



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Energy, Economic Development and Tourism
Friday, January 28, 2022 at 3:00 p.m.

By

Garret T. Yoshimi, Vice President for Information Technology/Chief Information Officer
University of Hawai'i System

SB 2173 – RELATING TO BROADBAND SERVICE INFRASTRUCTURE

Chair Wakai, Vice Chair Misalucha, and members of the committee:

The University of Hawai'i, representing the State's broadband interests, supports SB 2173.

Robust, resilient and reasonably priced broadband services are a critical need for all of our communities. The global pandemic has only served to bring that need front-and-center over the past two years. Hawai'i needs all of our critical infrastructure operators to be part of the future broadband solution to help ensure that we will be well served both now and into the future. This bill serves to help include the significant and vital capabilities and experience of our electric utilities as part of our overall infrastructure solution, consistent with a national movement to expand and improve broadband access for all.

Thank you for the opportunity to provide comments on SB 2173.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Energy, Economic Development, and Tourism
Friday, January 28, 2022
3:00 p.m.
Conference Room 224 & Videoconference**

**On the following measure:
S.B. 2173, RELATING TO BROADBAND SERVICE INFRASTRUCTURE**

Chair Wakai 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 bill.

The purpose of this bill is to facilitate the development of broadband facilities and services throughout the state by allowing electric utilities to use utility easements and public rights of way to deploy broadband infrastructure and by allowing electric utilities to own, operate, lease, plan, construct, install, maintain, and/or replace broadband facilities. This bill will add a new chapter to the Hawaii Revised Statutes entitled Broadband Deployment Over Electric Easements Act.

The Department appreciates the intent of the bill 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 also

appreciates the comprehensive provisions including the liability provisions to protect the electric utility and the owner of real property with an existing electric easement.

The Department offers the following observations and comments.

The Department recognizes that the purpose of the bill is to enable the electric utilities to facilitate broadband access to our most vulnerable populations. The Department recommends that there should be a requirement for electric utilities to establish Hawaii Public Utilities Commission approved procedures and processes related to the clear separation as to how the electric utility records the financial activities for any such investments in broadband facilities and services to avoid the possibility that electric service might subsidize broadband service. The Department maintains that costs should be paid by the cost causer and that electric customers should not be potentially burdened with higher rates.

It is for the above reason that the Commission 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. Since this bill will give the electric utility authority to allow a broadband affiliate or any other person to construct, install, own, operate, lease, maintain, and/or replace broadband facilities within the electric utility's easements, the proposed bill may require the Commission to revisit and possibly amend the safeguards included in the Affiliate Transaction Requirements to accommodate a broadband affiliate.

§A-6(b) states that except for the provisions in §A-6(a), the new statute is not intended to alter HRS § 269-19. The Department suggests that clarifying language be added to HRS § 269-19 that provides 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 electric utility companies should be required to file

¹ Exhibit A filed in Order No. 36112 in Docket No. 2018-0065 on January 24, 2019.

applications that have a minimum amount of information to facilitate a streamlined and efficient review process.

The Department offers that these provisions may require the Commission and the Consumer Advocate to seek additional resources to initiate and maintain oversight over the broadband activities of the electric utilities and to ensure that customers are protected from cross-subsidization and unreasonable electricity rates.

Thank you for the opportunity to testify on this bill.

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

TO THE
SENATE COMMITTEE ON
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

January 28, 2022
3:00 p.m.

Chair Wakai and Members of the Committee:

MEASURE: S.B. No. 2173

TITLE: RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

DESCRIPTION: Allows an electric utility to own, operate, lease, plan, construct, install, maintain, and/or replace broadband facilities, including middle mile infrastructure, to help facilitate the development of and investment in broadband facilities and services to rural, unserved, underserved, and urban communities throughout the State.

POSITION:

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

COMMENTS:

The Commission appreciates the intent of this measure to facilitate improvements in broadband services to rural, unserved, underserved, and urban communities throughout the State.

The Commission notes the comments shared by the Department of Commerce and Consumer Affairs’ Division of Consumer Advocacy (“Consumer Advocate”) related to cost causation and cross-subsidization among electricity customers and broadband customers, or between electric utilities and unregulated affiliates that may provide broadband service using utility infrastructure. Should this measure be implemented, 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.

