

S.B. NO. 2788

JAN 25 2012

A BILL FOR AN ACT

RELATING TO REPORTING REQUIREMENTS FOR TELECOMMUNICATIONS AND
CABLE TELEVISION PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The State of Hawaii recognizes that advanced
2 broadband capability is essential infrastructure required to
3 drive innovation, the economy, and job creation in the twenty-
4 first century. High speed broadband services at affordable
5 prices are essential for the advancement of education, health,
6 public safety, research and innovation, civic participation, e-
7 government, economic development and diversification, and public
8 safety and services. The State of Hawaii also recognizes the
9 evolution in the manner in which communications and information
10 services are delivered to the consumer, including by wireline,
11 wireless, cable television, and satellite infrastructures, and
12 that the voice, video, and data services provided by these
13 infrastructures are converging. The telecommunications industry
14 is thus an essential element of Hawaii's economy and vital to
15 the health and welfare of all people in the State of Hawaii.

16 A complete and thorough understanding of the operations of
17 the telecommunications industry and the cable television

1 industry is required by state government to develop and
2 administer effective policies to support and grow a competitive,
3 stable, and robust industry for the benefit of the State's
4 economy and consumers, and for the well-being of the public at
5 large. Information and data concerning all aspects of the
6 telecommunications industry and cable industry, such as
7 capacity, availability, service level, infrastructure, prices,
8 distribution, and demand are essential to this understanding.
9 Information collected will also aid the State in obtaining
10 information necessary to identify and qualify for federal grant
11 and loan programs for the benefit of the State, consumers,
12 residents, and telecommunications and cable television
13 providers.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

17 **"CHAPTER**

18 **TELECOMMUNICATIONS AND CABLE INDUSTRY INFORMATION REPORTING**

19 § -1 **Definitions.** As used in this chapter, unless the
20 context otherwise requires:

21 "Broadband" means an "always on" service that combines
22 computer processing capabilities, information provision, and
23 computing interactivity with data transport, enabling end users

1 to access the internet and use a variety of applications, at
2 minimum speeds set by the director.

3 "Cable operator" has the same meaning as the term is
4 defined in section 440G-3.

5 "Data center" means any facility used to manage and house
6 computer network systems and associated components, such as
7 computer network routers, switches, security devices, and
8 network monitoring systems.

9 "Data communications technology" means the type of
10 technology utilized in the transmission system to transfer data
11 between points in the delivery of broadband services to a
12 subscriber.

13 "Department" means the department of commerce and consumer
14 affairs.

15 "Director" means the director of commerce and consumer
16 affairs.

17 "Facility" includes all real property, antenna, poles,
18 supporting structures, wires, cables, conduits, amplifiers,
19 instruments, appliances, fixtures, and other personal property
20 used by a cable operator or telecommunications carrier to
21 provide service.

22 "Internal action levels" means the level at which the
23 provider has predetermined that action must be taken to bring a

1 specific measure of quality or performance to acceptable levels
2 in order to maintain subscriber services.

3 "Internet service provider" means any company that provides
4 connectivity between a data center and the internet.

5 "Minimum service levels" means the lowest level of service
6 that a provider sets for each level of telecommunications
7 service offered to subscribers.

8 "Network" means a data network that is capable of carrying
9 integrated traffic, including but not limited to voice, video,
10 and data.

11 "Network availability" means the amount of time, expressed
12 as a percentage, that a network is available for processing
13 data. It is calculated by multiplying the network uptime by one
14 hundred then dividing that number by the sum of the network's
15 uptime and downtime.

16 "Network latency" means the length of time it takes for a
17 data packet to travel through a network to a given destination
18 and to return to the original location.

19 "Network node" means a redistribution point that provides
20 the connectivity from a data center to the subscriber premises.

