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**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
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ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**WRITTEN ONLY**  
TESTIMONY BY CRAIG K. HIRAI  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION  
AND GOVERNMENT OPERATIONS  
ON  
SENATE BILL NO. 3016

**February 9, 2022**  
**9:30 a.m.**  
**Room 229**

**RELATING TO THE HAWAII PUBLIC WIRELESS SAFETY ACT**

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 3016 adds a new chapter to the HRS entitled the "Hawaii Public Wireless Safety Act" (HPWSA) to: 1) require the Department of Commerce and Consumer Affairs (DCCA) to determine the most appropriate means of providing information to individuals in close proximity to radio frequency (RF) transmitters with information that supports compliance with Title 47, Code of Federal Regulations, Section 1.1307(b), which establishes the Federal Communications Commission's regulations on human exposure to RFs and reporting requirements for RF transmitter permits, licenses, and renewals; 2) require DCCA to consider a centralized database of RF-transmitting facilities in the State, RF exposure insurance, and a third-party RF Compliance Administrator; 3) establish the Public Wireless Safety Fund (PWSF), outside of the State Treasury, to be administered by DCCA without identifying if the fund is a new special fund; 4) fund the PWSF with a monthly Wireless Safety Surcharge (WSS) imposed on each wireless communications service provider equal to 1.5% of all

wireless service fees billed; and 5) allow DCCA to make recommendations to the Legislature on amendments to the PWSF and WSS, among other requirements.

B&F notes that the Public Benefits Fee and other similar on-bill utility surcharges were thoroughly researched by DCCA and regulated through the Public Utilities Commission's Decision and Order prior to being enacted through legislation, so this mandate to establish the PWSF and WSS without regulatory input may be premature. Furthermore, B&F has concerns about this bill establishing the PWSF outside of the State Treasury without precedence to justify this financial arrangement and specify DCCA's legal requirements as administrator of these funds. Without proper research and regulatory structure, the cost of the WSS could be unduly passed on to consumers without a clear public benefit. Defer to DCCA on the feasibility of the HPWSA, PWSF, WSS, and other requirements of this bill.

Thank you for your consideration of our comments.



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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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committees on Commerce and Consumer Protection & Government  
Operations  
Wednesday, February 9, 2022  
9:30 a.m.  
Via Videoconference**

**On the following measure:  
S.B. 3016, RELATING TO THE HAWAII PUBLIC WIRELESS SAFETY ACT**

Chair Baker, Chair Moriwaki, and Members of the Committees:

My name is Catherine P. Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs' (Department). The Department offers comments on this bill.

This bill establishes the Hawaii Public Wireless Safety Act to be administered by the Department of Commerce and Consumer Affairs. The purpose of the bill is to ensure that growth in new wireless technology occurs in compliance with Federal Communications Commission ("FCC") regulation 47 C.F.R. section 1.1307(b). This federal regulation entitled "Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared" is part of Subpart I of the Practice and Procedures of the FCC, entitled "Procedures Implementing the National Environmental Policy Act of 1969". See, <https://www.ecfr.gov/current/title-47/chapter-1/subchapter-A/part-1/subpart-I/section-1.1307>.

The bill establishes the Hawaii public wireless safety administration, requires the department to establish a process to determine the most appropriate means of sharing information about FCC regulations relating to radio frequency exposure limits at facilities, and establishes the public wireless safety fund consisting of revenues from a monthly one and one-half per cent wireless safety surcharge imposed on each wireless communications service provider.

The department offers the following comments:

1. The bill's purpose is not well-defined. The bill requires the department to establish a Hawaii public wireless safety administration, but the sole function of the new entity would be to determine the most effective means of sharing information that supports compliance with the FCC regulations<sup>1</sup> pursuant to detailed criteria set forth in the bill. Given the amount of work that would be placed with the department to gather, analyze and validate data and conduct annual audits solely to share information about compliance with federal procedural regulations, the department suggests that the

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<sup>1</sup> 1.1307(b)(1) **Requirements.**

(i) With respect to the limits on human exposure to RF provided in [§ 1.1310 of this chapter](#), applicants to the Commission for the grant or modification of construction permits, licenses or renewals thereof, temporary authorities, equipment authorizations, or any other authorizations for radiofrequency sources must either:

(A) Determine that they qualify for an exemption pursuant to [§ 1.1307\(b\)\(3\)](#);

(B) Prepare an evaluation of the human exposure to RF radiation pursuant to [§ 1.1310](#) and include in the application a statement confirming compliance with the limits in [§ 1.1310](#); or

(C) Prepare an Environmental Assessment if those RF sources would cause human exposure to levels of RF radiation in excess of the limits in [§ 1.1310](#).

