DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
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DIRECTOR

JI SOOK KIM
CABLE TELEVISION ADMINISTRATOR

TO THE HOUSE COMMITTEE ON
INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Date: Wednesday, February 1, 2017
Time: 9:00 a.m.

TESTIMONY ON H.B. NO. 624 – RELATING TO THE INSTALLATION OF INFRASTRUCTURE.

TO THE HONORABLE TAKASHI OHNO, CHAIR, AND MEMBERS OF THE COMMITTEE:

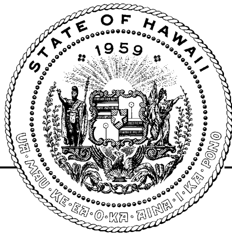
My name is Ji Sook “Lisa” Kim, and I am the Cable Television Administrator at the Department of Commerce and Consumer Affairs (the “Department”). The Department appreciates the opportunity to provide comment on H.B. No. 624, which codifies Act 151, Session Laws of Hawaii 2011, and seeks to expand its provisions to exempt the installation of new small wireless facilities and networks infrastructure from state and county permitting and approval processes. Because Act 151 was only intended to provide an exemption from certain county permitting and state permitting and approval requirements in a very limited situation in which actions were directly related to the replacement of existing coaxial cables with fiber optic cables using existing or replacement infrastructure and within existing rights-of-way and easements that had already been granted permits and approvals, the Department strongly recommends against the proposed amendment to exempt the new installation of small wireless facilities and networks from the state or county permitting and approval processes applied to new infrastructure deployment.

The Department supports permit streamlining that can facilitate statewide access to affordable, high speed broadband services necessary to build a vibrant economy and to improve the quality of life for our residents. The Department further supports permit and authorization streamlining that expedites broadband infrastructure deployment while creating and protecting an even playing field for the various technologies and providers who offer or seek to offer communications services in the State. However, the

Department also recognizes that such streamlining must be balanced against the need to protect the health and safety of the public, the need to control visual impacts in the community, and the need to collect appropriate and reasonable fees necessary to maintain state infrastructures and rights-of-way. The Department believes that H.B. No. 1047, together with the recently enacted shot-clock law under Section 46-89, Hawaii Revised Statutes, provides such balance by creating a streamlined process for small wireless facilities and networks that provides appropriate checks and reasonable cost standards to be applied by the agencies responsible for safeguarding the public and public property and facilities, as well as protecting the nature and quality of our community. This approach thus takes into account the possible impacts of the deployment of new small wireless facilities under an appropriate but streamlined review process.

Specifically, H.B. No 624 (1) inserts “small wireless facilities” and “small wireless facilities networks” into the exemption at Section 2 of Act 151 (and codifies that section); (2) eliminates the requirement that the deployment use existing “telecommunications infrastructure” by deleting that term under section (1)(A); and (3) inserts new language at page 3, lines 17-21, that would deem the installation of a small wireless facility to not be a significant change to existing public rights-of-way or public utility easements. These changes thus create an exemption for the new deployment of small wireless facilities and networks that is not provided for in the new deployment of any other type of communications infrastructure, and also significantly changes the intent and impact of Act 151, which was only intended to exempt from certain county permitting and state permitting and approval requirements specific actions taken to replace existing wireline telecommunications cables with new wireline cables (1) on existing or replacement utility poles and conduits and using existing infrastructure and facilities; (2) within existing rights-of-way or public utility easements or existing telecommunications infrastructure; and (3) where that replacement makes no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure. Accordingly, the Department strongly recommends that Act 151 not be amended.

Thank you for the opportunity to testify on this bill.



OFFICE OF PLANNING
STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON INTRASTATE COMMERCE
Wednesday, February 1, 2017
9:00 AM
State Capitol, Conference Room 429

in consideration of
HB 624
RELATING TO THE INSTALLATION OF INFRASTRUCTURE.

Chair Ohno, Vice Chair Choy, and Members of the House Committee on Intrastate Commerce.

The Office of Planning (OP) supports the intent of HB 624, however, we prefer the language provided in HB 625.

HB 624 supports the installation of wireless technology, such as small wireless facilities, for the delivery of broadband technology in the State by clarifying the exemptions permitted by Act 151 to include small wireless facilities; repeals and codifies, in Hawaii Revised Statute (HRS) Chapter 27, provisions that are permanent and general; and expands the definition of wireless communications antennas in HRS Section 205-4.5(a)(18) to include small wireless facilities.

Thank you for the opportunity to provide testimony on this measure.

