



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

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

**Before the  
Senate Committee on Commerce and Consumer Protection  
Thursday, March 24, 2022  
9:30 AM  
Conference Room 229 & Videoconference**

**On the following measure:**

**SCR 120/SR 107, REQUESTING THE HAWAII PUBLIC UTILITIES 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**

Chairs Baker 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 Requirements<sup>1</sup> 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 that requires the electric utility companies 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.

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<sup>1</sup> 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.

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

**LATE**

TO THE  
SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

March 24, 2022  
9:30 a.m.

Chair Baker and Members of the Committee:

**MEASURE:** S.C.R. No. 120 / S.R. No. 107

**TITLE:** REQUESTING THE HAWAII PUBLIC UTILITIES 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.

**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.



**Hawaiian  
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

**SCR 120/SR 107**

**REQUESTING THE HAWAII PUBLIC UTILITIES 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.**

March 24, 2022  
9:30 am, Agenda Item #3  
State Capitol, Conference Room 229 and Videoconference

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

Chair Baker, Vice Chair Chang and members of the Committee:

My name is Christian Whitney, and I am testifying on behalf of Hawaiian Electric Company **in support** of SCR 120/SR 107.

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")<sup>1</sup> November, 2021 *Resolution Supporting Energy Company Communications Infrastructure for Broadband Expansion*, articulates the need to reduce regulatory hurdles as well.<sup>2</sup>

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.<sup>3</sup> While Hawaiian Electric can and will continue to provide its middle

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<sup>1</sup> 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.

<sup>2</sup> "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."

<sup>3</sup> 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,<sup>4</sup> 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 SCR 120/SR 107. Thank you for this opportunity to testify.

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<sup>4</sup> 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).



To: Hawai'i State Senate Committee on Consumer Protection

DATE: March 24, 2022

TIME: 9:30 am

PLACE: Via Videoconference

RE: SCR 120 REQUESTING THE HAWAII PUBLIC UTILITIES 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.

POSITION: Comments

Aloha Chair Baker, Vice Chair Chang and members of the committee:

We are writing on behalf of Crown Castle to provide comments on SCR 120 REQUESTING THE HAWAII PUBLIC UTILITIES 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.

We support the intent of this resolution and ask that it be amended to ensure that a level playing field and appropriate levels of competition in the telecommunications infrastructure industry is maintained.

Crown Castle owns, operates, and leases cell towers and other telecommunications infrastructure supporting small cells and fiber solutions in Hawai'i and across the continental U.S. This portfolio of communications infrastructure connects citizens and communities to essential data, technology, and wireless service.

Mahalo for the opportunity to testify.

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

**SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION**

March 24, 2022, 9:30 PM  
State Capitol, Conference Room 229, Videoconference

**COMMENTS FOR:**

**S.C.R. NO. 120/ S.R. 107 - REQUESTING THE HAWAII PUBLIC UTILITIES 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**

To: Chair Baker, Vice-Chair Chang, and Members of the Committee

**Re: Testimony providing comments for SCR 120/ SR 107 with requested amendments**

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

Thank you for this opportunity to submit comments for Senate Concurrent Resolution 120/ Senate Resolution 107 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 underscored language be amended into the measures 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 SCR 120/ SR 107.

