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Report

on

Act 151, Session Laws of Hawaii 2011

Relating to Telecommunications



CABLE TELEVISION DIVISION DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS STATE OF HAWAII

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Report on Act 151, Session Laws of Hawaii 2011 Relating to Telecommunications

This report is filed by the Department of Commerce and Consumer Affairs (DCCA) pursuant to section 4, Act 151, Session Laws of Hawaii 2011 (Act 151), which requires DCCA to:

- (1) Review the state of broadband communications in Hawaii and the permitting exemptions granted pursuant to Act 151; and
- (2) Make a recommendation on whether to extend the exemptions provided by Act 151.

Background

Act 151 - Purpose and Provisions

The purpose of Act 151 was "to facilitate the deployment of high-speed broadband infrastructure in Hawaii by exempting the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology from state and county permitting requirements, under certain conditions, and reducing the time and costs associated with requests for access to utility poles and conduits."¹

As originally enacted, Act 151 included the following provisions and requirements (emphasis added):

- "From January 1, 2012 to January 1, 2017, actions relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunication cables, **shall be exempt from county permitting requirements, state permitting and approval requirements** . . . that require existing installations to comply with new pole replacement standards at the time of any construction or alteration" except where required by federal law or necessary to protect federal funding or assistance eligibility, provided that these actions (Telecommunications Cables Improvement):
 - Is directly related to the improvement for existing telecommunication cables or installation of new cables on existing or replacement utility poles, and using existing infrastructure and facilities;
 - Is within existing rights-of-way (ROWs) or public utility easements or uses existing telecommunications infrastructure; and
 - Makes no significant changes to existing ROWs, public utility easements or telecommunications infrastructure.

¹ Act 151 also amended Act 199, Session Laws of Hawaii 2010 (Act 199), which created the Broadband Assistance Advisory Council as an advisory council to DCCA. Specifically, Act 151 amended Act 199 to make the Director of DCCA a member and chairperson of the BAAC in place of the Cable Television Administrator of DCCA. *See* Act 151 (Sess. L. Haw. 2011) at §§ 5 and 6.

- A person or entity using the Act 151 exemption must provide at least 30 calendar day notice of any action to be taken by electronic posting in the form required by DCCA.
- Upgrade or replacement of a utility pole is not required if the Telecommunications Cables Improvement does not: (1) increase the overall weight load and diameter of the attachments on a pole; and (2) damage or make the pole less safe or reliable.
- DCCA shall submit a report to the 2016 Legislature on the state of broadband communications in Hawaii and the Act 151 permitting exemptions, including a recommendation on whether to extend the exemptions and any proposed legislation.

Act 151 was subsequently amended by Act 264, Session Laws of Hawaii 2013 (Act 264) to again make a Telecommunications Cables Improvement subject to all safety and engineering requirements including utility pole safe weight capacities established by the Federal Communications Commission (FCC) and the Public Utilities Commission (PUC). Because a substantial percentage of the existing utility poles in the State had been grandfathered under previous safe weight capacities set, the effect of the amendment is that, in most instances, a provider who makes a Telecommunications Cables Improvement will be required to replace a large percentage of the affected poles even where the net effect is no increased load being placed on the existing poles. Attached as Appendix A are copies of Act 151 and Act 264.

Hawaii Broadband Task Force

In 2007, the Legislature created the Hawaii Broadband Task Force through Act 2, First Special Session Laws of Hawaii 2007 (Act 2) to provide recommendations on how to advance the State's broadband capabilities and use. Specifically, Act 2 charged the Hawaii Broadband Task Force to remove barriers to broadband access, identify opportunities for increased broadband development and adoption, and enable the creation and deployment of new advanced communications technologies in Hawaii. The Hawaii Broadband Task Force issued its final report in December 2008. The report outlined four recommendations to achieve world-class broadband capability in the State:

- (1) Establish a forward-looking vision to make Hawaii globally competitive
- (2) Create a one-stop broadband advancement authority
- (3) Welcome trans-pacific submarine fiber to Hawaii
- (4) Stimulate demand for broadband

Legislation

Since that time, various legislation has been introduced seeking to advance these recommendations. Of particular relevance here, legislation to create a one-stop broadband advancement type of authority was introduced in the 2009, 2010 and 2012 legislative sessions. The various bills introduced generally had a common purpose: to establish an agency/division or commission under which all telecommunications regulation would be consolidated and with duties to advance the development of broadband infrastructure and services.