Bob Bass
President
Hawaii
External Affairs

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February 2, 2017

Rep Takashi Ohno, Chairman Committee on Intrastate Commerce
Rep Isaac W. Choy, Vice-Chairman on Committee on Intrastate Commerce

RE: Testimony on House Bill 624 -- Relating to the Installation of Infrastructure

Committee Chair Takashi and Vice Chair Choy:

On behalf of AT&T, I would respectfully request that the committee support House Bill 624—Relating to the Installation of Infrastructure—a bill that will promote the installation of small cell wireless facilities to improve wireless networks.

Consumers and businesses are using their mobile devices more than ever before in history to connect to everyone and everything around them. Since 2007, AT&T has experienced a 250,000% increase in data usage on our network. Additionally, as streaming video continues to become more prominent and new applications and services are introduced, this growth in data usage will continue to rise. Small cell wireless facilities help bring customers faster download speeds, improved call quality and a better overall wireless experience.

With this increased demand and pressure on the mobile network, AT&T has developed innovative ways to enhance our network, prepare for 5G network deployment and provide the best possible experience for our customers.

House Bill 624 will allow for access to the public rights-of-way at reasonable rates, and expedite the process for small cell installation that will promote critical investment to benefit Hawaii consumers.

Please support House Bill 624.

Respectfully submitted,

Bob Bass
AT&T

Joyce Masamitsu
Director, Public Policy & Legal Affairs
Pacific and North Central Markets
15505 Sand Canyon Avenue
Irvine, CA 92618

January 31, 2017

Honorable Takashi Ohno
Chair, House Committee on Intrastate Commerce Hawaii State Capitol
Room 332
Honolulu, HI 96813

Honorable Isaac W. Choy
Vice Chair, House Committee on Intrastate Commerce Hawaii State Capitol
Room 404
Honolulu, HI 96813

RE: HOUSE BILL 624 – Relating to the Installation of Infrastructure - SUPPORT

Dear Chair Ohno and Vice Chair Choy and Members of the Committee,

On behalf of Verizon, mahalo for allowing me to submit testimony in STRONG SUPPORT of HB 624, Relating to the Installation of Infrastructure. HB 624 codifies the exemptions to state and county permitting requirements for broadband projects in Act 151, S.L.H. 2011, into Hawaii Revised Statutes and clarifies that the exemptions in Act 151 are applicable to small wireless facilities.

HB 624 also clarifies that small wireless facility installations and broadband projects shall be exempt from specified permitting provided that the installations are directly related to improving these facilities on existing, replacement or new poles. The bill continues to disallow exemptions where permitting is required by federal law or for federal funding and defines small wireless facilities and small wireless facilities network based on a definition and dimensions in Federal Communication Commission regulations. Finally, HB 624 authorizes the state or counties to impose a specified charge for attaching small wireless facilities to government poles or structures, including poles used for lighting.

HB 624 will provide the necessary clarifications in existing law to expedite the deployment of small wireless facilities, improving current coverage and laying the foundation for the availability of 5G technologies.

According to CTIA, there are approximately 1,450,000 wireless subscribers in the state of Hawaii and 95% of Hawaii residents have access to mobile broadband. Explosive growth in the demand for mobile data presents a network capacity challenge for wireless providers. Throughout the state of Hawaii growing demand is reducing available capacity across existing wireless infrastructure, leading to network congestion. This is a trend which is occurring nationwide where 292.2 million mobile users are expected by 2020. The end result is slower broadband speeds, shrinking cellular footprints and increased coverage problems evidenced by an increase in dropped calls. Rather than continue to build

“macro” cell towers to meet demand, carriers can and in many cases must now deploy small wireless facilities to address network capacity challenges. Small wireless facilities deployed in greater quantity offloads capacity from existing macro towers and improve the user experience for subscribers in the immediate service area.

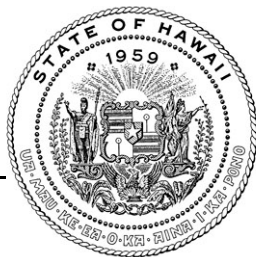
Small wireless facilities are relatively new and much smaller than macro towers. Small wireless facilities normally consist of a small antenna, radios (that process the spectrum) and certain support equipment mounted on utility poles, street lights, signs, bus shelters traffic signals or other host structures. Although the designs may vary slightly as required to support the network in a particular area, small cells typically consist of a 40" tall by 12” diameter canister antenna; cables down the pole to 1 or 2 radio heads; an electrical disconnect switch in the junction box that will power down the antenna if crews will be working on or near the antenna; and unless the electric utility allows a flat fee arrangement, a power meter. For most installations, small cell are connected to the wireless network by fiber, which may be installed aerially or underground as required in the area. These deployments are designed to blend into the existing environment as much as possible. Indeed, due to their small size and unobtrusive design, they are aesthetically pleasing compared to traditional “macro” cell towers.

