

Honolulu, Hawaii
February 16, 2018

RE: H.B. No. 2651
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Intrastate Commerce, to which was referred
H.B. No. 2651 entitled:

"A BILL FOR AN ACT RELATING TO WIRELESS BROADBAND
FACILITIES,"

begs leave to report as follows:

The purpose of this measure is to upgrade and support next-generation wireless broadband infrastructure throughout Hawaii by establishing a permitting, application, review, and approval process for communications service providers to install small broadband or wireless facilities on State- or county-owned utility poles or install associated utility poles in the right of way.

AT&T, Verizon Wireless, T-Mobile US, Sprint, CTIA, the Maui Hotel & Lodging Association, Hawai'i Lodging & Tourism Association, Maui Chamber of Commerce, and the National Hispanic Caucus of State Legislators supported the measure. The Department of Transportation, Mayor of the County of Hawaii, and Charter Communications opposed the measure. The Department of Commerce and Consumer Affairs; Department of Business, Economic Development and Tourism; Office of Enterprise Technology Services; Office of the Mayor of the City and County of Honolulu; Hawaiian Telcom; Hawaiian Electric Company, Inc.; Hawaii Electric Light Company, Inc.; and Maui Electric Company, Limited, submitted comments.



Your Committee has amended this measure by:

- (1) Amending the applicability of the new statute only to activities of a communications service provider to deploy small broadband facilities and wireless facilities and to modified or replaced State or county solely-owned utility poles associated with small broadband facilities;
- (2) Adding definitions for "broadband or wireless facility", "broadband or wireless provider", "broadband or wireless support structure", and "wireline backhaul";
- (3) Amending the definitions of "collocate", "communications service provider", "decorative pole", "micro broadband or wireless facilities", "small broadband or wireless facilities", "technically feasible", and "utility pole";
- (4) Removing the requirement that the State or a county must modify laws or ordinances regulating the development of real property to ensure that new development of real property or the redevelopment of existing real property, including in residential zones, must include locations in the right of way capable of accommodating a utility pole or other structure for the placement of a small wireless facility;
- (5) Removing the provision that where the State or county has requirements for the undergrounding of facilities that pre-date the submission of an application, the State or county must allow reasonable and nondiscriminatory access by wireless providers to place, construct, install, maintain, modify, operate, or replace state or county poles and other utility poles for the collocation of small wireless facilities subject to the requirements of the new statute;
- (6) Removing the prohibition against the State or a county from directly or indirectly requiring applicants who seek to obtain one or more permits to collocate a small wireless facility or install a modified or replaced utility pole associated with a small wireless facility to perform services or provide goods unrelated to the permit, such as in-kind contributions to the State or



county, including reserving fiber, conduit, or pole space for the State or county;

- (7) Requiring applicants who seek to use the right of way for small broadband or wireless facilities and utility poles to also provide to the State or a county:
 - (A) A geographical description of the project area;
 - (B) A listing and description of the utility poles, light standards, buildings, and structures included in the project for the installation, mounting, operation, and placement of broadband infrastructure, including an assessment of the identifying information, location, and ownership of the listed utility poles, light standards, buildings, and structures; and
 - (C) A description of the equipment associated with the facilities to be installed in the project area, including radio transceivers, antennas, coaxial or fiber-optic cables, power supplies, and related equipment, and the size and weight of the equipment to be installed on each pole, building, or structure;
- (8) Allowing the State or county to deny a proposed collocation of a small broadband or wireless facility or the construction or modification of a modified or replaced utility pole that meets certain requirements for the following additional reasons:
 - (A) If the proposed application could cause the installation of the equipment on the poles, buildings, and structures to be performed in a manner that does not protect public health and safety and safe travel in the public rights of way;
 - (B) If the proposed application could cause the utility poles and light standards to be unable to bear the additional weight of the equipment and the equipment could pose a hazard or obstruction to the public; and



- (C) If the proposed application could allow the project equipment and broadband infrastructure to interfere with government systems for public safety communication operations or emergency services;
- (9) Allowing the State or a county to limit the number of small broadband or wireless facilities placed on a single utility pole;
- (10) Allowing an applicant seeking to collocate small broadband or wireless facilities within a two-mile radius to, at the applicant's discretion, file a consolidated application and receive a single permit for the collocation of no more than 25 small broadband or wireless facilities; provided that the denial of one or more small broadband or wireless facilities in a consolidated application must not delay processing of any other small broadband or wireless facilities in the same batch;
- (11) Allowing the State or a county to remove a utility pole if it decides to do so;
- (12) Prohibiting the State or a county from requiring an application or permit, or charging any rate, fees, or compensation for replacement of small broadband or wireless facilities with small broadband or wireless facilities that are substantially similar or the same size and weight or smaller;
- (13) Excluding state and county poles, related structures, sites, and facilities that support public safety, law enforcement, and emergency communications from certain public-access provisions;
- (14) Except as provided in the new statute with respect to the small broadband or wireless facilities subject to the permit, rate, and fee requirements established by the new statute or specifically required pursuant to Chapter 440G, Hawaii Revised Statutes, or federal law, prohibiting the State and any county from adopting or enforcing any regulations or requirements or charging additional rates or fees on the placement or operation of communications facilities in the right of way where



the entity is already authorized by a franchise or authorization other than that granted in the new statute to operate throughout the right of way, and prohibiting the State from regulating or charging fees for the provision of communications services, unless expressly authorized by applicable law;

- (15) Removing the prohibition against the State or county from requiring a broadband or wireless provider to obtain insurance naming the State or a county or its officers and employees as an additional insured;
- (16) Amending various deadlines by which the State or a county must take action regarding applications;
- (17) Changing various fees to unspecified amounts;
- (18) Changing its effective date to July 1, 3000, to encourage further discussion; and
- (19) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee has implemented a two-year sunset date, because wireless providers have repeatedly communicated their readiness to serve the Hawaii market, and your Committee would like to see the progress of deploying small broadband or wireless facilities in that timeframe. In addition, your Committee respectfully requests that your Committee on Consumer Protection & Commerce consider whether cellular video streaming services, where live television and live channels may be offered by a cellular phone company, are the same as or similar to cable television service and should thus be subject to a state franchise fee, as mandated by the Federal Communications Commission.

As affirmed by the record of votes of the members of your Committee on Intrastate Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2651, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2651, H.D. 1, and be referred to your Committee on Consumer Protection & Commerce.



Respectfully submitted on
behalf of the members of the
Committee on Intrastate
Commerce,



TAKASHI OHNO, Chair