(ii) Compliance with these limits for fixed RF source(s) may be accomplished by use of mitigation actions, as provided in [§ 1.1307\(b\)\(4\)](#). Upon request by the Commission, the party seeking or holding such authorization must electronically submit technical information showing the basis for such compliance, either by exemption or evaluation. Notwithstanding the preceding requirements, in the event that RF sources cause human exposure to levels of RF radiation in excess of the limits in [§ 1.1310 of this chapter](#), such RF exposure exemptions and evaluations are not deemed sufficient to show that there is no significant effect on the quality of the human environment or that the RF sources are categorically excluded from environmental processing.

approach set forth in the bill may not be the most efficient means of accomplishing its intended purpose.

2. The bill does not include any language that would compel wireless carriers to comply with the new requirements. The bill relies on data-gathering from wireless carriers but does not include enforcement language that would mandate cooperation with the department. Without language that directs wireless carriers to provide the information referenced in the bill, it would be challenging for the department to obtain timely, accurate information.

3. Under subsection (e) of 47 C.F.R. section 1.1307, states are precluded from regulation on the basis of environmental effects of radio frequency emissions if the carrier is in compliance with the federal rule:

Subsection 1.1307(e): No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

The department is concerned that given its inability to meaningfully regulate in this area, the existence of an entity called the Hawaii Public Wireless Safety Administration may give the public a false impression that the state is regulating wireless safety when it is not able to do so.

4. The department's primary mission and focus is on matters involving consumer protection. In that regard, it is unfamiliar with worker safety issues, or environmental assessments or collection of radio frequency emissions data that may be relevant as

part of an FCC application. Since this bill does not require compliance by wireless carriers, perhaps the information is best obtained by interested individuals and entities through contracts for services rather than through state regulation.

5. The bill will add to the cost of cell phone services for each cell phone customer. This bill would add a one and one-half percent wireless safety surcharge on each wireless communications service provider which the provider can pass on to each customer as a separate line item on the customer's bill. Although the increase may appear to be nominal, cell phone service has become an essential service for most citizens, and any increase in the bottom line cost to the consumer should be carefully considered.

6. The bill provides that the wireless surcharge is imposed on each wireless communications service provider (page 9 lines 17-19) but makes customers liable to the state for any failure to pay the surcharge (page 11 lines 9-11) and absolves the provider from liability for remitting surcharges not paid by customers (page 11, lines 11-13) even though the provider is entitled to retain five percent of the surcharge for administrative costs associated with collecting the surcharge. The language is internally inconsistent and unenforceable, and the department requests that subsection (h) of the bill (page 11 lines 9-19) be stricken in its entirety.

7. The bill will require a commitment of personnel and resources. The bill requires the department to set up a central repository of detailed information relating to radio frequency emission information for each transmitting facility; a capability for exchanging information about each facility; a method to conduct annual audits of the site-specific safety information; and a method to provide radio frequency exposure insurance to affected parties. In addition, the bill authorizes the department to contract for services of a neutral third-party radio frequency compliance administrator and authorizes the department to prequalify prospective third-party compliance administrators. Although the bill envisions a contracting of professional services to oversee the requirements of this bill, the prospect of retaining a company that is objectively and subjectively neutral would be challenging, and it is likely that the department will have to employ individuals to perform the data collection, data analysis and audit functions as

set forth in the bill. If this bill is adopted by this committee, the department requests positions and a budget appropriation to cover the costs of this new program.

Thank you for the opportunity to testify on this bill.

**RE: Statement in Support of Hawaii Public Wireless Safety Act SB 3016**

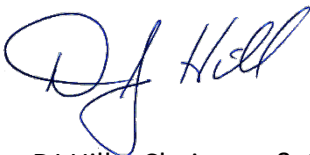
Wireless communications technology has become an indispensable part of everyday life for virtually all consumers in Hawaii. However, as the wireless networks grow to meet increasing consumer demand, the infrastructure (base stations or “cell sites”) required to meet this demand has begun to steadily encroach on neighborhoods, schools and workplaces. Many more sites will need to be built, and existing sites upgraded to deliver the capacity and performance promises of new broadband wireless technology such as 5G.

Consumers expect their wireless devices to work everywhere, all the time, yet most do not appreciate that a reliable, robust wireless network often requires a cell site to be located nearby. Some consumers object to sites in their own neighborhoods due to potential or perceived safety issues. Opposition to the deployment of new sites or upgrades to existing sites can result in expensive delays, the unavailability of network services or unacceptable wireless performance in an area. The issue can pit neighbor vs. neighbor with one side demanding competitive wireless broadband service and the other side opposing it due to safety concerns. This stalemate benefits no one.