Creating a streamlined legal framework for small wireless facilities is critical to the deployment to meet current mobile users demands as well as the next generation wireless network: 5G. This new technology—spawned by the release of new “millimeter wave” spectrum—will be truly a game changer. 5G is 100x faster than the current technology, 4G, and has 1/10 the latency of 4G, making response time from a command nearly imperceptible to humans. Together, ultra-fast speed and super low latency will power telemedicine, remote surgery, remote equipment operation, public safety communications, and enhance safety on the roads by allowing much better pre-crash sensing, enabling vehicles to sense imminent collisions and mitigate or even avoid adverse impacts of a collision. 5G technology will enable simultaneous connections from billions of independent devices and embedded sensors, from cellphones to home appliances to clothing, creating the internet of things (IoT) and enabling “smart city” solutions. Smart City solutions can prove fruitful to meet the pressing needs of state and local governments. Solutions such as intelligent lighting, intelligent traffic and smart meters can facilitate significant reduction of energy consumption while supporting the state’s sustainability goals and more.

In sum, HB 624 helps to streamline permitting by clarifying that small wireless facilities deployment shall benefit from the specified permitting exemptions already in law; those enacted in Act 151. It encourages ongoing investment in wireless broadband data technology that consumers, business and government increasingly demand and helps set the stage for the 5G revolution that is imminent.

Chair Ohno, Vice Chair Choy and members of the House Committee on Intrastate Commerce, for the above reasons, Verizon requests your vote to SUPPORT House Bill 624.

Thank you for your consideration.



DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development and Tourism
before the
HOUSE COMMITTEE ON INTRASTATE COMMERCE
Wednesday, February 1, 2017
9:00 AM
State Capitol, Conference Room 429

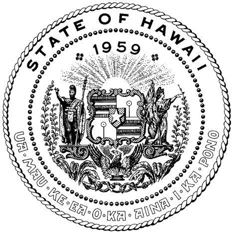
in consideration of
HB 624
RELATING TO THE INSTALLATION OF INFRASTRUCTURE.

Chair Ohno, Vice Chair Choy and Members of the House Committee on Intrastate Commerce.

The Department of Business, Economic Development and Tourism (DBEDT) supports the intent of HB 624, however, we prefer the language provided in HB 625.

HB 624 supports the installation of wireless technology, such as small wireless facilities, for the delivery of broadband technology in the State by clarifying the exemption permitted by Act 151 to include small wireless facilities; repeals and codifies, in Hawaii Revised Statute (HRS) Chapter 27, provisions that are permanent and general; and expands the definition of wireless communications antennas in HRS Section 205-4.5(a)(18) to include small wireless facilities.

Thank you for the opportunity to offer these comments/support on HB 624.



OFFICE OF ENVIRONMENTAL QUALITY CONTROL

DAVID Y. IGE
GOVERNOR

SCOTT GLENN
DIRECTOR

DEPARTMENT OF HEALTH | 235 South Beretania Street, Suite 702, Honolulu, HI 96813 | oeqchawaii@doh.hawaii.gov (808) 586-4185

Testimony of
SCOTT GLENN, Director

before the
HOUSE COMMITTEE ON INTRASTATE COMMERCE
Wednesday, February 1, 2017
9:00 AM
State Capitol, Conference Room 429

in consideration of
HOUSE BILL 624
RELATING TO THE INSTALLATION OF INFRASTRUCTURE

Chair Ohno, Vice Chair Choy, and Members of the House Committee on Intrastate Commerce,

The Office of Environmental Quality Control (OEQC) administers Hawaiʻi Revised Statutes (HRS) Chapter 343, Environmental Impact Statements (EIS). The purpose of the EIS law is to "establish a system of environmental review which ensures that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations" (HRS §343-1). Additionally, the OEQC serves "the Governor in an advisory capacity on all matters relating to environmental quality control," as directed in HRS §341-3.

HB 624 proposes to codify the exemptions to Broadband Service permitting requirements established by Act 151, SLH 2011. Act 151 provides an exemption from certain county and state permitting and approval requirements, as well as the environmental review process established by HRS Chapter 343, in very limited situations where actions were directly related to the replacement of existing coaxial cables with fiber optic cables using existing or replacement infrastructure and within existing rights-of-way and easements that had already been granted permits and approvals. HB 624 proposes to amend Act 151 by also exempting new installations of small wireless facilities and networks from the state or county permitting and approval process without much or any review.