S.B. No. 2173
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Thank you for the opportunity to testify on this measure.

Statement Before The
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Friday, January 28, 2022

3:00 PM

Conference Room 224 & Videoconference

in consideration of

SB 2173**RELATING TO BROADBAND SERVICE INFRASTRUCTURE.**

Chair WAKAI, Vice Chair MISALUCHA, and Members of the Senate Energy, Economic Development, and Tourism Committee

Common Cause Hawaii provides comments regarding SB 2173 which allows an electric utility to own, operate, lease, plan, construct, install, maintain, and/or replace broadband facilities, including middle mile infrastructure, to help facilitate the development of and investment in broadband facilities and services to rural, unserved, underserved, and urban communities throughout the State.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy - one that works for everyone and not just the special interests.

As technology advances, many of our basic democracy values depend on robust connectivity. Broadband enhances civic engagement, participation in the democratic process, and a responsive government. Yet too many in Hawaii lack access to affordable, high-speed broadband and continue to face significant barriers to get online.

Affordability remains the most significant barrier to broadband adoption while those on the wrong side of the digital divide are disproportionately low-income, people of color, seniors, people with disabilities, and other marginalized communities. Without broadband, these communities live in a democracy where their voices go unheard, and their needs are unmet.

Therefore, while it is necessary to develop and invest in broadband facilities and services in rural, unserved, underserved, and even in urban communities, ultimately broadband must be provided at an affordable cost. Common Cause Hawaii hopes that SB 2173's end goal is clear -- affordable, fair, reasonable, and nondiscriminatory high-speed broadband for all. Broadband equity is necessary for the good of our representative democracy.

Thank you for the opportunity to provide comments on SB 2173. If you have any questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM**

SB 2173

Relating to Broadband Service Infrastructure

Friday, January 28, 2022

3:00pm, Agenda Item 2

State Capitol, Conference Room 224 and Videoconference

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

Chair Wakai, Vice Chair Misalucha, and members of the Committee:

My name is Christian Whitney, and I am testifying on behalf of Hawaiian Electric Company **in support** of SB2173. The purpose of this bill is to allow electric utilities to facilitate broadband expansion by leveraging their existing infrastructure to promote broadband deployment and digital equity to Hawaii's rural, unserved, underserved, urban and Hawaiian Home Land communities. Where mutually beneficial, this bill also allows third parties to use an electric utilities' easements and rights of way to further facilitate broadband expansion.

In order to meet shared State and community goals for a distributed energy future, including Hawaiian Electric's 100% renewable energy goal by 2045 and our 70% carbon reduction goal by 2030, we must modernize our electric grid which requires unique, robust and diverse telecommunications to all of our grid assets at the edge of every community on every island we serve. We are always focused on providing maximum value to the ratepayer; therefore, we support maximizing the value of Hawaiian Electric's investments in telecommunications infrastructure in new and

creative ways to address the growing need for equitable access to telework, telemedicine, remote learning, and participation in the digital economy. As the owner and manager of our own telecommunications network, we are able to provide our foundational, diverse middle-mile infrastructure, leasing it to internet providers and other third parties without duplicating efforts, congesting the right-of-way or view plane, or increasing costs to the consumer.

The idea of maximizing an electric utility's infrastructure for broadband deployment is consistent with what we observe in other states where similar legislation was passed in Alabama, Georgia, Mississippi, Virginia and Texas.¹ Moreover, it is consistent with the priority of the National Association of Regulatory Utility Commissioners' ("NARUC")² November, 2021 *Resolution Supporting Energy Company Communications Infrastructure for Broadband Expansion*, to expand consumer broadband access by allowing energy companies to provide middle mile communications infrastructure and to reduce regulatory hurdles for doing so.³

Electric utility telecommunication is increasingly important to operate the electric grid safely and efficiently. As Hawaiian Electric expands its telecommunications

¹ See Ala. Code § 37-16; Ga. Code Ann. § 46-3-205; Miss. Code Ann. §§ 77-3-2(1), 77-3-44; Va. Code Ann. § 55.1-306; Tex. Utilities Code §§43.001-43.152.

