

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEE ON
HIGHER EDUCATION AND TECHNOLOGY

March 23, 2022
2:00 p.m.

Chair Takayama and Members of the Committee:

MEASURE: H.C.R. No. 118 / H.R. 118

TITLE: URGING THE PUBLIC UTILITIES COMMISSION TO DEVELOP AND ADOPT AN EFFICIENT, STREAMLINED PROCESS FOR REVIEWING ELECTRIC UTILITIES' REQUESTS TO PROVIDE MIDDLE MILE BROADBAND SERVICES IN FURTHERANCE OF THE STATE'S EFFORTS TO EXPEDITE BROADBAND ACCESS AND EQUITY.

POSITION:

The Public Utilities Commission ("Commission") offers the following comments for consideration.

COMMENTS:

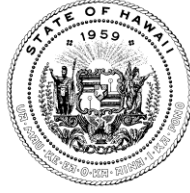
The Commission appreciates the intent of these resolutions to facilitate improvements in broadband services to rural, unserved, underserved, and urban communities throughout the state.

The Commission affirms that the existing process for reviewing any utility requests to provide middle-mile broadband services is efficient and streamlined, and may be expedited to the extent that utilities are transparent with their accounting processes and avoid engaging in anti-competitive practices. As such, this resolution may not be necessary.

The Commission will take appropriate actions to ensure that regulated utilities are required to accurately account for their broadband-related financial activities and to distinguish these transactions from those that might impact ratepayers. Such actions will

help to identify cost causation and prevent cross-subsidization among electricity customers and broadband customers, or between electric utilities and unregulated affiliates that may provide broadband service using utility infrastructure.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Higher Education & Technology
Wednesday, March 23, 2022
2:00 PM
Conference Room 309 & Videoconference**

**On the following measure:
HCR118/HR118, URGING THE PUBLIC UTILITIES COMMISSION TO DEVELOP
AND ADOPT AN EFFICIENT, STREAMLINED PROCESS FOR REVIEWING
ELECTRIC UTILITIES' REQUESTS TO PROVIDE MIDDLE MILE BROADBAND
SERVICES IN FURTHERANCE OF THE STATE'S EFFORTS TO EXPEDITE
BROADBAND ACCESS AND EQUITY**

Chair Takayama and Members of the Committee:

My name is Dean Nishina, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department offers comments on this resolution.

The purpose of this resolution is to request the Hawaii Public Utilities Commission (Commission) to develop an efficient and streamlined process for reviewing electric utilities' requests to provide "middle mile" broadband services in support of expanding broadband services for Hawaii residents in underserved and unserved areas.

The Department appreciates and supports the intent of the resolution and recognizes the importance of developing broadband facilities that reach all communities throughout the state, especially those in unserved and underserved areas. The COVID

pandemic has clearly shown the need for broadband facilities to allow for distance learning, telemedicine, teleworking, and staying connected in our communities.

The Department recognizes that the purpose of the resolution is to encourage the Commission to enable the electric utilities to facilitate broadband access to our most vulnerable populations. The Department appreciates how the resolution recognizes that the Commission needs to ensure that the electric utility does not favor itself or its affiliates, where there should be no cross-subsidization and ensure that no electric rates include funding for facilities beyond that which is reasonably required for electric service. Along those lines, while the Commission has established rules known as the Affiliate Transaction Requirements¹ that provide safeguards to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities and to govern the interactions between the Hawaiian Electric Companies and their affiliates in transactions related to acquisitions or investments, in developing streamlined processes, it may be necessary for the Commission to revisit those guidelines to ensure that such cross-subsidization does not occur for broadband activities.

The Department respectfully notes that, beyond any proceedings that the Commission may initiate pursuant to this resolution based on its existing statutory authority, clarifying language to HRS § 269-19, via other legislation, may be necessary to provide for a streamlined application process for the sale, lease, assign, mortgage, disposal or encumbrance of any utility property used for broadband deployment. Further, in order to facilitate a streamlined process while still protecting electric customers and the respective electric, broadband, and telecommunications markets, the Commission may need to consider whether a standardized application requiring the electric utility companies to file more than sufficient information to facilitate a streamlined and efficient review process instead of requiring the regulators to rely on a discovery process to address concerns may be helpful.

¹ Promulgated by order in Exhibit A of Order No. 36112, in Docket No. 2018-0065, issued on January 24, 2019.

Thank you for the opportunity to testify on this resolution



Charter Communications
Testimony of Rebecca Lieberman, Director of Government Affairs

COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY

Hawaii State Capitol
Wednesday, March 23, 2022

COMMENTS ON H.C.R 118/H.R. 118

**URGING THE PUBLIC UTILITIES COMMISSION TO DEVELOP AND ADOPT AN EFFICIENT,
STREAMLINED PROCESS FOR REVIEWING ELECTRIC UTILITIES' REQUESTS TO PROVIDE MIDDLE
MILE BROADBAND SERVICES IN FURTHERANCE OF THE STATE'S EFFORTS TO EXPEDITE
BROADBAND ACCESS AND EQUITY**

Chair Takayama, Vice Chair Clark, and Members of the Committee.