21 "Peak bandwidth utilization" means the maximum network
22 capacity, expressed as a percentage, that can be used at a
23 network's highest output level. It is calculated by multiplying

S.B. NO. 2788

1 the network's peak utilization rate by one hundred then dividing
2 that number by the network's available bandwidth.

3 "Peak capacity" means the maximum data rate, in bits per
4 second, that connection to a network is capable of carrying.

5 "Person" means an individual, corporation, partnership,
6 association, limited liability company, any other form of
7 business entity, trust, or governmental agency.

8 "Provider" means any cable operator, telecommunications
9 carrier, or telecommunications common carrier.

10 "Quality of service" means a measure of service quality
11 provided to a subscriber that quantifies the overall quality of
12 network performance, which includes but is not limited to
13 measurements for reliability, capacity, effectiveness, and
14 consistency.

15 "Subscriber" means any person who receives services from a
16 provider.

17 "Subscriber connection" means the connection between a
18 subscriber's premises and a network node.

19 "Telecommunications" means the transmission, between or
20 among points specified by a user, of information of the user's
21 choosing, without change in the form or content of the
22 information as sent and received.

1 "Telecommunications carrier" or "telecommunications common
2 carrier" means any person that owns, operates, manages, or
3 controls any facility used to furnish telecommunications
4 services for profit to the public, or to classes of users as to
5 be effectively available to the public, engaged in the provision
6 of services.

7 "Telecommunications service" means the offering of
8 telecommunications for a fee directly to the public, or to such
9 classes of users as to be effectively available directly to the
10 public, regardless of the facilities used.

11 § -2 **Providers to register.** Every provider shall
12 register with the department pursuant to this chapter on a form
13 prescribed by the director.

14 § -3 **Statements.** (a) On reporting dates established by
15 the director, every provider shall file with the department,
16 separately for each county in which the provider offers
17 services, the following information:

- 18 (1) All data center locations;
- 19 (2) For each internet service provider used to connect the
20 provider's network to the internet, the internet
21 service provider's name, carrier tier, number of
22 connections supplied, bandwidth of each connection
23 supplied, and upstream backhaul provider;

S .B. NO. 2788

- 1 (3) The provider's alternate internet service provider and
2 alternate transpacific backhaul partner, if any;
- 3 (4) The names of the provider's fail-over and continuity
4 of operations partners, and the terms of the
5 provider's fail-over agreement with each partner;
- 6 (5) The network map of the provider, which includes all
7 connection information, number of network nodes, and
8 network node locations;
- 9 (6) The bandwidth of connections from the provider's data
10 center to each network node, and the up and down
11 connection speeds;
- 12 (7) The maximum number of subscriber connections that can
13 be made per network node;
- 14 (8) The current number of subscriber connections per
15 network node;
- 16 (9) The connection medium between the network nodes and
17 subscribers; and
- 18 (10) The data communications technology used for subscriber
19 connection, including applicable protocols.
- 20 (b) The department may request that a provider submit
21 additional information to the department when the department
22 deems it necessary to perform its responsibilities under this
23 chapter.

S.B. NO. 2788

1 § -4 **Informational reports.** (a) On reporting dates
2 established by the director, every provider shall file
3 separately for each county reports with the department in such
4 form as the director shall prescribe and include the following:

5 (1) For each major network node in the provider's network:

6 (A) The peak capacities;

7 (B) The average overall network availability over the
8 most recent thirty day period;

9 (C) The peak bandwidth utilization over the most
10 recent thirty day period; and

11 (D) Information on the frequency and duration of peak
12 bandwidth utilization over the most recent thirty
13 day period;

14 (2) For each internet service provider used to connect the
15 provider's network to the internet:

16 (A) The internet service provider's name;

17 (B) The number of connections provided;

18 (C) The peak capacity of each connection;

19 (D) The average network availability of each
20 connection over the most recent thirty day
21 period; and

22 (E) The peak bandwidth utilization of each connection
23 over the most recent thirty day period;