² 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.

³ "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."

footprint for its internal purposes, this bill will allow the Company to share the benefits of its existing infrastructure and upgrades by providing its middle mile dark fiber backbone to broadband users throughout the State. In this way, the bill overlays Hawaiian Electric's existing infrastructure and future telecommunications infrastructure plans with the State's need to provide broadband to more users, and can simultaneously offer diverse routes from those that otherwise exist.⁴ Generally speaking, broadband consumers are also electric utility ratepayers, and by allowing Hawaiian Electric to leverage its broadband facilities and middle mile infrastructure in conjunction with last-mile providers, together we hope to positively impact the end user of both services—Hawaii's consumers.⁵

This bill would also enable the Company to allow third parties, where mutually beneficial, to utilize its electric easements and rights of way (collectively, "easements") for broadband expansion. This would significantly reduce the bureaucratic and/or political strain that can face internet providers when trying to reach unserved and underserved areas of the state. In this respect, we are able to support the State initiative to provide access to underserved and unserved communities by making the infrastructure we currently own and are installing (including our easements) available to others.

In closing, we view this bill as a creative and efficient way to bring together electric utilities' middle-mile infrastructure and their electric easements with last-mile service providers and other third parties to accomplish mutually beneficial broadband

⁴ NARUC states that energy companies that are building their telecommunication network can share their middle mile infrastructure with ISPs, "leveraging the energy company infrastructure to reduce the cost of bringing broadband Internet access to unserved or underserved communities." *Id.*

⁵ "Those communities in which the "leveraging" approach is implemented will benefit from both the increased availability of consumer broadband and the increased grid efficiency, reliability, safety, and security made possible by the new energy company broadband network deployed for critical grid communications." *Id.*

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.

Accordingly, Hawaiian Electric supports SB2173. Thank you for this opportunity to testify.



Committee on Energy, Economic Development and Tourism
Senator Glenn Wakai, Chair, Senator Bennette E. Misalucha, Vice Chair

Friday, January 28, 2022, 3:00 p.m. Via Videoconference
SB 2173 RELATING TO BROADBAND SERVICE INFRASTRUCTURE

TESTIMONY

Janet Mason, Legislative Committee, League of Women Voters of Hawaii

Chair Wakai, Vice Chair Misalucha, and Committee Members:

The League of Women Voters supports this bill which allows an electric utility to own, operate, lease, plan, construct, install, maintain, and/or replace broadband facilities, including middle mile infrastructure, to help facilitate the development of and investment in broadband facilities and services to rural, unserved, underserved, and urban communities throughout the State.

This bill would permit electricity distribution to merge with telecommunications, offering both services. We hope the Public Utilities Commission will weigh in on this notion, while not standing in the way of bringing these industries together, where this makes economic sense for the Hawaii consumer.

There are obvious synergies to having an electric utility- broadband marriage, such as avoiding construction of duplicate distribution systems and leveraging the operational experience of the respective industries, but what about other existing internet service providers such as Hawaii Telcom and Charter Communications Inc.? Competition among providers with existing capacity is usually a good thing!

We certainly do not have a judgment about the optimal combination of providers for Hawaii, but we can say unequivocally that this is a complicated and important question, involving corporate rights to bandwidth, ownership of existing utility and internet systems, construction of a carrier-neutral landing infrastructure on Oahu, etc. However, we do support this bill recognizing the electric utility distribution system is already well developed and experienced in Hawaii.

Hawaii does have a valuable and current "Broadband Strategic Plan," but this isn't the same as having a more detailed roadmap for moving forward. Is it possible to publicly translate the broad steps outlined in this plan, for the benefit of ratepayers?

Thank you for the opportunity to submit testimony.