Thank you for the opportunity to provide **comments** on H.C.R. 118/H.R. 118, a resolution that would urge the Public Utilities Commission to update its processes for reviewing electric utilities' requests to provide middle mile broadband service.

Charter supports efforts to promote fair competition and increased choices for broadband consumers. We also strongly favor policies designed to foster broadband expansion to unserved areas of Hawaii. The State's broadband policies, however, must ensure that competition is fair and equitable and that customers of regulated electric utility services are not subsidizing entry of electric companies into the broadband marketplace. When entities like electric utilities – which control the market – seek to enter competitive markets (like the broadband market), then, respectfully, legislators need to guard against the potential for them to leverage built-in advantages in an effort to gain an immediate and anticompetitive foothold in the new market. Electric utilities possess numerous advantages,

including a captive rate-base and ownership of key infrastructure inputs like utility poles that, if left unpoliced, could become a means of artificially tilting the broadband market in their own favor.

The resolution, as currently drafted, fails to adequately acknowledge the risks to the electric system, electric ratepayers, and competition in the provision of broadband services. Rather, as drafted, the resolution makes claims about costs that are not borne out in actual experience and that undermine the goal of ensuring that building out broadband to unserved consumers does not increase electric rates, harm the electrical system, or disincentivize private broadband investment.

First, electric utilities frequently control the poles that broadband providers must attach to in order to build out to customers, and charge providers for access to those poles. Because electric utilities own the poles on which Charter and other broadband providers attach, they have the incentive and ability to leverage their control over those poles in a manner that stifles broadband deployment and competition by over-allocating costs to competing providers for attaching to their poles. In addition, electric utilities entering the broadband market also have an incentive to provide their broadband affiliate – either directly or indirectly – with more favorable rates, terms, and conditions for accessing and utilizing poles.

Second, an electric utility with a captive electric market could drive private competitors out of the market by subsidizing build-out and customer broadband prices with their electric service. Electric utilities are driven by a completely different set of incentives than firms participating in competitive markets. Irrespective of the type of rate regulation their utility electric service operates under, they are effectively guaranteed a rate from their captive electric rate-base of customers that enables them

to recover their costs, whether or not those costs are associated with the delivery of electric utility service. This gives them an incentive to push as many costs as possible – warehouse, vehicle, property, administrative, overhead, etc. – onto their utility rate base without a fear that customers will leave them for another provider. Hawaii already has the highest electric rates in the country and this could lead to even higher electric rates. If electric customers see their rates go up even further so their utility can deploy fiber, then they are contributing to the kind of cross-subsidization that PUCs and state legislatures have long sought to deter and prevent.

Third, while cost recovery of investments, plus a guaranteed profit on top of those investments is a core principle of electric utility regulation – that is certainly not the case with broadband networks. Internet service providers (ISPs), like Charter, invest large sums of risk capital every year without any guarantee of recouping those investments, let alone turning a profit. By contrast, utilities are able to avail themselves of guaranteed cost recovery mechanisms in their core electric business, which risks turning an otherwise competitive broadband market into an extension of the monopoly electric market. If an ISP must spend money to compete for customers on an uneven playing field, that can affect its cost of capital – particularly relative to a regulated utility – as well as its incentive and ability to invest and innovate in its network or expand broadband into rural areas.

Fourth, allowing electric utilities to enter the broadband business puts the electric system and ratepayers at risk. If the broadband business fails, the electric utility must cover that failure through higher rates and taking on debt. It is the customer that pays for that failure over the long-term by paying those higher rates and the interest payments on those debts. There is no guarantee that a

duplicative network will attract enough customers to generate the revenue needed to be successful and meet debt obligations, thereby leaving electric ratepayers and taxpayers with the bill.

Charter respectfully requests that H.C. R. 118/H.R 118 be amended such that language in the resolution is replaced with the language from S.C.R. 120, a resolution of the same name, which clearly states that an electric utility's primary responsibility is the provision of electric service, clarifies that any middle mile broadband service provided by an electric utility is to be directed at bringing service to unserved and underserved residents of Hawaii, and outlines that the electric utility follows all applicable state and federal rules to protect consumers and competition.

Charter believes that every Hawaii resident should have reliable access to the Internet ecosystem. We stand ready to help bring the benefits of broadband and access to the internet to those who need it most. In 2020 alone, Charter extended its network to reach an additional 14,000 homes and small businesses in Hawaii, investing more than \$87 million in the state. Additionally, Charter is pleased to now provide high-speed data services to beneficiaries living in the Hawaiian Homelands following an announcement made earlier this month by DHHL, which allows homesteaders to obtain telecommunications services from a provider of their choice.