Federal regulations already exist to ensure safe use of radio frequency (RF) or wireless communications technology. Responsibility for regulation and enforcement falls to the Federal Communications Commission (FCC). Public safety can be assured, assuming these regulations are being fully complied with. Years ago, industry experts estimated at least 10% of wireless sites were out of compliance<sup>1</sup>. With the hundreds of thousands of cell sites currently in existence and hundreds of thousands more to be built in the next few years in the US, it is unreasonable to expect the limited resources of the FCC to ensure compliance of every cell site with its RF safety rules. While the cell site owners (or licensees) are responsible for ensuring compliance at their sites, it is difficult to comply in many cases as the licensees do not fully control the access to every one of their sites. Furthermore, the public does not always trust or accept the self-certification of these companies that their own sites are safe.

This highlights the critical need for a new wireless safety system as proposed by the Hawaii Public Wireless Safety Act. The designation of a neutral, 3<sup>rd</sup> party entity by the department of commerce and consumer affairs will ensure public safety through verified compliance with the FCC’s rules while properly addressing public questions and concerns. This neutral, 3<sup>rd</sup> party can securely collect and manage all the necessary operational data needed to ensure compliance at each site, while maintaining the confidentiality of each licensee’s information. The site-specific safety information can then be provided to authorized users as well as to certify to the public that the site in their neighborhood is in full compliance with safety rules. To provide a further backstop and ensure the overall integrity of this new public safety system, insurance would be provided in the event of any RF overexposure accident or genuine injury claim. Finally, such a system would allow continued and timely deployment of broadband wireless networks. It’s a win-win for everyone.

Sincerely,



DJ Hill – Chairman & CEO, Safe Dynamics, Inc.

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<sup>1</sup> [Cellphone Boom Spurs Antenna-Safety Worries \(Wall Street Journal\)](#)



# Beneventure Partners, LLC

February 7, 2021

Senator Sharon Moriwaki  
Hawaii State Senate  
415 S. Beretania Street, Room 223  
Honolulu, HI. 96813

RE: Hawaii Public Wireless Safety Act – SB 3016

Honorable Senator Moriwaki:

Let me begin by applauding Hawaii's efforts to address a very significant issue that is a direct function of the prolific growth in wireless services and the wireless transmission sites needed to make wire communication possible.

I am the former CEO of Apple, National Semiconductor, and a longtime member of AT&T's board. I am a technology expert with a Ph.D. in Physics. I know how Radio Frequency (RF) technology works and the serious health effects RF exposure can have on humans.

In recent years, I met with the former Federal Communications Commission (FCC) Chairman, Tom Wheeler, Representative Anna Eshoo Chairman, and several wireless industry experts in an attempt to help solve the issue of RF safety for the public and workers at or near our nation's wireless transmission sites.

Hawaii's Public Wireless Safety Act SB 3016 is the first piece of legislation I have seen since the FCC attempted to solve this problem with their 2013 Notice of Inquiry to obtain comments on potential RF safety solutions to address today's wireless world. I applaud Hawaii's efforts to protect the public and workers from RF exposure at wireless sites.

Mind you this is not an assignment of blame on the wireless carriers, the building owners, employers, or others who may be considered principal wireless stakeholders, instead, this is an opportunity, as recognized by SB 3016, to address an issue that is the cornerstone of our obligation to the public and workers regarding wireless site safety. Again, I applaud you and your colleagues for this bill and your efforts to implement what I would consider, one of the most important pieces of wireless safety legislation I have seen.

If I can be of any assistance to you or the Hawaii legislator, please let me know.

Sincerely



Gilbert F. Amelio - CEO



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February 8, 2022

**To: Senator Sharon Y. Moriwaki, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Members of the Committee on Government Operations**

**Senator Rosalyn H. Baker, Chair  
Senator Stanley Chang, Vice Chair  
Members of the Committee on Commerce and Consumer Protection**

**Date: Wednesday, February 9, 2022**

**Time: 9:30 a.m.**

**Place: Conference Room 229**

**State Capitol  
415 South Beretania Street**

### **SUPPORT FOR SENATE BILL 3016**

My law firm represents Safe Dynamics, Inc. (“Safe Dynamics”), an independent safety company that promotes the public’s understanding and acceptance of wireless technologies. Safe Dynamics’ 3rd party certification process ensures the public that all wireless sites, including 5G, can operate safely when in compliance with FCC exposure guidelines. I respectfully submit the following testimony in support of Senate Bill 3016.