Testimony Before the Senate Committee on Energy, Economic Development and Tourism

By David Bissell
President and Chief Executive Officer
Kaua'i Island Utility Cooperative
4463 Pahe'e Street, Suite 1, Lihu'e, Hawai'i, 96766-2000

Friday, January 28, 2022; 3:00 pm
Conference Room #224 & Videoconference

Senate Bill No. 2173 - RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

To the Honorable Senator Glenn Wakai, Chair, Senator Bennette Misalucha, Vice Chair and Members of the Committee:

Kaua'i Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

KIUC supports this measure.

There is no question that the continued deployment of broadband throughout the state is critical to promoting economic development, creating job opportunities, and advancing health care and educational goals and initiatives.

As an owner of critical infrastructure that could potentially assist in the expansion of broadband on Kaua'i, KIUC appreciates this effort to clarify the role we may play in the deployment of broadband facilities in our service area. We will continue to examine broadband opportunities in the broader context of our core mission, which is to safely provide reliable electrical power to our members that is fairly and competitively priced.

Thank you for your consideration.



Charter Communications
Testimony of Felipe Monroig, Senior Director of Government Affairs

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Hawai'i State Capitol
Friday, January 28, 2022

OPPOSITION TO S.B. 2173, RELATING TO BROADBAND SERVICE INFRASTRUCTURE

Chair Wakai, Vice Chair Misalucha, and Members of the Committee.

Thank you for the opportunity to provide testimony in opposition to S.B. 2173, a bill that would (1) grant authority to electric utilities to provide wholesale and retail broadband service, and (2) perfect their electric easements so that they can be used for broadband.

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.

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 legislation, as currently drafted, neither acknowledges the existence of nor seeks to address the potential for utilities to leverage these kinds of advantages, to the detriment of consumers.

Allowing a monopoly provider of essential electric service to compete with private broadband providers risks distorting the marketplace and dis-incentivizing private investment in broadband in at least four respects.

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. They may also engage in conduct that hampers competition, by slow-rolling or complicating make-ready work necessary for competitors to attach their transmission lines. Hawaii already has some of the highest pole rental rates for attachment to poles owned by the electric utilities and this has the potential to get worse if this bill passes. Under pole attachment agreements with the major provider in the state, broadband providers' use of the electric utility pole is secondary to the use by the electric utility and if they enter the broadband market, the electric utility can force broadband providers like Charter off the poles to make way for their own capacity. 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.

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 opposes S.B. 2173.

Mahalo for the opportunity to testify.

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

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, & TOURISM

January 28, 2022 3:00PM
State Capitol, Conference Room 224, Videoconference

COMMENTS FOR:

S.B. NO. 2173 RELATING TO BROADBAND SERVICE INFRASTRUCTURE

To: Chair Wakai, Vice-Chair Miscalucha, and Members of the Committee

Re: Testimony providing comments for SB 2173

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

Thank you for this opportunity to submit comments on Senate Bill 2173. The primary intent of this bill is to allow an electric utility to own, operate, lease, plan, construct, install, maintain, and/or replace broadband facilities including middle mile infrastructure, to help facilitate the investment to rural, unserved, underserved and urban communities throughout the State.

Hawaiian Telcom will be meeting with the proponents of this legislation to discuss their need for this legislation which stems from a National Association of Rural Utility Commissioners (NARUC) resolution that offers support for “non-traditional broadband providers, electric co-ops, municipal utilities, and Investor Owned Utilities providing service in unserved and underserved areas to quickly close the broadband availability gap.”

While we have concerns regarding several provisions in this bill including impacts on property owner easement rights and allowing “any other person” to run networks that bypass and possibly undermine regulatory rules and procedures, we are withholding further comments to better understand the need for securing legislative authorization to integrate broadband service infrastructure into the electric utilities’ business model. Current Public Utilities Commission procedures are already in place to establish new service providers including affiliates of electrical utility companies which in turn can enter into agreements with electrical utilities to lease their infrastructure. Unlike the electric industry, there is significant competition in the broadband and telecommunications industry. This is evidenced by the 142 wireline telecommunications and 76 wireless telecommunications providers authorized to do business in Hawaii.

Thank you for the opportunity to submit these comments for Senate Bill 2173.

Attachments: (1) NARUC resolution sponsored by its Committee on Telecommunications and adopted by the NARUC Board of Directors on November 9, 2021