Administration bills introduced during the 2009 legislative session² sought to establish the Hawaii Communications Commission (HCC) within DCCA. Under these bills, functions relating to telecommunications would be transferred from the PUC to the HCC, which would also be charged with the functions relating to cable television services. The HCC would also be tasked with investigating, promoting, and ensuring the growth and development of broadband infrastructure within the State. Specifically, the Commission would, among other things: (1) "champion" the State's broadband, telecommunications, and video interests; (2) develop State policies relating to broadband communication services and facilities; (3) be responsible for the consolidated regulation of telecommunications carriers and cable operators; and (4) expedite the availability of communications services to the residents of Hawaii. Administration bills introduced during the 2012 legislative session³ again sought to create a communications division within DCCA to regulate telecommunications and cable television services; to promote the development of broadband infrastructure; and to advance the provision of broadband, telecommunications, and video programming services.

None of the bills proposing a comprehensive consolidation of regulation and expansion of broadband-related duties were adopted. Instead, during the 2010 legislative session, Act 199 was adopted, which charged DCCA with duties related to the expansion of broadband services and created the Broadband Assistance and Advisory Council (BAAC) to advise the Director of DCCA "on policy and funding priorities to promote and encourage use of telework alternatives for public and private employees, and expedite deployment of affordable and accessible broadband services in Hawaii."

Pursuant to Act 199 (as later amended by Act 151), the BAAC is composed of the Director of DCCA and twelve members equally appointed by the President of the Senate and by the Speaker of the House of Representatives. Of these twelve members, four members are to be representatives of the state Legislature, four members are to be representatives of "federal, state, and county government entities having a role in infrastructure deployment; management of public rights-of-way, regulation, and franchising; information technology; and economic development;" and four members are to be representatives of the State's private sector technology, telecommunications, and investment industries.

Act 199 also provided for the establishment of a permitting work group (the Act 199 Permitting Work Group) "to develop procedures for streamlined permitting functions that are applicable to the development of broadband services and broadband technology that are normally available to state and local governments for the use or development of broadband service or broadband technology" and to report on those recommended procedures to the 2011 Legislature. DCCA thus convened the Act 199 Permitting Work Group, and a Pole Attachment Subgroup in 2010. *See* Appendix B for a list of members.

The Act 199 Permitting Work Group Report submitted to the 2011 Legislature identified the current requirements related to the ability of providers to attach new fiber cables to existing utility poles as the major obstacle to the expeditious deployment of infrastructure. In that same

² See House Bill No. 1077 (2009) and companion Senate Bill No. 895 (2009).

³ See House Bill No. 2524 (2012) and companion Senate Bill No. 2786 (2012).

legislative session, House Bill No. 1342 (HB 1342) was introduced and enacted as Act 151, as a result of the discussions of the Act 199 Permitting Work Group, its Pole Attachment Subgroup and other interested parties:

The legislature finds that the broadband work group has recommended the creation of an exemption from various permitting requirements for the installation of new or upgraded broadband infrastructure along existing poles and conduits that are already used for telecommunications. Another discussion item of the broadband work group is the streamlining of the processing of pole, conduit, and duct applications.⁴

At the request of the Legislature, DCCA reconvened the Act 199 Working Group, and additional interested parties, to address objections and to obtain consensus on the language of HB 1342, *See* Appendix B. Certain changes requested by stakeholders were incorporated into the bill, but complete consensus could not be achieved. In particular, consensus could not be achieved with respect to the provisions, referenced above, regarding utility pole replacement.

In the 2013 legislative session, Act 264 was enacted to expedite the approval process for broadband-related permits to facilitate broadband infrastructure deployment. Act 264 requires the State and the counties to take action within sixty days for broadband-related permit applications and within one hundred forty-five days for use applications for broadband facilities within the conservation district. If no action is taken within the required timeframe, the permit is deemed approved. Again, Act 264 also amended Act 151 as noted above to require that any installation or improvements proceeding under that Act be required to meet current utility pole safe weight capacities established by the FCC and the PUC.