Further, OEQC understands that the language of **HB 625** addresses the installation of new small wireless facilities by establishing a siting process, rather than statutorily exempting such facilities from established permitting and approval processes and the environmental review process.

While OEQC supports the implementation of Broadband service and wireless technology in the State, we prefer the language of **HB 625** and believe that the existing environmental review process established pursuant to HRS Chapter 343 and its implementing rules, HAR Chapter 11-200, provides the ability to exempt certain projects, including as appropriate both the existing Act 151 exemptions and the new small wireless facilities referenced in this bill, from the requirement to prepare an environmental assessment.

Thank you for the opportunity to testify on this measure.

Testimony before the House Committee on Intrastate Commerce

By Paul A. Nakagawa
Superintendent, T&D Infrastructure
Construction and Maintenance Department
Hawaiian Electric Company, Inc.

Wednesday, February 1, 2017
9:00 a.m., Conference Room 429

House Bill 624
Relating to the Installation of Infrastructure

Chair Ohno, Vice Chair Choy, and Members of the Committee:

My name is Paul Nakagawa, and I am testifying on behalf of the Hawaiian Electric Company, Inc. and its subsidiaries, Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited (collectively, the "Hawaiian Electric Companies") in support of HB 624.

While we support and encourage the deployment of high-speed broadband infrastructure in Hawaii, and, as an active participant, the efforts of the Legislature and the Broadband Assistance Advisory Council (BAAC) to streamline the permitting process applicable to the State's broadband initiative, we have the following strong concerns with our interpretation of HB 624 as written:

1. The proposed amendment to Chapter 27, Hawaii Revised Statutes, described in SECTION 2, page 2 of this bill, exempts an entity taking action under this bill from several permitting requirements, including public utility commission rules under Hawaii Administrative Rules, chapter 6-73 (H.A.R. 6-73), that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation; EXCEPT to the extent that permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance. Our interpretation of this proposed amendment is that unless such installations require permitting or approval by federal law OR is federally funded, it would be exempt from H.A.R. 6-73. By no means is our intent of this matter to impede the implementation of broadband technology—in fact, we encourage and support it. Rather, our intent, as a public utility, is to ensure that any entity using Hawaiian Electric Companies' facilities under this bill complies with H.A.R. 6-73, which

provides installation, maintenance, and safety requirements ensuring safe and operational electrical facilities.

2. SECTION 2, on page 3, line 16 states: ***"Make no significant changes to the existing public rights-of-way or public utility easements. For purposes of this section, the installation of a small wireless facility shall be deemed to not make a significant change to existing public rights-of-way or public utility easements."*** Our interpretation of this provision is that such small wireless facility installations would be deemed by operation of law as being included in the public rights-of-way or existing public utility easements. Our concern is that while the Hawaiian Electric Companies do obtain public rights-of-way and private easements for the installation, operation, and maintenance of our own facilities, we have no legal authority to presume that grantors of right-of-way and private easements are deemed to consent to third party telecommunication attachers. Consequently, we are not authorized to grant perpetual easement rights on behalf of private easement grantors to third party attachers without the consent of such grantors.

3. SECTION 2, on page 6, line 11 states: ***"The state or county may impose a charge on small wireless facilities and small wireless facilities networks collocated on utility poles, structures, and lighting standards located within the pubic rights-of-way and installed on state or county property. The rates shall be reasonable and nondiscriminatory abased on annual services provided by the collocating person. The rate may not exceed the annual recurring rate that would be permitted under rules adopted by the Federal Communications Commission under 47 United States Code section 224(e) or $20 per year, whichever is less. The rate shall be used to recover the actual, direct, and reasonable costs related to the use of space on the utility pole. In any controversy concerning the appropriateness of a rate for a state or county owned utility pole, the state or county shall have the burden of proving that the rates are reasonable."*** Our concern is the vagueness of this provision. There are situations where the Hawaiian Electric Companies solely or jointly own utility poles within the public rights-of-way and installed on state or county property (where the state or county have no pole ownership interest). We would therefore have concerns whether this rate formula would have a rational basis for calculation and reasonable protocols for collection and administration by the state or county.

We appreciate the support of the Legislature and BAAC in hearing and understanding our concerns as we work together to address these issues.

Thank you for the opportunity to testify on this matter.

Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association
on
HB 625 and HB 624
Relating To Infrastructure and Relating to the Installation of Infrastructure

COMMITTEE ON INTRASTATE COMMERCE
Wednesday, February 1, 2017, 9:00 am
Conference Room 429

Dear Chair Ohno, Vice Chair Choy and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is **in support of both** HB 625 and HB 624, which establishes the siting process of infrastructure for small wireless facilities and small wireless facilities networks on state and county owned land; and Clarifies the telecommunication exemptions to include small wireless facilities. Repeals and codifies in the Hawaii Revised Statutes provisions of Act 151, SLH 2011, that are permanent and general. Expands the definition of wireless communications antennas to include small wireless facilities.

MHLA believes that these measures would enable Hawai`i to establish a faster, more reliable wireless network to meet the growing demands of our communities and our visitor industry.

Our visitor industry needs to remain competitive globally, it is essential that Hawai`i reaffirms its position as a premier travel destination by establishing a stronger wireless network to remain attractive to visitors while keeping pace with their expectations. These bills would accommodate the public's need for more data by creating a next-generation (5G) network. To transition to 5G, this bill would enable small wireless facilities known as "small cells" to be placed in a timely and cost-efficient manner on existing structures, such as utility poles and public facilities, in a visually pleasing and non-obtrusive manner.

We respectfully request you consider passing HB 625 and HB 624. Thank you for the opportunity to testify.

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HB 624

RELATING TO THE INSTALLATION OF INFRASTRUCTURE

KEN HIRAKI
VICE PRESIDENT – GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM

February 1, 2017

Chair Ohno and members of the Committee:

I am Ken Hiraki, testifying on behalf of Hawaiian Telcom on HB 624 - Relating to the Installation of Infrastructure.

Hawaiian Telcom supports the intent of HB 624 to promote the deployment of advanced broadband services throughout the state by codifying in Chapter 27, Hawaii Revised Statutes, the provisions of Act 151, Session Laws of Hawaii 2011.

The measure also adds small wireless facilities to the list of exemptions permitted by Act 151. While we are not opposed to the inclusion of wireless facilities, we believe that benefits afforded to small wireless facilities under HB 624 should apply equally as well to wireline broadband.

In order to maintain a level regulatory playing field, Hawaiian Telcom respectfully requests that the bill be amended to include wireline facilities to the list of proposed wireless exemptions. Attached is a copy of our suggested amendments for the committee's consideration.

As the late Senator Daniel K. Inouye proclaimed at a hearing on the importance of increasing Hawaii's broadband capabilities:

> "*Broadband matters because broadband communications have become the great economic engine of our time. Broadband deployment drives opportunities for business, education, and healthcare...Add to this hundreds of millions of dollars in savings through e-government and telemedicine initiatives and untold riches we can reap by tapping the genius of web-based entrepreneurs in every corner of this country. The case for better broadband is clear.*"

Measures designed to encourage and promote both wireline and wireless broadband services are essential tools moving us closer to our goal of providing advanced broadband services second to none.

Based on the aforementioned, Hawaiian Telcom requests that the committee look favorably upon our suggested amendments. Thank you for the opportunity to testify.

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2017

STATE OF HAWAII

H.B. NO. 624 HD1 - PROPOSED

A BILL FOR AN ACT

RELATING TO THE INSTALLATION OF INFRASTRUCTURE.

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

SECTION 1. Act 151, Session Laws of Hawaii 2011 (Act 151), provides an exemption for the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology from state and county permitting requirements, under certain conditions.

Since Act 151 was passed into law, broadband technology has advanced substantially. Wireless technology is now essential to the delivery of broadband service. Implementation of wireless technology, such as small wireless facilities, will play a major role in continuing the benefits afforded by broadband infrastructure to the State.

The purpose of this Act is to:

(1) Clarify the exemptions permitted by Act 151 to include both small wireless and wireline facilities;

(2) Repeal and codify in chapter 27, Hawaii Revised Statutes, provisions of Act 151 that are permanent and general; and

(3) Expand the definition of wireless communications antennas in section 205-4.5(a)(18), Hawaii Revised Statutes, to include small wireless facilities.

SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended by adding a new section to part VII to be appropriately designated and to read as follows:

"**§27-A Broadband-related infrastructure; installation; rates.** (a) Actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection and installation of telecommunications cables and the installation of small wireless or wireline facilities on a utility pole or other supporting structure, shall be exempt from county permitting requirements; state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343; and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation; except to the extent that permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation,

improvement, construction, or development of infrastructure shall:

(1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables, including the improvement and installation of small wireless or wireline facilities and small wireless or wireline facilities networks:

(A) On existing, replacement, or new utility poles and conduits; and

(B) Using existing or new infrastructure and facilities;

(2) Take place within existing rights-of-way or public utility easements, or use existing or new telecommunications infrastructure; and

(3) Make no significant changes to the existing public rights-of-way or public utility easements. For purposes of this section, the installation of a small wireless or wireline facility shall be deemed to not make a significant change to existing public rights-of-way or public utility easements.

