

SB253 SD1

Measure Title:	RELATING TO BROADBAND SERVICE.
Report Title:	Broadband Internet Access Service; Protections; Net Neutrality Principles
Description:	Codifies the substantive provisions of Executive Order No. 18-02, which requires all state agencies to: contract internet-related services only with internet service providers who demonstrate and contractually agree to support and practice net neutrality principles where all internet traffic is treated equally; and add contract language and provisions to state procurement requirements that suppliers of telecommunications, internet, broadband, and data communication services shall abide by net neutrality principles. Defines "net neutrality principles". (SD1)
Companion:	
Package:	None
Current Referral:	TEC, CPH
Introducer(s):	GABBARD, S. CHANG, ENGLISH, HARIMOTO, KANUHA, KEITH-AGARAN, K. RHOADS, RUDERMAN, WAKAI, Ihara

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON

COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 26, 2019, 9:30 A.M.

SB253, SD1

RELATING TO BROADBAND SERVICE

Chair Baker, Vice-Chair Chang, and members of the committees, thank you for the opportunity to submit testimony on SB253, SD1. The State Procurement Office (SPO) opposes this bill and provides the following comments which proposes to create a new section in HRS§103D on net neutrality:

1. **Concern: Net Neutrality Requirements are Specifications (Specs).** The SPO considers the net neutrality requirements to fall under the Specifications Section of a solicitation. This means that any Specs and Spec changes must reside in that area of the Statute to maintain the subject matter specific, decrease clutter in the procurement code, and most importantly, to ensure that the provision is not lost on the staff member who follows their broadband code but may or may not be knowledgeable of the procurement code. Specifications are written by the Program Manager who is often not the same person as the Procurement Officer. Due to the lack of organizational workforce and promotion structure for Procurement Specialists, the SPO recommendation is to always rely on the Program Manager (or respective subject matter expert) to write the requirements. There is a high risk that this provision might be completely missed if it is not moved to its appropriate location.

Recommendation: Move this requirement to the DCCA HRS 440G-11.5, which describes the duties of the Director of Broadband Services, and states:

§440G-11.5 Other duties of the director; broadband services. (a) In conjunction with broadband services, the director shall:

(1) Promote and encourage use of telework alternatives for public and private employees, including appropriate policy and legislative initiatives;

(2) Advise and assist state agencies, and upon request of the counties, advise and assist the counties, in planning, developing, and administering programs, projects, plans, policies, and other activities to promote telecommuting by employees of state and county agencies;

(3) Support the efforts of both public and private entities in Hawaii to enhance or facilitate the deployment of, and access to, competitively priced, advanced electronic communications services, including broadband and its products and services and internet access services of general application throughout Hawaii;

(4) Make recommendations to establish affordable, accessible broadband services to unserved and underserved areas of Hawaii and monitor advancements in communications that will facilitate this goal;

(5) Advocate for, and facilitate the development and deployment of, expanded broadband applications, programs, and services, including telework, telehealth, and e-learning, that will bolster the usage of and demand for broadband level telecommunications;

(6) Serve as a broadband information and applications clearinghouse for the State and a coordination point for federal American Recovery and Reinvestment Act of 2009 broadband-related services and programs; and

(7) Promote, advocate, and facilitate the implementation of the findings and recommendations of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007.

2. **Concern: Limiting Competition.** There is a concern for the smaller content and infrastructure providers. If an “upstream carrier” (in another State), is throttling some traffic, the contractual language would be unenforceable because it’s not the local ISP doing the throttling. If we added additional language that required the local ISP enforce those terms and conditions on their upstream carriers, it is likely we are now talking about inter-state commerce which is regulated by the Federal Government. The penalty to these smaller providers is (a) the vendor could not submit a proposal because they could not comply (and remain profitable) or (b) the vendor would have to “eat the cost” of any pricing disparities for them to comply while their suppliers don’t have to comply because they are not a signatory to the contract.

3. **Concern: Limiting Flexibility.** As others have testified, technology changes rapidly and we must set up ourselves to be flexible so that we can adjust in a more agile way. There is a federal case pending right now that could give larger guidance on this area.

4. **Concern: Burdensome Contractor Oversight.** ETS has the purview of contract oversight for broadband contracts. They would have to consider their current resources and the additional burden it would take to monitor for net neutrality. It might also require further legislation to allow ETS to access this information from these contractors.

Recommendation: SPO defers to the CIO as to how many additional FTEs the ETS division would require.

Thank you.

((CONTINUATION OF TESTIMONY))

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Committee on COMMERCE, CONSUMER PROTECTION, AND HEALTH

February 26th, 2019

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February 25, 2019

The Honorable Rosalyn Baker
Chair, Senate Commerce, Consumer Protection & Health Committee
Hawaii Senate
Hawaii State Capitol, Room 230
415 South Beretania St.
Honolulu, HI 96813

Dear Chair Baker:

On behalf of CTIA, the trade association for the wireless communications industry, I write to oppose Senate Bill 253 SD1. CTIA and its member companies support an open internet. To further that goal, we support a bipartisan federal legislative solution to enshrine open internet principles to resolve this issue once and for all and provide certainty for U.S. consumers and broadband providers. CTIA, however, respectfully opposes piecemeal state regulation of the borderless internet and mobile wireless broadband, a truly interstate service, like SB253 SD1.