As stated in the Preamble, the purpose of this bill is to establish the Hawaii Public Wireless Safety Act to ensure that growth in new wireless technologies, and corresponding growth in wireless transmitting antennas, occurs in a responsible and managed manner, consistent and in compliance with Federal Communications Commission (“FCC”) regulations. This bill further addresses and supports the existing wireless transmitting systems, technological growth, and deployment of 5G and other next generation wireless technologies and services available to our communities today and into the future, and will help ensure that wireless antenna sites located within the State utilize technology that addresses and supports the communities’ needs for current and expanded wireless service offerings. Most importantly, this bill establishes a process to determine the most appropriate means of providing the public, the

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workers, and others who may be in close proximity to a radio frequency transmitting antenna, with information that allows compliance with the FCC's regulations regarding radio frequency exposure limits, to protect public health and safety.

While SB3016 designates the Department of Commerce and Consumer Affairs (“DCCA”) as the relevant department to select and work with a qualified third-party radio frequency compliance administrator and service provider, I recognize that there may be a better fit with another department, agency, branch or office. The DCCA’s Cable Television Division (“CATV”) is responsible for implementing activities to promote ubiquitous access to high-speed broadband at affordable prices throughout the State. These activities include developing plans and recommending legislation to expand and accelerate deployment of broadband infrastructure; supporting public-private efforts to develop broadband infrastructure; and working with government agencies, broadband providers, and other stakeholders to advance the provision of broadband services to unserved and underserved areas in the State.

Alternatively, the Hawaii Broadband and Digital Equity Office (“HBDEO”), created in 2021 within the Department of Business, Economic Development, and Tourism (“DBEDT”) may also be suited to administer this bill. Under HRS 206S-2, the Governor, upon the advice and consent of the Senate, shall appoint a strategic broadband coordinator for HBDEO. Further, one of the duties of HBDEO is to provide a repository, aggregation point, and governance framework for broadband mapping and digital equity data from various sources, including digital literacy, telehealth, distance education, remote work, internet accessibility, and service coverage to support mapping, reporting, infrastructure deployment, and data-driven policy.

I would defer to the wisdom of the policy makers as to which department would be best suited to select and work with a qualified third-party radio frequency compliance administrator and service provider that would securely collect and manage all the necessary operational data needed to ensure compliance at each site, while maintaining the confidentiality of each FCC licensee’s information.

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This bill also includes a safety surcharge that attempts to place the cost of performing this work with the parties who would reap the benefits from the faster and more reliable communications resulting from the deployment of 5G networks. While such surcharges are generally viewed as cringeworthy in even numbered years, I have been told that Hawaii wireless customers currently have the 43<sup>rd</sup> highest surcharges of all states, and that this proposed surcharge would amount to only \$.40 - \$.45 per month for each customer. This seems like a reasonable price to pay to support this bill's objectives.

I acknowledge that this bill may need revisions during this legislative process to address other valid concerns. As Voltaire said, "Don't let the perfect be the enemy of the good." In this regard, I ask that these committees recognize that SB3016, as currently drafted, may not be a perfect bill, but its objectives – to protect public and worker health and safety in compliance with Federal Communications Commission regulations – are good objectives worthy of support. I respectfully ask that these committees make appropriate revisions to this bill and keep this bill alive to continue this important discussion.

Sincerely,

**SCHLACK ITO**  
A LIMITED LIABILITY LAW COMPANY

/s/ Matthew M. Matsunaga  
Matthew M. Matsunaga

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** MISCELLANEOUS, Establishes Hawaii Public Wireless Safety Act and Related Surcharge

**BILL NUMBER:** SB 3016, HB 2244

**INTRODUCED BY:** SB by KOUCHI by request; HB by SAIKI by request

**EXECUTIVE SUMMARY:** Establishes the Hawaii Public Wireless Safety Act to be administered by the Department of Commerce and Consumer Affairs.

**SYNOPSIS:** Adds a new chapter to the HRS entitled the Hawaii Public Wireless Safety Act. The apparent function of the Act is to protect the public from radio frequency energy at unsafe levels. DCCA is tasked with enforcing the chapter. In the chapter, section 4 establishes a public wireless safety fund, which appears to be a special fund. Section 5 imposes a wireless safety surcharge on each wireless communications service provider at the rate of 1.5% of the amount charged for all wireless services fees billed to each customer.