A person or entity taking any action under this section, shall comply with all applicable safety and engineering requirements relating to the installation, improvement,

construction, or development of infrastructure relating to broadband service.

At least thirty calendar days before taking any action under this section, the person or entity taking the action shall provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for posting on the designated central state of Hawaii internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easement, or telecommunications infrastructure.

(b) Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or small wireless or wireline facilities, or to improve existing telecommunications cables or small wireless or wireline facilities; provided that:

(1) The installation or improvement does not increase the overall weight load and diameter of the attachment prior to the installation or improvement;

(2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and

(3) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.

(c) The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16 including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this section. Recovery of all prudently incurred costs shall also apply to a broadband service provider.

(d) If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how the evidence and

information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

(e) The state or county may impose a charge on [~~small wireless facilities and small wireless facilities networks~~] facilities collocated on utility poles, structures, and lighting standards located within the public rights-of-way and installed on state or county property. The rates shall be reasonable and nondiscriminatory based on annual services provided by the collocating person. The rate may not exceed the annual recurring rate that would be permitted under rules adopted by the Federal Communications Commission under 47 United States Code section 224(e) or $20 per year, whichever is less. The rate shall be used to recover the actual, direct, and reasonable costs related to the use of space on the utility pole. In any controversy concerning the appropriateness of a rate for a state or county owned utility pole, the state or county shall have the burden of proving that the rates are reasonable."

SECTION 3. Section 27-41.1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

""Small wireless or wireline facilities" means wireless or wireline facilities that meet the following qualifications:

(1) If applicable, [~~E~~]each individual antenna, excluding the associated equipment, is individually no more than

three cubic feet in volume, and all antennas on the structure total no more than six cubic feet in volume; and/or

(2) All other wireless or wireline equipment associated with the structure, excluding cable runs for the connection of power and other services, do not cumulatively exceed:

(A) Twenty-eight cubic feet for collocations on all non-pole structures, including buildings and water tanks that can support fewer than three providers;

(B) Twenty-one cubic feet for collocations on all pole structures, including light poles, traffic signal poles, and utility poles that can support fewer than three providers;

(C) Thirty-five cubic feet for non-pole collocations that can support at least three providers; or

(D) Twenty-eight cubic feet for pole collocations that can support at least three providers.

The volume of any deployed equipment that is not visible from public spaces at the ground level from two hundred fifty feet or less may be omitted from the calculation of volumetric limits.

"Small wireless or wireline facilities network" means a collection of interrelated small wireless or wireline facilities designed to deliver wireless communications service.

"Utility pole" means a public or private pole or similar structure that is used in whole or in part for communications service, electric service, lighting, traffic control, signage, or similar functions."

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:

(1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;

(2) Game and fish propagation;

(3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

(4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this

paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(5) Public institutions and buildings that are necessary for agricultural practices;

(6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;

(8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;

(9) Agricultural-based commercial operations as described in section 205-2(d)(15);

(10) Buildings and uses, including mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2(d);

(11) Agricultural parks;

(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:

(A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;

(B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or

(C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;

(13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(14) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating

agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(15) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;

(16) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory and secondary to the growing of the energy feedstock; provided that biofuel processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar

handling of feedstock, fuels, and other products of biofuel processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy;

(17) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities;

(18) Construction and operation of wireless communication antennas[;] including small wireless or wireline facilities as defined in section 27-41.1; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the

provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection;

(19) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this paragraph, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2;

(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser or for which a special use permit is granted pursuant to section 205-6; provided that this use shall not be permitted on lands with soil classified by the land study bureau's

detailed land classification as overall (master) productivity rating class A unless the solar energy facilities are:

(A) Located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land upon which the paved or unpaved road is located has a valid county agriculture tax dedication status or a valid agricultural conservation easement;

(B) Placed in a manner that still allows vehicular traffic to use the road; and

(C) Granted a special use permit by the commission pursuant to section 205-6;

(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to section 205-6; provided that:

(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the

appropriate county planning commission prior to date of commencement of commercial generation; and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

(i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and

(ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3);

(22) Geothermal resources exploration and geothermal resources development, as defined under section 182-1; or