Charter is a member of DBEDT's weekly Broadband Hui to assist in strategic broadband planning and closing the Digital Divide. Additionally, Charter participated in the FCC's Emergency Broadband Benefit Program (EBB) and is now participating in the \$14.2 billion federal Affordable Connectivity Program (ACP). The EBB, and now the ACP, has helped connect over 18,000 eligible

households in Hawaii with high-speed broadband during the ongoing COVID-19 pandemic. Broadband internet access is more important than ever and the newly adopted ACP offers a tremendous opportunity to help low-income families stay connected, providing eligible households a discount of up to \$30 per month toward broadband service and up to \$75 per month for households on the Hawaiian Homelands.

Today's broadband ecosystem is robustly competitive. Competition thrives – and consumers benefit most – when firms compete for customers on a level playing field and success is determined by market forces and consumer preferences rather than via leveraging of monopoly assets and a regulated utility rate base. Because the risks to consumers and competition of entry into the Hawaii broadband marketplace by electric utilities outweigh the benefits, Charter respectfully requests amendments to H.C.R. 118/H.R. 118.

Mahalo for the opportunity to testify.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
HIGHER EDUCATION AND TECHNOLOGY**

HCR 118/HR 118

**URGING THE PUBLIC UTILITIES COMMISSION TO DEVELOP AND ADOPT AN
EFFICIENT, STREAMLINED PROCESS FOR REVIEWING ELECTRIC UTILITIES'
REQUESTS TO PROVIDE MIDDLE MILE BROADBAND SERVICES IN
FURTHERANCE OF THE STATE'S EFFORTS TO EXPEDITE BROADBAND
ACCESS AND EQUITY.**

March 23, 2022
2:00 pm, Agenda Item #3
State Capitol, Conference Room 309 and Videoconference

Christian Whitney
Director of Pole Infrastructure Enterprise
Hawaiian Electric Company, Inc.

Chair Takayama, Vice Chair Clark, and members of the Committee:

My name is Christian Whitney, and I am testifying on behalf of Hawaiian Electric Company **in support** of HCR 118/HR 118.

Electric utility telecommunication is increasingly important to operate the electric grid safely and reliably. As Hawaiian Electric expands its telecommunications footprint to serve electricity needs, this resolution establishes clear public policy support for the Company's middle mile broadband service initiatives as aligned with the State's desire to (1) provide broadband to more users, (2) capture available Federal grant funding for broadband, and (3) offer diverse telecommunication fiber paths that include the formation of new fiber rings which are not readily available without the inclusion of electric utilities' middle mile, backbone fiber network.

The idea of maximizing an electric utility's infrastructure for broadband deployment follows a national trend. Other jurisdictions have been able to strike the right balance between the interests of speed, volume and repetitious nature of broadband deployment and protecting competition against any electric utility unfair advantages and protecting ratepayers from cross-subsidization. The National Association of Regulatory Utility Commissioners' ("NARUC")¹ November, 2021 *Resolution Supporting Energy Company Communications Infrastructure for Broadband Expansion*, articulates the need to reduce regulatory hurdles as well.²

Today, Hawaiian Electric contributes to broadband expansion with oversight from both the Federal Communications Commission ("FCC") and the Hawaii Public Utilities Commission ("Commission"), each ensuring against Hawaiian Electric favoring itself or its affiliates and from cross-subsidizing any of its broadband service activities with ratepayers funds.³ While Hawaiian Electric can and will continue to provide its middle

¹ NARUC is a non-profit organization that seeks to improve the quality and effectiveness of public utility regulation and ensure that utility services are provided at rates and conditions that are fair, reasonable, and nondiscriminatory for all consumers. NARUC supports both a limited grant of authorization to electric utilities that provide broadband facilities and minimal regulation of electric utilities that contribute to broadband expansion.

² "Resolution Supporting Energy Company Communications Infrastructure for Broadband Expansion," National Association of Regulatory Utility Commissioners, Nov. 9, 2021, ("NARUC Resolution"), <https://pubs.naruc.org/pub/48B7A610-1866-DAAC-99FB-EEAD58155985>, resolving that, "in the planning of [its own telecommunications] networks, energy companies should to the extent that they are authorized and it is feasible, consider sharing or making available wired and wireless 'middle mile' communications infrastructure to support the expansion of consumer broadband access." And further resolving that, "state legislatures and appropriate agencies and commissions should consider identifying and mitigating any overly burdensome legislative or regulatory obstacles to the expeditious deployment of energy company wired and wireless networks for critical grid communications and work to encourage the leveraging of 'middle mile' infrastructure for broadband expansion in unserved and underserved communities."

