SB-253
Submitted on: 1/29/2019 3:33:28 AM
Testimony for TEC on 1/31/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Gonce	Individual	Support	No

Comments:

Testimony of Charter Communications/Spectrum

COMMITTEE ON TECHNOLOGY

Hawai'i State Capitol, Conference Room 414
Thursday, January 31, 2019
2:45 PM

Opposition to S.B. 253, Relating to Broadband Service

Aloha Chair Keohokalole, Vice Chair English and Members of the Committee,

Charter does not slow down, block, or discriminate against lawful content. Instead, we extend customer-friendly practices of "no data caps or usage-based billing." Additionally, we do not interfere with the online activities of our customers and have no plans to change our practice. We believe legislation, if any, should be guided by Congress and be nationally uniform, flexible and technology-neutral, while also providing clear rules of the road for companies.

The Open Internet has broad bi-partisan support and Congress has clear constitutional authority to permanently protect the Open Internet. While the FCC included a provision preempting states from creating their own regulations, we continue to advocate for a permanent, modern, and Open Internet framework rather than a possible patchwork of multi-state laws.

For the forgoing, S.B. 253 is unnecessary we ask the Committee to defer the measure.

Mahalo for the opportunity to testify.

Written Statement of
Ani Menon
Director of Government & Community Affairs

SENATE COMMITTEE ON TECHNOLOGY

January 31, 2019 2:45PM
State Capitol, Conference Room 414

COMMENTS FOR:

S.B. NO. 253 RELATING TO BROADBAND SERVICE

To: Chair Keohokalole, Vice-Chair English, and Members of the Committee
Re: Testimony providing comments for SB253

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

Thank you for the opportunity to submit comments on SB253.

The concerns that have inspired the proposed requirements listed within this measure are understandable in light of the Federal Communications Commission's decision to repeal net neutrality rules.

Hawaiian Telcom believes that a net neutral approach is the right thing to do for our customers, and that's how we approach every decision we make. Therefore, we maintain our publicized position that we do not interfere, and do not plan to interfere with the lawful online practices of our customers.

- We do not block lawful content, applications, or services
- We do not impair or degrade lawful internet traffic
- We do not engage in paid prioritization
- We do not throttle Internet speed
- We do not interfere with our customers' lawful internet use

We believe the Internet is a powerful asset that facilitates access to education, health services, employment opportunities, and more. We focus our efforts on delivering high-speed Internet access as Hawaii's Technology Leader.

Our full terms and conditions are accessible online at hawaiiantel.com.

SB-253
Submitted on: 1/30/2019 2:09:07 PM
Testimony for TEC on 1/31/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

Testimony of
GERARD KEEGAN
CTIA

In Opposition to Hawaii Senate Bill 253

Before the Hawaii Senate Committee on Technology

January 31, 2019

Chair, Vice Chair, and members of the committee, on behalf of CTIA, the trade association for the wireless communications industry, I submit this testimony in opposition to Senate Bill 253. CTIA and its member companies support a free and open internet. We support a federal legislative solution to enshrine open internet principles. To further that goal, we believe that a national regulatory framework with uniform and generally applicable competition and consumer protections is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem. CTIA, however, respectfully opposes piecemeal state regulation of this interstate service, including this legislation.

The mobile wireless broadband marketplace is competitive and continuously changing. It is an engine of innovation, attracting billions of dollars in network investment each year, and generating intense competition to the benefit of consumers. From the beginning of the Internet Age in the 1990s, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment, and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC took a much different approach, applying 80-year-old common-carrier mandates meant for traditional monopoly public utilities, despite the fact that internet

services are nothing like public utility offerings such as water or electricity or even landline telephone service.

In 2017, the FCC's *Restoring Internet Freedom Order* reversed that 2015 decision, finding that application of 1930s utility-style rules to the internet services of today actually harmed American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from $32.1 billion in 2014 to $26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

The FCC's overbroad prohibitions on broadband providers harmed consumers in other ways, too—particularly with respect to innovation. For example, after the 2015 Order, the FCC launched a yearlong investigation of wireless providers' free data offerings, which allow subscribers to consume more data without incurring additional costs. The risk of FCC enforcement cast a shadow on mobile carriers' ability to innovate, compete and deliver the services that consumers demanded. In addition, the inflexible ban on paid prioritization precluded broadband providers from offering one level of service quality to highly sensitive real-time medical applications and a differentiated quality of service to email messages. The FCC's 2017 *Restoring Internet Freedom Order* took a different path – one that benefits consumers and enables new offerings that

support untold varieties of technological innovations in health care, commerce, education, and entertainment.

Based on the way some people have talked about the *Restoring Internet Freedom Order*, you might think the FCC eliminated federal rules that had always applied to internet services and that the federal government left consumers without any protections. But that is just not the case. The internet was not broken before 2015, and the internet as we knew it did not end because of the FCC's 2017 decision.