Broadband Assistance Advisory Council (BAAC) Permitting Work Group

The full BAAC was convened by DCCA in 2011. In addition to the twelve appointed members, DCCA invited other public and private stakeholders to be participants on the BAAC and its two work groups (permitting and adoption). Stakeholder participants include (or have in the past included) representatives of Hawaiian Electric Company, tw telecom, Verizon Wireless, the Hawaii State Public Library System, Sandwich Isles Communications, and the Department of Business, Economic Development & Tourism.

The BAAC Permitting Work Group was formed to examine permitting and approval processes related to broadband infrastructure deployment and to make recommendations on streamlining and otherwise improving those processes. In addition, this group has provided input on various proposed methods and legislation to expedite broadband deployment. The Permitting Work Group first met in 2012. Attached as Appendix C is a copy of the Permitting Work Group

⁴ Act 151 (Sess. L. Haw. 2011) at § 1.

Report to the BAAC dated October 18, 2012. In summary, the Permitting Work Group reported the following activities for 2012:

- The Permitting Work Group identified seven (7) recommendations to expedite deployment:
 - Create a centralized database that includes all pole calculations and life expectancies.
 - "Make ready" existing underground infrastructure, including consolidation of cables to free up space in conduits, and place inventory into a database.
 - Create a new alternate path as an option for providers. The process, funding, and rules for this will evolve over time.
 - Streamline City & County of Honolulu easement process.
 - Streamline Department of Transportation (DOT) Use and Occupancy process by use of a standard form and fee structure.
 - Streamline City & County of Honolulu permitting process. Once a design is approved, subsequent permit requests using the same design should receive cookie cutter approval through an electronic filing.
 - Create fee/fund to pay for shared database for poles. Incorporation of all pole load information (existing, proposed, reserved) into database will allow for load calculation in advance.
- The Permitting Work Group compiled procedure flowcharts and timelines documenting the various processes and procedures for broadband infrastructure deployment, which include the following:
 - Procedures to Request Attachment to Hawaiian Telcom, Inc. Poles or Occupation of Hawaiian Telcom Conduits (August 1, 2010) (Guidelines).
 - o HECO Facilities Attachment Program Process (Flowchart).
 - HECO-Only Pole Attachment Request (Flowchart).
 - HECO Service Requests Flow Chart.
 - Timeline for Obtaining City & County of Honolulu Easement for Attachment or Running of Cable Lines.
 - Joint Pole Manual By Hawaiian Electric Co., Inc.; Hawaiian Telcom, Inc.; City & County Of Honolulu, Department of Design and Construction; and State of Hawaii, Department of Transportation, Highways Division (November 25, 2005).
 - Simplified DOT Permit Process.
- The Permitting Work Group, pursuant to request made by the DCCA Director, attempted to identify potential broadband infrastructure "demonstration projects" through its provider members that could be overseen by the Work Group in order to gather information on specific permitting and approval "choke points" and other impediments to infrastructure deployment. The information would be used to identify specific legislative proposals that could expedite deployment and information sharing across the counties on ways to expedite the process.

- The Permitting Work Group commenced work on its recommendation to create a centralized database of all pole calculations and life expectancies, identifying and discussing issues that needed to be considered and addressed.
- The Permitting Work Group commenced work on its recommendation to streamline the City and County of Honolulu easement process.
- The Permitting Work Group identified standardization of the DOT Use and Occupancy Process as a current project.

In 2013, the Permitting Work Group reported the following activities (*See* Appendix D - Permitting Work Group Report to the BAAC dated January 14, 2014):

• Demonstration Projects for Broadband Permit Streamlining/Infrastructure Project Summaries

To address limitations and concerns with utilizing current provider projects, the Permitting Work Group agreed instead to utilize historical timelines and summaries of past experiences from completed projects as successful models or as examples of processes that hindered deployment. Methods to address these situations were discussed, such as revisions to state laws or counties ordinances, the establishment of a central permitting authority, and the development of standardized forms. However, given the enactment of Act 264, effective January 1, 2014, requiring a 60-day review process of broadband permits, the Permitting Work Group agreed to first evaluate the effectiveness of Act 264 to determine what other steps, if any, needed to be taken to streamline broadband permit approvals. Provider Work Group members were asked to share their experiences with any submissions made under Act 264.

