summer, we submitted and won a competitive bid for the CAF Phase II Auction (a second allocation of FCC Phase II funds, 2018-2024). Hawaiian Telcom was awarded \$18.2 million in CAF Phase II Auction funds to deploy high-speed internet service of 1 gigabit per second download and 500 megabits per second upload.

As of today, we have enabled more than 6,000 rural locations. We would welcome the opportunity to help enable more unserved and underserved areas statewide.

Thank you for the opportunity to submit these comments for SB553 HD1.

**TESTIMONY BEFORE HOUSE COMMITTEE
ON CONSUMER PROTECTION AND COMMERCE**

S.B. 553, SD2, HD1

Relating to Broadband Service Infrastructure

Wednesday, March 20, 2019
2:15 P.M., Agenda Item #1
State Capitol, Conference Room 329

Mindy E. Hartstein
Director of Pole Infrastructure Enterprise
Hawaiian Electric Companies

Aloha Chair Takumi, Vice Chair Ichiyama, and Members of the Committee,

My name is Mindy E. Hartstein and I am testifying on behalf of the Hawaiian Electric Companies Inc., Maui Electric Company, Limited and Hawai'i Electric Light Company, Inc. (collectively, "the Hawaiian Electric Companies") in support of SB553, SD2, HD1 and providing amended language for your consideration.

On October 16, 2018, the Public Utilities Commission approved the joint Docket No. On October 16, 2018, the Public Utilities Commission approved the joint Docket No. 2018-0075, between the Companies and Hawaiian Telcom, Inc. As of October 16, 2018, the Companies are now the sole managing owner of the communication space on approximately 120,000 poles that were once jointly-owned with Hawaiian Telcom. This means that the Companies now serve to facilitate broadband service to all parts of the State with our pole infrastructure. The Companies also use broadband services to assist with key renewable and resiliency efforts such as our distributed energy resources opportunities and in providing innovative grid modernization solutions.

As a physical infrastructure owner across all islands (except Kauai) and owner of temporary and spare fiber, the Companies believe the it can contribute to the

deployment of broadband services in unserved, and underserved areas of Hawaii, which will enhance the economic development, education, health care, and emergency services across the State. As an infrastructure owner, we believe broadband infrastructure providers should be allowed to upgrade facilities as part of the project being proposed. We also believe that applicants should be allowed to use additional state and/or federal funds via awarded grants or loan programs to serve unserved and underserved areas, especially when those projects could be rolled into other expansive broadband state-wide deployment efforts, including above ground and/or undersea fiber projects.

The Companies' previous testimony proposed to delete a certification requirement found on Page 6, Section 5(B)(2)(C), removing the requirement that none of the project funds be used to extend or deploy facilities to any already-served households. Your committee adopted that proposal; however, similar language regarding upgrading existing plant remains on page 5, Section 4(1), and the Companies believe that language should be removed as well.

Page 4, Line 21: Section 3(a) The department may award grants for eligible projects; provided that on the date the application is submitted, the area to be served by the project shall be an unserved area or underserved area; ~~and provided further that no funds may be used to support any project involving the upgrade of existing broadband plants by an applicant.~~

Similarly, your committee accepted the Companies' proposal to remove the requirement that a grant applicant may not provide a matching amount from any funds derived from federal or state government grants, loans or subsidies; however, similar language still exists regarding the prohibition on using additional

federal or state funds. The Companies propose to strike Section 4(1) in its entirety, found on Page 5, Lines 8- 10, and Section 6(b)(1), Lines 8-10. This will allow the Companies to use additional federal or state funds to match or as part of the overall project costs.

Hawaii's broadband initiative is paramount for robust connectivity, economic viability, and to create renewable, resilient, and sustainable communities for the future. As an infrastructure owner, we would like the opportunity to apply for the grants proposed in this bill. Accordingly, the Hawaiian Electric Companies support SB553, SD2, HD1 and provide the amended language above. Thank you for this opportunity to testify.