With its action in 2017, the FCC restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand. The truth is that, in a competitive market like wireless, mobile broadband providers have no incentive to block access to lawful internet services, and if they did, their customers would simply switch providers.

Under the current – and pre-2015 – regulatory landscape, consumers continue to have legal protections that complement the rigorous competitive forces in play in the internet marketplace. First, the FCC's current regulations include a "transparency" rule that was adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2015 decision, which requires broadband providers to publicly disclose extensive information about their performance, commercial terms of service, and network management practices to consumers and internet entrepreneurs. Second, consistent with the FCC's pre-2015 framework, the Federal Trade Commission (FTC) once again has

ample authority to police broadband offerings in applicable cases and has publicly committed to engage in active enforcement. This extends to any unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments. The FCC's 2015 Order actually removed the FTC from its longstanding enforcement role.

Third, the Department of Justice enforces federal antitrust laws, which preclude anticompetitive network management practices. Finally, the FCC made clear in its 2017 Order that generally applicable state laws relating to fraud, taxation, and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework to broadband internet access services. The 2017 Order reaffirmed the FCC's 2015 decision that states and localities may not impose requirements that conflict with federal law or policy, but may otherwise enforce generally applicable laws. Thus, Hawaii remains empowered to act under its UDAP statute.

In short, Hawaii consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing Hawaii state law. On the other hand, state-specific net neutrality rules imposed on broadband providers would harm consumers, and would – along with other state and local mandates – create a complex "patchwork quilt" of requirements that would be unlawful.

In its 2017 *Restoring Internet Freedom Order*, the FCC explained that broadband internet access is an inherently interstate and global offering. Internet communications delivered through broadband services almost invariably cross state lines, and users pull content from around the country and around the world – often from multiple jurisdictions in one internet session. Any attempt to apply multiple states' requirements would therefore be harmful to consumers for the same reasons the FCC's 2015 rules were harmful, in addition to the fact that those requirements will be at best different and at worst contradictory.

These problems multiply in the case of mobile broadband: questions will arise over whether a mobile wireless broadband transmission is subject to the laws of the state where users purchased service, where they are presently located, or even where the antenna transmitting the signal is located. State-by-state regulation even raises the prospect that different laws will apply as the user moves between states. For example, a mobile broadband user could travel through multiple states during a long train ride, even the morning commute, subjecting that rider's service to multiple different legal regimes even if the rider spent that trip watching a single movie. Such a patchwork quilt of disparate regulation is untenable for the future success of the internet economy. In this mobile environment, state-by-state rules would be especially burdensome, difficult to comply with, costly, and subject net neutrality requirements to differing state interpretations and enforcement – creating further business uncertainty.

In its 2017 Order, the FCC explained that broadband internet access is inherently interstate and global and found broadband-specific state laws are unlawful and

preempted by federal law. The FCC recognized that state or local laws that impose net neutrality mandates or that interfere with the federal preference for national regulation of broadband internet access are impermissible. This is nothing new: even in its 2015 Order, the FCC had concluded that contrary state laws governing broadband internet access are preempted.

Several states have nonetheless adopted net neutrality laws and regulations, but the futility of doing so is becoming clear. California enacted a net neutrality law that was challenged in court by the Justice Department, the FCC, and a group representing broadband providers. Before even a preliminary hearing in the case, the California Attorney General stipulated to non-enforcement of the law pending judicial review of the 2017 Order.

Likewise, when a net neutrality bill was proposed in the Vermont legislature, that state's own Public Service Department issued a memo in which it "strongly caution[ed]" that the legislation "would likely run afoul of" the FCC's rules and warned that "a federal court is likely to be highly skeptical [of] and disinclined to uphold any law that directly or indirectly seeks to legislate or regulate net-neutrality." The law was nevertheless enacted, and is now facing its own court challenge, based in part on the analysis of the state's own Public Service Department.

Ultimately, Congress may decide to modify the existing federal regulatory framework for broadband internet access. CTIA has called on Congress to enact legislation for the internet ecosystem that promotes a free and open internet while also enabling the consumer-friendly innovation and investment we need for tomorrow.

Nevertheless, today, state-by-state efforts to regulate of broadband internet access would harm consumers and conflict with federal law.

Finally, it is worth noting that this is the second time that the FCC has issued a de-regulatory classification of broadband. When the first such order reached the Supreme Court, the Court expressly upheld the FCC's authority in this regard in the Brand X case. According to the Supreme Court:

> "The questions the Commission resolved in the order under review involve a 'subject matter [that] is technical, complex, and dynamic.' . . . The Commission is in a far better position to address these questions than we are. Nothing in the Communications Act or the Administrative Procedure Act makes unlawful the Commission's use of its expert policy judgment to resolve these difficult questions."