S.B. NO. 2788

1 (3) The network performance measurements used by the
2 provider to monitor quality of service, including the
3 provider's internal action levels related to those
4 network performance measurements, and customer service
5 quality measurements prescribed by the director. The
6 network performance measurements reported should
7 include but not be limited to measurements for network
8 availability, network latency for connections made
9 within the provider's network, network latency for
10 connections made outside of the State, bandwidth
11 utilization during peak time, and connection speeds
12 (upstream and downstream) during peak time;

13 (4) Operational information, including the following:

14 (A) The total numbers of subscribers, the numbers of
15 subscribers for each service and rate category
16 offered by the provider, and the number of
17 subscribers added and dropped during the
18 reporting period;

19 (B) The total number of installation requests and
20 completions for the reporting period, and other
21 information concerning the installations as
22 required by the director; and

S.B. NO. 2788

1 (C) The percentage of time service is provided above
2 minimum service levels and the network
3 availability during the reporting period; and

4 (5) Financial information, including the following:

5 (A) On a periodic basis as requested by the director,
6 the provider's income statement, balance sheet,
7 and statement of cash flow; and

8 (B) On an annual basis, an independent audit report
9 and accompanying audited financial reports,
10 management letter, and responses to the
11 management letter.

12 (b) The department may request that a provider submit
13 additional information to the department when the department
14 deems it necessary to perform its responsibilities under this
15 chapter.

16 § -5 **Public reports.** In addition to the reports to be
17 filed under section -4, each provider shall file with the
18 director, in a form and on the time schedule prescribed by the
19 director, reports of the provider's ownership and its financial,
20 technical, and operational conditions that shall be kept on file
21 open to the public. The information included in these public
22 reports shall be determined by the director.

1 § -6 **Confidential information.** (a) Notwithstanding
2 chapter 92F, statements and reports provided to the department
3 pursuant to sections -3 and -4, and the data contained
4 therein, shall be deemed confidential, except to the extent that
5 the provider has made the information or data public, or the
6 director has required the information or data to be made public
7 pursuant to section -5.

8 (b) All information and data collected by the department
9 may be shared with the attorney general, the consumer advocate,
10 and the department of business, economic development, and
11 tourism if the information and data are necessary for the
12 performance of the agency's duties and functions and are also:

- 13 (1) Compatible with the purpose for which the information
14 was collected or obtained; or
15 (2) Consistent with the conditions or reasonable
16 expectations of use and disclosure under which the
17 information was provided.

18 (c) Unless otherwise provided by law, with respect to the
19 data or information made confidential under subsection (a),
20 neither the department nor any agency permitted access under
21 subsection (b) may do any of the following:

S.B. NO. 2788

- 1 (1) Use the information furnished or obtained for any
2 purpose other than the purposes for which it is
3 supplied;
- 4 (2) Make any publication whereby the data furnished by any
5 person can be identified; or
- 6 (3) Permit any person other than the department, the
7 attorney general, the consumer advocate, the
8 department of business, economic development, and
9 tourism, and the authorized representatives and
10 employees of each to examine the individual reports or
11 statements provided.

12 § -7 **Confidential information obtained by another state**
13 **agency.** Any confidential information specified in sections
14 -3 and -4 or pertinent to the responsibilities of the
15 department that is obtained by another state agency, including
16 the attorney general and the consumer advocate, shall be
17 available to the attorney general, the department of business,
18 economic development, and tourism, and the department to the
19 extent such disclosure is consistent with the terms set forth in
20 section -6(b).

21 § -8 **Waiver of reporting requirements.** The director may
22 waive all or any part of the reporting requirements under this

1 chapter, or may exempt a provider from compliance with this
2 chapter, if the director deems it appropriate.