**EFFECTIVE DATE:** Upon Approval

**STAFF COMMENTS:** **New Tax:** This bill would create a new “sin tax,” not unlike that now imposed on liquor and tobacco products. It is designed to affect social behavior by making the thing sought to be taxed more expensive.

The problem with a sin tax can be seen with our experience with the tobacco tax. We put heavy taxes on tobacco products. We earmark the revenue for noble causes like the cancer center. Then more people stop smoking (which we thought was the goal), and the revenue from the sin tax naturally drops. Then government officials went into conniptions because they need to do something about funding the cancer center.

Fiscal reliance on funds from a sin tax is inadvisable, perhaps outright dangerous. If the goal is to affect social behavior, use of the tax law is not the most effective way to do so.

**New Special Account:** In 2002, the Legislature set requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, now state that the criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by the purpose of the program to be supported by the fund; the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue—as

opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;

- Provides an appropriate means of financing for the program or activity, that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

We are concerned that the new special fund clearly fails the first criterion in that there is no reason why the program cannot be funded through general funds subject to the appropriation process. It may fail other criteria as well. The establishment and intended use of the special fund as described subverts the appropriation process.

Digested: 2/8/2022



February 7, 2022

The Honorable Sharon Y. Moriwaki  
Chair, Senate Committee on Government Operations  
Hawaii State Capitol, Room 223  
Honolulu, HI 96813

The Honorable Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
Honolulu, HI 96813

**RE: SB 3016 Oppose – Relating to the Hawaii Public Wireless Safety Act**

Dear Chairs Moriwaki and Baker:

Verizon is pleased to be a leader in bringing advanced wireless services and technology to the State of Hawaii, to the benefit of its citizens, businesses, in support of public safety, in support of remote learning and “work from home,” and to expand access to broadband. In deploying wireless infrastructure, we are proud to engage in a cooperative and positive relationship with local municipalities, counties, and community organizations.

If it were to become law, SB 3016 would greatly impede the ability of Verizon and other wireless carriers to be able to move forward with critically needed technology deployment, and have the chilling effect of potentially significantly slowing or halting investment in the State.

SB 3016 seeks to set up an unnecessary and unwieldy bureaucracy within the Department of Commerce and Consumer Affairs (DCCA), to attempt to regulate and set standards for all Radio Frequency (RF) technology and emissions. These objectives are preempted by federal law, and under the jurisdiction of the Federal Communications Commission (FCC). The U.S. Congress has given the FCC exclusive authority to regulate RF emissions and other aspects of wireless operations. The FCC exercises federal authority over radio waves through the 1934 Communications Act and the Telecommunications Act of 1996. Therefore, SB 3016 would be in direct conflict with federal law, and highly disruptive to deploying wireless services efficiently if the state attempted to set its own standards and try to regulate radio frequencies.

The only predictable outcome of SB 3016 would be to greatly deter wireless investment in Hawaii, which would be counter to the State’s goals to have ubiquitous broadband for all its citizens. Furthermore, the bill seeks to impose a new burdensome fee on wireless customers to

pay for an unnecessary and unworkable bureaucracy that would not survive the legal challenge of being preempted by Federal statute.

We therefore ask the Committees to oppose and not advance HB 3016.

Sincerely,

Michael Bagley  
Executive Director, Government Affairs





February 8, 2022

The Honorable Sharon Y. Moriwaki  
Chair, Senate Committee on Government Operations  
Hawaii State Capitol, Room 223  
Honolulu, HI 96813

The Honorable Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
Honolulu, HI 96813

**RE: SB 3016 Opposition — Relating to the Hawaii Public Wireless Safety Act**

Dear Chairs Moriwaki and Baker,

On behalf of CTIA, the trade association for the wireless communications industry, I respectfully write in opposition to SB 3016. This legislation is both unnecessary and is preempted by federal law.

Radio frequency (RF) emissions are critical to wireless communications. Congress instructed the Federal Communications Commission (FCC) to regulate RF emissions to ensure a proper balance between an effective communication system and consumer protection.<sup>1</sup> Congress has long exercised federal authority over radio waves through the 1934 Communications Act, its creation of the FCC, the Telecommunications Act of 1996, and its delegation of authority to the FCC to regulate all technical aspects of wireless communication.<sup>2</sup>

Because of the need for an efficient and effective national telecommunications system, Congress and the FCC have emphasized the importance of uniformity in the regulation of wireless phones and equipment such that the same phone-and-wireless network that works in Hawaii works in every other state. National uniformity ensures accessibility and compatibility. In contrast, state-by-state regulation, like SB 3016, would disrupt that system, place unnecessary and costly burdens on industry, and make wireless phones and service more expensive for consumers.<sup>3</sup>

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<sup>1</sup> *CTIA – The Wireless Ass’n v. City of Berkeley*, 928 F.3d 832, 850 (9th Cir. 2019) (“the FCC was tasked not only with protecting the health and safety of the public, but also with ensuring the rapid development of an efficient and uniform network.”) (citation omitted).