(23) Hydroelectric facilities, including the appurtenances associated with the production and transmission of hydroelectric energy, subject to section 205-2; provided that the hydroelectric facilities and their appurtenances:

(A) Shall consist of a small hydropower facility as defined by the United States Department of Energy, including:

(i) Impoundment facilities using a dam to store water in a reservoir;

(ii) A diversion or run-of-river facility that channels a portion of a river through a canal or channel; and

(iii) Pumped storage facilities that store energy by pumping water uphill to a reservoir at higher elevation from a reservoir at a lower elevation to be released to turn a turbine to generate electricity;

(B) Comply with the state water code, chapter 174C;

(C) Shall, if over five hundred kilowatts in hydroelectric generating capacity, have the approval of the commission on water resource management, including a new instream flow standard established for any new hydroelectric facility; and

(D) Do not impact or impede the use of agricultural land or the availability of surface or ground water for all uses on all parcels that are served

by the ground water sources or streams for which hydroelectric facilities are considered."

SECTION 5. Act 151, Session Laws of Hawaii 2011, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, as amended by section 1 of Act 193, Session Laws of Hawaii 2016, is amended by repealing section 2.

["~~SECTION 2. Beginning January 1, 2012, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, shall be exempt from county permitting requirements, state permitting and approval requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities commission rules under Hawaii Administrative Rules, chapter 6-73, that require existing installations to comply with new pole replacement standards at the time of any construction or alteration to the equipment or installation, except to the extent that such permitting or approval is required by federal law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, improvement, construction, or development of infrastructure shall:~~

~~(1) Be directly related to the improvement of existing telecommunications cables or the installation of new telecommunications cables:~~

~~(A) On existing or replacement utility poles and conduits; and~~

~~(B) Using existing infrastructure and facilities;~~

~~(2) Take place within existing rights-of-way or public utility easements or use existing telecommunications infrastructure; and~~

~~(3) Make no significant changes to the existing public rights-of-way, public utility easements, or telecommunications infrastructure.~~

~~An applicant shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service.~~

~~A person or entity taking any action under this section shall, at least thirty calendar days before the action is taken, provide notice to the director of commerce and consumer affairs by electronic posting in the form and on the site designated by the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given by a public utility or government entity for an action relating to the installation, improvement, construction, or development~~

~~of infrastructure relating to broadband service or broadband technology where the action taken is to provide access as the owner of the existing rights-of-way, utility easements, or telecommunications infrastructure.~~"]

SECTION 6. Act 151, Session Laws of Hawaii 2011, as amended by section 3 of Act 264, Session Laws of Hawaii 2013, is amended by repealing section 3.

["~~SECTION 3. Consistent with federal law, no person or entity shall be required to upgrade or replace an existing utility pole when using that utility pole to install new telecommunications cables or to improve existing telecommunications cables; provided that:~~

~~(1) The overall weight load and the diameter of the attachment on the utility pole following the installation or improvement does not exceed the overall weight load and diameter of the attachment prior to the installation or improvement;~~

~~(2) The overall weight load on the utility pole does not exceed maximum utility pole safe weight capacities established by the Federal Communications Commission and the public utilities commission; and~~

~~(3) The utility pole is not damaged or made less safe or reliable due to the installation or improvement of telecommunications cables.~~

~~The public utilities commission may allow a public utility to recover all prudently incurred costs as approved through rates, charges, or clauses approved or established by the public utilities commission pursuant to section 269-16, Hawaii Revised Statutes, including but not limited to planning, engineering, construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband service provider.~~

~~If access to a utility pole is not granted within forty-five days of a written request for access, the utility must confirm the denial in writing by the forty-fifth day, consistent with the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.~~"]

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2017.

INTRODUCED BY: ______________________________

mobilitie
intelligent infrastructure

2955 Red Hill Avenue
Suite 200
Costa Mesa, California 92660

Testimony to the House Intrastate Commerce Committee
Wednesday, February 1, 2017 9:00 am
Conference Room 429, State Capitol
RE: House Bill 624

Chair Ohno, Vice Chair Choy and Members of the Intrastate Commerce Committee:

Mobilitie **supports** HB 624, which clarifies exemptions to include small wireless facilities, repeals and codifies in the HRS provisions of Act 151, SLH 2011, that are permanent and general, and expands the definition of wireless communications antennas to include small wireless facilities.

Mobilitie is a nationwide provider of wireless infrastructure solutions, currently deploying a hybrid transport network designed to provide high-speed, high-capacity bandwidth in order to facilitate the next generation of devices and data-driven services. In Hawaii, Mobilitie is authorized by the Public Utilities Commission to provide telecommunications services under its' Certificate of Authority.