3 § -9 **Failure to timely provide information; failure to**
4 **make and file statements; false statements; penalties; referral**
5 **to the attorney general.** (a) The department shall notify those
6 persons who have failed to timely provide the information
7 specified in section -3 or -4 or requested by the
8 department under section -3 or -4. If, within five
9 business days after being notified of the failure to provide the
10 specified or requested information, the person fails to supply
11 the specified or requested information, the person shall be
12 subject to a civil penalty of not more than \$2,500 per day for
13 each day the submission of information is refused or delayed.

14 (b) Any person, or any employee of any person, who
15 willfully makes any false statement, representation, or
16 certification in any record, report, plan, or other document
17 filed with the department shall be subject to a civil penalty
18 not to exceed \$50,000 and shall be deemed to have committed an
19 unfair or deceptive act or practice in the conduct of a trade or
20 commerce and subject to the penalties specified in chapters 480
21 and 486B.

22 (c) The department shall refer any matter under subsection
23 (a) or (b) to the attorney general, who may exercise any

S.B. NO. 2788

1 appropriate legal or equitable remedies that may be available to
2 the State.

3 (d) For the purposes of this section, "person" means, in
4 addition to the definition contained in section -1, any
5 responsible corporate officer.

6 (e) All penalties collected under this subsection shall be
7 deposited in the compliance resolution fund established pursuant
8 to section 26-9(o).

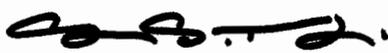
9 § -10 Rules. The director shall adopt rules pursuant to
10 chapter 91 for the purposes of this chapter."

11 SECTION 3. **Conflict with provisions of this Act.** All acts
12 passed by the legislature during this regular session of 2012,
13 whether enacted before or after the effective date of this Act,
14 shall be amended to conform to this Act unless such acts
15 specifically provide that this Act is being amended.

16 SECTION 4. This Act shall take effect on July 1, 2012.

17

18

INTRODUCED BY: 

19

BY REQUEST

Report Title:

Telecommunications and Cable Television Providers; Reporting Requirements

Description:

Requires reporting by telecommunications and cable television providers to the Department of Commerce and Consumer Affairs and provides confidentiality for certain information and reports submitted.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO REPORTING REQUIREMENTS FOR TELECOMMUNICATIONS AND CABLE TELEVISION PROVIDERS.

PURPOSE: To require telecommunications and cable television industry providers to report to the Department of Commerce and Consumer Affairs through its Cable Television Division information and data concerning all aspects of the telecommunications industry and cable television industry, such as capacity, availability, service level, infrastructure, prices, distribution, and demand.

MEANS: Add a new chapter to the Hawaii Revised Statutes.

JUSTIFICATION: The telecommunications industry is an essential element of the State's economy and vital to the health and welfare of all people in the State. Communications and information services delivery systems, including wireline, wireless, cable television, and satellite infrastructures, and the voice, video, and data services provided by these infrastructures are converging.

A complete and thorough understanding of the operations of the telecommunications industry and cable television industry is required to administer effective policies to support and grow a competitive, stable, and robust industry for the benefit of the State's economy and consumers, and for the well-being of the public at large.

Information collected will also aid the State in obtaining information necessary to identify and qualify for federal grant and loan programs for the benefit of the State,

consumers, residents, and telecommunications and cable television providers.

Impact on the public: There should be a positive impact on the public because the bill is intended to provide state government with information to create effective policies to support a competitive and stable telecommunications industry and cable television industry, and thereby advance the availability of ultra high speed broadband service at affordable prices throughout the State. This will in turn allow for increased use of high speed broadband services in areas such as economic development, health care, education, public safety, government efficiency, and civic engagement.

Impact on the department and other agencies: The Department of Commerce and Consumer Affairs will have the added functions of collecting and reviewing the required information and reports, and may require additional staff to perform these functions.

Penalties collected by the Department under the proposed chapter will be deposited into the compliance resolution fund.

GENERAL FUND: None.

OTHER FUNDS: CRF Special Funds.

PPBS PROGRAM DESIGNATION: CCA-102 Cable Television.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2012.