<sup>2</sup> *Farina v. Nokia, Inc.*, 625 F.3d 97, 124 (3d Cir. 2010) (“The stated purpose behind the FCA is to “regulat[e] interstate and foreign commerce in communication by wire and radio so as to make available ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges[.]” (citing 47 U.S.C. § 151)).

<sup>3</sup> *Farina*, 625 F.3d at 126 (“The wireless network is an inherently national system ... Congress and the FCC recognized uniformity as an essential element of an efficient wireless network.”)



Based on recommendations from blue-chip standard-setting organizations and based on a consensus of the federal health and safety agencies, such as the Food and Drug Administration (FDA), Environmental Protection Agency, and the Occupational Safety and Health Administration, in 1996 the FCC adopted an RF emission standard that protects consumers at 50 times below the level at which adverse biological effects were observed in laboratory animals.<sup>4</sup> In reality, wireless devices and equipment operate at well below the FCC limit.<sup>5</sup>

In 2019, the FCC and FDA, after re-evaluating the standard, confirmed the adequacy of the standard to protect consumers and workers. The standard applies to RF emitted from 5G systems. The FCC and FDA have declared that wireless phones and equipment compliant with the FCC's standards are safe for use by all workers and consumers, including children.<sup>6</sup> Thus, SB 3016 is unnecessary.

Courts have repeatedly upheld the preemptive effect of the FCC's regulations, rendering legislation like SB 3016 unlawful.<sup>7</sup> Federal preemption applies with equal force to state-mandated warnings or disclosure requirements that suggest FCC-compliant equipment is unsafe.<sup>8</sup> Specifically, federal courts in the Ninth Circuit have barred as preempted state regulation that creates "an erroneous public perception" that RF emissions from FCC-compliant equipment are unsafe.<sup>9</sup> A legislative action, like SB 3016, that even raises the "implication about public safety" is preempted.<sup>10</sup>

### **SB 3016 Is Preempted for a Number of Reasons**

First, SB 3016 is premised on the alleged inadequacy of the FCC's RF standards. Specifically, Section 1 asserts that the legislation is necessary because the FCC "has been unsuccessful in updating its rules and regulations ... to safely manage wireless growth and services in all segments of the industry." Federal law preempts any challenge to the adequacy of the FCC's standards. Further, as discussed above, in 2019, the

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<sup>4</sup> *Cohen v. Apple*, 497 F. Supp. 3d 769, 782 (N.D. Ca. 2020).

<sup>5</sup> *Id.* at 783 (noting that FCC compliance testing "is performed under more extreme conditions than a user would normally encounter").

<sup>6</sup> *CTIA - The Wireless Ass'n v. City of Berkeley*, 487 F. Supp. 3d 821, 826-827 (N.D. Ca. 2020); *Cohen*, 497 F. Supp.3d at 775-776 (N.D. Ca. 2020).

<sup>7</sup> *Murray v. Motorola, Inc.*, 982 A.2d 764, 777 (D.C. 2009) ("insofar as plaintiffs' claims rest on allegations about the inadequacy of the FCC's RF radiation standard or about the safety of their FCC-certified cell phones, the claims are preempted under the doctrine of conflict preemption."); *Farina*, 625 F.3d at 122 (federal law preempts state law based on the premise that FCC RF emission "standards are inadequate—that they are insufficiently protective of public health and safety."); *Cohen*, 497 F. Supp.3d at 785 (same).

<sup>8</sup> *Cohen*, 497 F. Supp.3d at 785 (holding that requiring "additional consumer disclosures regarding [] FCC-certified cell phones ... conflict[s] with the FCC's contrary determination that its existing disclosure requirements adequately inform the American public."); *id.* at 786 (preempting claims requiring additional disclosures because they risk "improperly imped[ing] the marketing of cell phones that the FCC has found to be safe").

<sup>9</sup> *CTIA*, 487 F. Supp. 3d at 828 (federal preemption barred Berkeley's disclosure requirement because "the FCC concluded that the information about RF exposure on its website and in cell phone user manuals was 'adequate to inform consumers' of potential health risks associated with RF emissions from FCC-certified cell phones ... any additional warnings about RF exposure could create 'an erroneous public perception or overwarning of RF emissions from FCC certified or authorized devices' and 'contribute to a feeling of uncertainty or a lack of control.'").