In closing, it is unnecessary to pass state legislation on this issue due to the strong consumer protections currently in place and that states are preempted in this area. Additionally, state-by-state rules would be especially burdensome, difficult to comply with, costly, and subject net neutrality requirements to differing state interpretations and enforcement – creating further business uncertainty. Accordingly, we respectfully ask that you not move SB253.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019

ON THE FOLLOWING MEASURE:
S.B. NO. 253, RELATING TO BROADBAND SERVICE.

BEFORE THE:

SENATE COMMITTEE ON TECHNOLOGY

DATE: Thursday, January 31, 2019 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 414

TESTIFIER(S): Clare E. Connors, Attorney General, or
Mana Moriarty, Deputy Attorney General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are (1) to require internet service providers to be transparent about network management practices, performance, and commercial terms of its services; and (2) to prohibit internet service providers from engaging in blocking, throttling, paid prioritization, or unreasonably interfering with or unreasonably disadvantaging users of their services.

We wish to inform you of a possible legal challenge to that portion of section 2 that prohibits blocking, throttling, and paid prioritization. The United States Department of Justice (DOJ) sued California less than twenty-four hours after California Governor Jerry Brown signed into law a bill to prevent internet service providers from engaging in blocking, throttling, and paid prioritization. The DOJ lawsuit alleges that California's law violates the Supremacy Clause of the United States Constitution and is preempted by federal statutes. The DOJ seeks to have California's law declared unconstitutional and seeks to enjoin California from enforcing its law. The DOJ has agreed to delay the lawsuit pending resolution of a separate lawsuit pending before a federal appellate court in Washington, D.C., in a case called *Mozilla Corp v. Federal Communications Commission,* No. 18-1051 (D.C. Cir.). California agreed not to enforce its own law on the January 1, 2019, effective date.

Although we have concerns about this bill, prohibiting blocking, throttling, and paid prioritization is consistent with the litigation position of the State of Hawai‘i and other parties in *Mozilla*. In *Mozilla,* the State of Hawai‘i, along with twenty-two other states and the District of Columbia, municipalities, various public interest groups, and private-sector technology companies, sued to overturn a federal rule regulating internet service providers. Three years before *Mozilla* was filed, the prohibitions on blocking, throttling, and paid prioritization were the law of the land pursuant to a 2015 rule adopted by the Federal Communications Commission (FCC), a federal agency tasked with regulating interstate communications. In 2018, the FCC reversed course and repealed those prohibitions. The FCC's course reversal opens the way for internet service providers to engage in blocking, throttling, and paid prioritization allowable under the new regulatory framework. Hawai‘i and the other parties who sued in *Mozilla* seek to overturn the 2018 FCC Rule. The 2018 FCC Rule also adopted transparency requirements that, to some extent, mirror the requirements in this bill.

Mozilla is before a federal appellate court in Washington, D.C., and arguments are scheduled for February 1, 2019, but a ruling in that case may be appealed to the United States Supreme Court. If the 2018 FCC Rule is overturned, then the prohibitions on blocking, throttling, and paid prioritization will be the law of the land for the entire United States. Even if the 2018 FCC Rule is upheld, the United States Supreme Court could still allow states to pass their own legislation regulating internet service providers. At present, the United States Supreme Court has yet to issue a definitive ruling that directly addresses state regulation of internet service providers.

Because these issues are the subject of an appeal, we are not recommending any changes to the bill. We are merely informing you of the legal risk.

If you are interested in alternatives that may pose a lower legal risk, we wish to inform you that in February 2018, Governor David Ige issued Executive Order No. 18-02. The executive order requires "state government agencies to contract internet-related services only with internet service providers who demonstrate and contractually agree to support and practice net neutrality principles." The Legislature could adopt a similar approach by amending this bill (1) to delete those provisions that prohibit blocking,

throttling, and paid prioritization, and (2) to add a new section to the Hawai‘i Procurement Code that adopts the approach embodied in Executive Order No. 18-02. A bill setting procurement requirements for the State does not pose the same constitutional challenges as a bill generally prohibiting internet service providers from blocking, throttling, and engaging in paid prioritization in its services to the public.

Thank you for the opportunity to comment.

LATE

SB-253
Submitted on: 1/31/2019 12:42:53 PM
Testimony for TEC on 1/31/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Smart	Individual	Oppose	No

Comments:

Pornographic websites must be allowed to be blocked. We have young and old people who have an unhealthy addiction to porn. One of the negative outcomes of this viewing activity is that many of these individuals "act-out" some of the activities that they have watched -- which includes significant abuse of innocent individuals. This is especially true for schools and libraries. We must have "porn" free sites where we know our children are safe from that smut.