- Streamlining DOT Use & Occupancy Process
 The Permitting Work Group requested that DCCA engage in discussions with the DOT
 on possible streamlining of its Use & Occupancy process. DCCA met with DOT on the
 impact of this process on broadband infrastructure deployment, and DCCA's possible
 assistance in streamlining processes.
- Creation of Centralized Pole Database During the year, providers reported on the use of a third party company to process pole applications on Oahu, which significantly improved the pole attachment process. As a result, provider members believed that the database project might be better pursued through a joint effort of the private companies involved utilizing a third party database. The Permitting Work Group thus suspended further action on this recommendation and asked to be provided updates on the progress of this project.

In 2014, the Permitting Work Group reported the following major activities and items monitored (*See* Appendix E - Permitting Work Group Report to the BAAC dated November 2014):

• Broadband Utilities and Project Coordinator

DCCA reported that, after discussions with DOT, DCCA prepared a draft scope of work for a position to facilitate and coordinate broadband infrastructure projects utilizing government roadways and ROWs. Duties would include review of broadband projects for compliance with DOT ROWs and Use and Occupancy requirements, liaison between the broadband applicant and DOT, and coordination among projects to promote the "dig once" concept. The objective is to improve the efficiency and turnaround time for these types of approvals in exchange for providing the State with a "big picture" view that could allow for strategic cooperation between government agencies, utility companies, and communications companies. The Work Group supported DCCA's efforts as a solution to expedite broadband deployment.

• Act 264

Provider members of the Permitting Work Group continued to report back that no application for approval that would be subject to Act 264 had yet been submitted by their respective companies.

• Hawaii Island Fiber Gap Project

The Permitting Work Group reviewed a resource report prepared by DCCA in conjunction with the County of Hawaii as part of DCCA's Broadband Capacity Building grant project. The report reviewed existing broadband fiber and microwave assets on Hawaii Island and the steps that might be taken to improve infrastructure deployment and network reliability for both government and private users. This report led to initiation of a joint project by DCCA, the County of Hawaii, and various stakeholders to close the existing fiber network "gap" of approximately 25 miles between Naalehu and Volcano, which could create a joint framework to be applied to expedite future deployment of broadband infrastructure. Most of the Permitting Work Group members or other representatives of their companies attended an on-island kick-off meeting at the end of April 2014 to discuss the project and potential roles and responsibilities of the participants. Also in attendance were the Mayor and other representatives of Hawaii County, and representatives of Hawaii Electric Light Company, the National Park Service and the U.S. Geological Service. As a result of the meeting, the first step identified to implement the project was the inclusion of the proposed new fiber line in the environmental assessment being prepared by Hawaii Electric Light Company in conjunction with the proposed relocation of its existing poles in the Volcano area.

BAAC Activities in 2015

The full BAAC was convened for three meetings in 2015. At its first meeting held on June 5, 2015, the BAAC heard a presentation by Mark Wong, Director of Information Technology, on the City and County of Honolulu Broadband Plan, including its Waikiki WiFi pilot project plan.

In May 2015, the Legislature adopted House Concurrent Resolution No. 189, House Draft 1, Senate Draft 1 (HCR 189), which requested that the BAAC and additional parties listed (Participants): (1) "create a master plan to provide universal high speed broadband access in resort areas and other areas of importance throughout Hawaii including, but not limited to, Honolulu International Airport and Hawaii public schools;" (2) develop specific strategies for the establishment of universal high speed broadband access throughout Waikiki, resort areas, and other areas of important throughout the State, including but not limited to Kaanapali, Maui; Kohala. Hawaii; Hanalei, Kauai; Honolulu International Airport; and Hawaii public schools;" and (3) identify best practices to establish a database that identifies current and prospective projects for deploying broadband[.]" Thereafter, DCCA convened the BAAC and Participants for two meetings held in July and August 2015 to provide input and assistance on HCR 189.⁵

A Report on House Concurrent Resolution No. 189, which includes a Broadband Assessment for areas named in HCR 189, was prepared by DCCA on behalf of the BAAC and Participants for the 2016 Legislature (HCR 189 Report). Also included in the HCR 189 Report are best practices for the creation of a broadband projects database of current and prospective projects, and other practices that may support and enhance the effectiveness of such a database to reduce deployment time for broadband infrastructure and to maximize state and county resources. DCCA is planning to work with the BAAC and other relevant stakeholders to gather input, determine priorities, and work towards implementation of the best practices recommended in the Report.