SB253 SD1 will likely to suffer the same fate as other state net neutrality laws and regulations currently being challenged in federal court. The Vermont net neutrality law, similar to SB253 SD1, is being challenged by a group of broadband providers, including CTIA. When the Vermont bill was proposed the state's own Public Service Department issued a memo in which it "strongly caution[ed]" that the legislation "would likely run afoul of" the FCC's rules and warned that "a federal court is likely to be highly skeptical [of] and disinclined to uphold any law that directly or indirectly seeks to legislate or regulate net-neutrality." In addition to the Vermont litigation, California enacted a net neutrality law last year that was immediately challenged in court by the U.S. Department of Justice and a group representing broadband providers, including CTIA. Before even a hearing on the law, the California Attorney General stipulated to non-enforcement of the law pending judicial review of the 2017 Federal Communications Commission (FCC) *Restoring Internet Freedom Order*.

The mobile wireless broadband marketplace is highly competitive and has been an engine of continual innovation, attracting billions of dollars in network investment each year. From the beginning of the Internet Age in the 1990s through the start of the 21st century, the FCC acting on a bipartisan basis carefully and purposefully applied a national regulatory framework to internet service that allowed providers to invest, experiment, and innovate while maintaining an open internet. In that time, an entire internet-based economy grew at unprecedented levels. But in 2015, the FCC dramatically changed course, applying for the first time ill-fitting and misplaced 80-year-old common-carrier mandates meant for traditional monopoly public utilities, such as landline phone service, to broadband internet access.



In 2017, the FCC restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that framework, mobile wireless broadband providers have every incentive to invest in and deliver the open internet services that consumers demand.

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

Under the 2017 Order, consumers continue to have legal protections that complement the competitive forces in play. First, the FCC's current regulations include rigorous "transparency" rules that were adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2017 decision, which require broadband providers to publicly disclose extensive information to consumers and internet entrepreneurs about their service performance, commercial terms of service, and network management practices. Second, consistent with the FCC's pre-2015 framework, and unlike with the 2015 decision, the FTC once again has ample authority to police broadband offerings and has publicly committed to engage in active enforcement. This extends to any unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments. The FTC also has authority to act against anticompetitive ISP practices. The FCC's 2015 Order actually removed the FTC from its longstanding enforcement role. Moreover, the U.S. Department of Justice enforces federal antitrust laws, which preclude anticompetitive network management practices.

Finally, the FCC made clear in its 2017 Order that generally applicable state laws relating to fraud, taxation, and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework for broadband internet access services.

However, the internet is not something that stops at state boundaries. Consumers regularly access content from across the country and around the world making it virtually impossible to make distinctions between interstate and intrastate internet traffic. Therefore, in its 2017 Order, the FCC explained that broadband internet access is inherently interstate and global and found broadband-specific state open internet laws are unlawful and preempted by federal law. Specifically, the FCC recognized that state or local laws imposing net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible. This



is nothing new: even in its 2015 Order, the FCC had concluded that contrary state laws governing broadband internet access are preempted.

There is support for federal legislation to ensure there is a uniform national framework for net neutrality protections. However, it is important to consider the unintended consequences of state-by-state legislation on a global internet and to recognize the existing protections in place today. We must work together to ensure investment continues while protecting the flow of information consumers expect. Rather than pursuing a state-level legislative framework that doesn't fit the internet or serve internet users, Hawaii should join the wireless industry and be leading the call for federal legislation to resolve this issue.

Accordingly, I respectfully urge you not to move this legislation.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs



Charter Communications
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hawai'i State Capitol, Conference Room 229
Tuesday, February 26, 2019
9:30 AM

Comment on S.B. 253, S.D.1, Relating to Broadband Service.

Chair Baker, Vice-Chair Chang, and Members of the Committee.

Charter believes in delivering a superior experience to our broadband customers which is why we support an Open Internet. We do not slow down, block, or discriminate against lawful content. Instead, we extend customer-friendly practices of “no data caps or usage-based billing” and do not interfere with the online activities of our customers and have no plans to change our practice.

We believe S.B. 253, S.D.1 is not necessary in light of the active Executive Order No. 18-02 issued by Governor David Y. Ige that requires "state government agencies to contract internet-related services only with internet service providers who demonstrate and contractually agree to support and practice net neutrality principles.”

While the FCC included a provision preempting states from creating their own regulations, we continue to advocate for a permanent, modern, and Open Internet framework rather than a possible patchwork of multi-state laws.

Mahalo for the opportunity to submit written comments.

SB-253-SD-1

Submitted on: 2/24/2019 9:58:15 AM

Testimony for CPH on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Skjold	Individual	Support	No

Comments:

Aloha,

I STRONGLY support this bill and all efforts to maintain net neutrality. I encourage a step further to allow only providers who ensure net neutrality to operate in the State of Hawaii.

Mahalo for your leadership and work to ensure our society's free access to information remains protected.

Please pass this bill!

Suzanne Skjold