HB 624 is necessary to allow the industry to effectively install small wireless facilities by expanding the current process utilized by wireline facilities to include wireless broadband infrastructure. These small wireless facilities will help densify the current network in order to sustain the data capacity needed today, while building in capacity for future technologies that support 5G. The 2011 version of ACT 151 did not allow for wireless broadband infrastructure.

Mobilitie is poised to invest in building out our network as soon as this legislation is effective, which will provide for dozens of local jobs, and millions of dollars invested in the local economy.

Thank you for the opportunity to testify.

TO THE HOUSE COMMITTEE ON INTRASTATE COMMERCE

TESTIMONY RELATING TO HB 624 and HB 625

MARK BROWN
VICE PRESIDENT – STATE REGULATORY AFFAIRS
CHARTER COMMUNICATIONS, INC.

February 1, 2017
9:00 AM

TO THE HONORABLE TAKASHI OHNO, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Mark Brown, and I am Vice President for State Regulatory Affairs for Charter Communications, the overall corporate parent of Oceanic Time Warner Communications. I appreciate the opportunity to speak with you today regarding both our company and pending legislation concerning small cell deployment.

At the outset, I want to highlight Oceanic's commitment to robust broadband deployment in Hawaii. Oceanic is the single largest provider of high-speed broadband and video throughout the state. We currently have deployed over 2,900 Wi-Fi hotspots throughout the Islands, with a commitment to provide an additional 1,000 hotspots by 2020. Oceanic has also committed to raise our base or floor-level broadband speed to 60 MBs by May of this year. Additionally, Oceanic is also planning to introduce by May Spectrum Internet Assist, our low-cost broadband program for low-income families and seniors, which at 30MBs, will be the fastest program of its kind offered by any broadband provider, and we believe will have a tremendous positive impact on the communities we serve in Hawaii.

We agree with Hawaiian Telecom that certain aspects of HB 624 and HB 625 raise unlevel playing field concerns by potentially crafting special rules for the placement of small wireless facilities in the right of way. Access to municipal rights of way should be equitable access for all occupiers.

In order to access the public right of way Charter, as a cable operator, is required to obtain a franchise, which involves a lengthy vetting process with DCCA. We are also subject to stringent safety and other obligations, including the requirement to pay franchise fees in Hawaii of 5% of gross revenue for occupancy and use. This equates to millions of dollars each year in payments.

This legislation is intended largely to allow unfranchised entities to circumvent the right of way authorization process, bypassing the procedure applicable to cable providers.

We are very concerned that cable operators should not be treated discriminatorily simply because we use the right of way to offer video/cable service, and our customers should not have to pay for us to use the right of way when others do not. Direct Broadcast Satellite companies like Dish Network and DirecTV already enjoy an advantage because they are not subject to any state or

local regulation applicable to cable operators. This legislation would go one step further, allowing companies that are building a series of ***wireline*** networks to circumvent the processes applicable to cable providers simply because they deliver content to customers over a wireless device like a mobile phone.

Although we are still reviewing these bills, and any unintended consequences, it is worth noting that the expedited process contemplated by this legislation does not apply only to the antennas themselves. The definition of "small cell facility" in and HB 624 and HB 625, for example, appears to include all "associated equipment", which seems to encompass "cable runs for the connection of power and other services." Use of the term "associated equipment" for the provision of "other services" is a clear example of the bills' effort to broaden its application beyond the stated purpose of wireless facility deployment and cover all uses of the public right of way, including a series of wireline connections between wireless antenna sites.

The bill is also unfair with regard to payment for the use of the public right of way. The expedited wireless process severely limits fees while cable operators pay millions of dollars in franchise fees each year (not to mention cable's provision of valuable public, educational and government programming and other obligations that flow from our cable authorization). We think reduced fees for wireless services would be appropriate but only if the Legislature were willing to consider a comprehensive reform of all fees and obligations required of cable and telecommunications providers for access to the public right of way.

Finally, it is important to note that requiring underlying right of way authority also ensures better coordination among the entities within the right of way (electric, telephone, cable) when plant and network are installed, repaired or replaced. Entities that are allowed to place equipment in the right of way without such authority can easily jeopardize the network and services of other providers.

HB 624 and HB 625 make significant changes to the current process for right of way access and create an unlevel playing field. We ask the Committee to hold consideration of the bills until it has an opportunity to further review the implications of these bills and provide entities, like Charter, an opportunity to more fully detail issues and concerns.

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