³ The Commission and the Consumer Advocate ("CA") both provide oversight over Hawaiian Electric, including review over its rates, rate proceedings, lease agreements, financial transactions, business relations, cross-subsidization, and pole attachments, among other oversight responsibilities. See Haw. Rev. Stat. §§ 269-1, -6, -7 -16, -19, -39 (Providing the Commission broad regulatory and investigatory authority of EUs, EU rates and ratemaking procedures, mergers and leases, among other oversight); Haw. Rev. Stat. §§ 269-51 & 269-54 (Granting the CA authority to oversee Hawaiian Electric activities and advocate on behalf of consumers, mandating that the CA "represent, protect, and advance the interests of all consumers, including small businesses, of utility services," and conferring upon CA powers to effectuate its review); and 47 U.S.C. §224(f) (Directing pole owners on how to calculate pole attachment fees and requiring that pole owners provide non-discriminatory access to their poles).

mile broadband infrastructure,⁴ this resolution establishes strong public policy support and clear recognition of electric utilities' valuable role in broadband expansion, and acknowledges the need for an efficient regulatory oversight process to serve this public purpose.

In closing, we view this resolution as providing clear public policy support of electric utilities' role in providing middle-mile infrastructure to accomplish mutually beneficial broadband expansion objectives. We encourage any partnership that will allow Hawaiian Electric's ongoing and significant investments in grid reliability and security to bring additional benefits to the community by way of broadband equity, and we look forward to working collaboratively with the Commission to develop a review process specifically designed for the unique circumstances surrounding the approval of electric utilities' participation in middle mile broadband services.

Accordingly, Hawaiian Electric supports HCR 118/HR 118. Thank you for this opportunity to testify.

⁴ Hawaiian Electric has been involved in providing middle mile broadband services in the past and has a current docket before the Commission. See, e.g., Commission Docket No. 96-0157, D&O No. 15192 (Approving Hawaiian Electric lease of its dark fiber to GST [Note that GST later became Pacific Lightnet (PLNI), then Wavecom, and now owned by Hawaiian Telecom]), and Docket No. 2021-0186 (Application by Hawaiian Electric to the Commission for approval of its agreement with Department of Information Services ("DISA") to lease DISA dark fiber).

Written Statement of
Jeannine Souki
Sr. Manager – Government & Regulatory Affairs

HOUSE COMMITTEE ON HIGHER EDUCATION & TECHNOLOGY

March 23, 2022, 2:00 PM
State Capitol, Conference Room 309, Videoconference

COMMENTS FOR:

H.C.R. NO. 118/ H.R. 118 - URGING THE PUBLIC UTILITIES COMMISSION TO DEVELOP AND ADOPT AN EFFICIENT, STREAMLINED PROCESS FOR REVIEWING ELECTRIC UTILITIES' REQUESTS TO PROVIDE MIDDLE MILE BROADBAND SERVICES IN FURTHERANCE OF THE STATE'S EFFORTS TO EXPEDITE BROADBAND ACCESS AND EQUITY

To: Chair Takayama, Vice-Chair Clark, and Members of the Committee

Re: Testimony providing comments for HCR 118/ HR 118 with requested amendments

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

Thank you for this opportunity to submit comments for House Concurrent Resolution 118/ House Resolution 118 with a request for amendments.

Hawaiian Telcom met with the proponents to discuss their need for this resolution. The proponents' stated interest is to apply for competitive federal broadband infrastructure grants to build middle mile connections between electric rate-payer subsidized facilities and to ensure that the regulatory review process does not prevent them from being awarded such grants.

While Hawaiian Telcom does not believe these resolutions are necessary, if the Committee decides to pass them, we request that the following amendments be included to be transparent about the purpose of the resolutions and to clarify that there is no current barrier for electric utilities to build and lease fiber to third parties:

WHEREAS, President Biden signed the Infrastructure Investment and Jobs Act into law on November 15, 2021, which provides \$1.2 trillion in federal investment in roads and bridges, water infrastructure, resilience, internet, including \$1 billion to expand middle mile infrastructure to reduce the cost of connecting unserved and underserved areas; and

WHEREAS, the electric utilities do not currently see barriers to entering the middle mile telecommunications market

but are concerned over the length of time needed for its approvals as competitive federal broadband funding becomes available; and

Hawaiian Telcom supports fair market competition and the expansion of broadband infrastructure and services in unserved and underserved areas in the state that will provide increased choices for broadband consumers. However, as currently drafted, we have concerns regarding the potential cross-subsidization between utility and non-utility enterprises that would create an unfair advantage for electric utilities and will not have the effect of closing the digital divide in unserved and underserved areas.

We appreciate the opportunity to offer our comments and suggested amendments for HCR 118/ HR 118.