<sup>10</sup> *Id.* at 834 n.11; *Cohen*, 497 F. Supp.3d at 785 (disclosure requirements in addition to what the FCC already requires "conflict with the FCC's considered policy judgment regarding how best and in what form to disseminate relevant information about RF exposure to the public.").



FCC and FDA, after re-evaluating the standard, confirmed the adequacy of the standard to protect consumers and workers.<sup>11</sup>

Second, SB 3016 raises the implication that RF emissions from FCC-certified equipment are unsafe, which could contribute to “an erroneous public perception” that RF emissions from FCC-compliant equipment are unsafe. Two separate District Courts in the Ninth Circuit recently held that federal law preempts this type of state regulation, whose stated goal is “to protect public health and safety,” because it conflicts with the FCC’s policy against “overwarning.” Even if the legislation were not misleading, it is still preempted because it conflicts with the FCC’s balancing of its policy objectives.<sup>12</sup>

In closing, as discussed above, SB 3016 is both unnecessary and unlawful and should be soundly rejected. CTIA and our members respectfully request that SB 3016 not advance.

Sincerely,

Bethanne Cooley  
Assistant Vice President  
State Legislative Affairs

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<sup>11</sup> *Cohen*, 497 F.Supp.3d at 785 (agreeing that requiring additional disclosures “conflict[s] with the FCC’s considered policy judgment regarding how best and in what form to disseminate relevant information about RF exposure to the public.”).

<sup>12</sup> *CTIA*, 487 F.Supp.3d at 833 (“Furthermore, even if the Berkeley ordinance specifically is (as the Ninth Circuit indicated) literally true and not misleading, it does not necessarily follow that there is no risk of ‘overwarning’ – especially given that the FCC is tasked with balancing the competing objectives of ensuring public health and safety and promoting the development and growth of the telecommunications network and related services.”).



**TECHNET**  
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February 8, 2022

The Honorable Sharon Y. Moriwaki  
Chair, Senate Committee on Government Operations  
Hawaii State Capitol, Room 223  
Honolulu, HI 96813

The Honorable Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
Honolulu, HI 96813

**Re: SB 3016 – Relating to the Hawaii Public Wireless Safety Act - OPPOSE**

Dear Chair Moriwaki and Chair Baker,

On behalf of TechNet, I write in respectful opposition to SB 3016. State-specific regulation of radio frequency technology and emissions would conflict with federal law, deter wireless investment in Hawaii, and impose burdensome fees on wireless customers.

TechNet is the national, bipartisan network of technology CEOs and senior executives. Our diverse membership includes dynamic American businesses ranging from startups to some of the most recognizable companies in the world. TechNet represents over four million employees and countless customers in the fields of information technology, e-commerce, sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

State-specific regulation of radio frequency technology and emissions would conflict with federal law and regulatory authority. The Federal Communications Commission (FCC) has exclusive authority to regulate radio frequency emissions and other wireless operations. National uniformity in the regulation of wireless phones and equipment is critical to ensuring a proper balance between an efficient and uniform communication system and consumer protection.

SB 3016 also raises the implication that radio frequency emissions from wireless equipment are unsafe. In 2019, the FCC and the Food and Drug Administration (FDA) evaluated and confirmed the adequacy of the FCC's radio frequency emission standard to protect workers and consumers. This standard applies to radio frequency emitted from 5G systems. Radio frequency emissions are critical to

wireless communications. Wireless devices and equipment operate well below the FCC limit, making SB 3016 unnecessary.

In addition, SB 3016 imposes a burdensome new fee on wireless customers. Not only does state-by-state regulation of the wireless telecommunication system place unnecessary and costly requirements on industry, but it also makes wireless services more expensive for consumers.

Thank you for your consideration. If you have any questions regarding TechNet's opposition to SB 3016, please contact Dylan Hoffman, Executive Director, at [dhoffman@technet.org](mailto:dhoffman@technet.org) or 505-402-5738.

Sincerely,

A handwritten signature in black ink, appearing to be 'Dylan Hoffman', written in a cursive style.

Dylan Hoffman  
Executive Director for California and the Southwest  
TechNet

# Roger E. Egan

February 7, 2021

Honorable Senator Sharon Moriwaki  
Hawaii State Senate  
415 S. Beretania Street, Room 223  
Honolulu, HI. 96813

RE: Proposed Hawaii Public Wireless Safety Act – SB 3016

Honorable Senator Moriwaki:

I was provided a copy of the referenced Senate Bill 3016 and wanted to share my thoughts on this important piece of legislation for Hawaii.

I am a long-time senior executive in the insurance industry; attached is a brief bio, and I follow notable insurance risks such as Radio Frequency Radiation emanating from wireless transmission sites. This is a very significant hazard, especially given the advent of 5G technology where wireless antennas with become ubiquitous.

I have watched our industry first recognize and then exclude coverage for RF. However, I believe the Public Hawaii Wireless Safety Act -SB 3016, if adopted and administered correctly, would likely result in making RF exposure insurance available for the State of Hawaii. The protocols proposed in SB 3016 are comprehensive and appear to address the needs of the public, wireless carriers, insurers, property owners, employers, employees, and others.

In the past, I met with the FCC as they attempted to amend their existing RF Safety rules and regulations to better address the needs of the public and workers in a rapidly changing wireless world.

I believe the FCC was close to adopting new RF Safety rules and regulations which are mirrored in your SB 3016, Hawaii Public Wireless Safety Act, however, under the Trump Administration the FCC closed the Notice of Proposed Rulemaking change --- this was a huge mistake. With time, and the continued roll-out of 5G to meet our insatiable appetite for all things wireless, this hazard (RF) will increase dramatically and, therefore, must be addressed now.

I support SB 3016 and would be happy to make myself available to discuss this important subject with you. Please feel free to include this letter in the public record regarding the Hawaii Public Wireless Safety Act SB 3016.

Sincerely,

Roger E. Egan

Biography attached.

## **ROGER E. EGAN**

Mr. Egan is an investor and business consultant to private equity firms who invest in the insurance industry. He is currently working with Kohlberg & Company as a Senior Advisor. He was Executive Chairman of one of their investments --- Risk Strategies Company, and more recently, a Director of U. S. Risk, Inc. until it was sold last year.

In 2005 Mr. Egan co-founded Integro, Ltd. --- an insurance brokerage firm and the largest venture capital deal in the United States that year. He served as CEO of Integro until September of 2008.

Before launching Integro, Mr. Egan was President of Marsh, Inc., the largest insurance brokerage firm in the world with over \$ 6 billion in revenue and 43,000 employees in over 120 countries. During his 32 - year tenure with the firm, he held a number of senior management positions, including Vice Chairman of Marsh Inc. and President and CEO of Marsh North America.

Mr. Egan is a current Director of Safe Dynamics — a wireless safety company. He is a past member of the Board of Overseers of the School of Risk Management at St. John's University and a past director of the American Institute for Chartered Property and Casualty Underwriters, The Insurance Institute of America, Sedgwick CMS, Risk Strategies Company and U.S. Risk, Inc. He is active in New Jersey charities and is the founder of MAC Drug-Free and Teen Pride, Inc., both aimed at preventing substance abuse among youth. This year he is Co-Chairing the capital campaign for Freedom House, which provides addiction services for men, women and families in New Jersey.

Mr. Egan received an A.B. in mathematics, with honors, from Boston College and an M.B.A. from the Stern Business School at New York University. He also completed the Program for Management Development at Harvard Business School and the Executive Management Program at Stanford University.

Mr. Egan has been named a David Rockefeller Fellow by the New York City Partnership.

February 7, 2022

Senator Moriwaki  
Hawaii State Senate  
Honolulu, HI. 96813

Comments on Senate Bill 3016

Dear Senator Moriwaki,

I am a longtime resident of Hawaii. My husband and children were born and raised here.

I heard about the proposed Public Wireless Safety Act, and I wanted to share my thoughts with you.

I have always been concerned with cell sites and their antennas. I see the antennas everywhere, especially on buildings. They are just all around us. I'm not so worried about the "electromagnetic smog" that some people are concerned with but I am very worried about the impact to our health those antennas could have. I want to know, are those antennas safe for us?

You may not be aware, but the public is pretty much left in the dark regarding the safety of the cell sites, and here comes 5G and whatever is next, and I heard about the 5G interfering with planes around the airports, it's very troublesome and scary.

It looks like the bill is proposing having an independent certification stating the sites are safe. I know my friends and I would certainly welcome this. I also did the math and based on our monthly bill; it looks like it might cost me \$0.40/month to pay for this service/technology. I can't speak for you, but I know no one in my household would miss \$0.40/month, and considering the offset, it would be paying, I think it's smart. I have a reluctance to trust "big anything" and the cell phone providers fit in that category, and I feel have rightly so earned my distrust.

Mahalo and thank you for your dedication to our safety here in Hawaii.

Krystal Emge