⁵ Minutes for the July 23, 2015 and August 19, 2015 meetings are available at: <u>http://cca.hawaii.gov/broadband/hawaii-broadband-assistance-advisory-council/broadband-assistance-advi</u>

The State of Broadband Communications in Hawaii

Access to fixed Internet services⁶ in the State has increased, but primarily in newer developments in the urban areas. Access in the rural areas across the State remains a very difficult and costly challenge. Moreover, the FCC has also recently increased its benchmark broadband Internet speed to measure whether Americans have access to broadband Internet service at speeds able to support "advanced telecommunications" to actual speeds of at least 25 megabits per second (Mbps) for download and 3 Mbps for upload (25 Mbps/3 Mbps), up from its previous benchmark of actual speeds of at least 4 Mbps download and 1 Mbps upload (4 Mbps/1 Mbps). Using this current 25 Mbps/3 Mbps speed benchmark, access in the rural areas has likely decreased.

Based upon FCC estimates and subscriber data provided by the State's two major residential wireline providers, Oceanic Time Warner Cable and Hawaiian Telcom, it is estimated that residential access to Internet services in the State is in the mid 90% range, with most residential subscribers able to receive services at the 25 Mbps/3 Mbps benchmark speed or higher. Conversely, approximately 5% of households do not have Internet access at broadband speeds and most may have access at very low speeds or no access at all. For Hawaii, the FCC estimates that 4% (57,000 persons) of the State's population is without access to broadband at the 25 Mbps/3 Mbps speed benchmark. Of these 57,000 persons, the FCC estimates that 50,000 persons live in the rural areas of the State (or 45% of the rural population), and further that 45,000 persons do not have access at 3 Mbps download and 768 kilobit per second (kbps) upload (3 Mbps/768 kbps) speeds.

Internet speeds offered by Oceanic Time Warner Cable and Hawaiian Telcom have increased significantly from the top advertised speeds of 50 Mbps download and 5-10 Mbps upload offered for residential plans in 2012. Oceanic Time Warner Cable currently offers residential plans with maximum advertised speeds up to 300 Mbps download and 20 Mbps upload, and also offers 1 Gigabit per second (1 Gbps) residential fiber service upon request, with higher speeds limited to certain areas. Hawaiian Telcom currently offers residential plans with fiber service offering speeds up to 1 Gbps download and 100 Mbps upload, although its higher speed services are limited to certain areas in the State.

These increases in speed have occurred in large part based on consumer demands for higher speeds due in part to additional devices demanding more bandwidth and the competition between current Hawaii broadband providers. Advances in technology and large investments by the current broadband providers in upgrading components of their infrastructure have helped providers meet the ever increasing consumer demands for greater bandwidth. Average subscription prices paid by the companies' respective consumers for the same services may have increased slightly, but in some instances consumers are receiving much higher speeds. For example, Oceanic Time Warner Cable has increased its Standard service plan cost slightly since

⁶ The FCC estimates for "fixed broadband" or "fixed terrestrial broadband" deployment includes services provided though fixed terrestrial broadband technologies as of December 31, 2013 that "include FTTH, digital subscriber line (xDSL), all copper-based technologies other than xDSL, cable modem, fixed wireless, and electric power line." 2015 Broadband Progress Report and Notice of Inquiry (2015 Broadband Progress Report) at ¶ 71, available at: https://www.fcc.gov/reports/2015-broadband-progress-report.

2012, but its service speeds have increased from 15 Mbps download offered in 2012 to 50 Mbps in 2015, with the latest increase in speed being provided without a price increase.

Other fixed Internet service options are available in some areas to service the more remote and sparsely populated areas of the State, such as smaller wireless Internet service providers (WISPs).⁷ Depending upon the provider, limitations may include higher costs than urban subscribers pay for similar speeds, lower top end speeds than urban areas, data usage caps and service quality issues due to the impact of topography, distance, and weather conditions on the different technologies used.⁸ However, these services have continued to improve with advances in technology and must be a part of any plan to address the many unserved, rural areas across the State that do not provide a market case for extension of infrastructure by the wireline providers.

Mobile (cellular) networks have also continued to expand and improve speeds. Based upon speed tests taken on Ookla website (speedtest.net), Ookla has reported speeds in the State for 2015 of up to 21 Mbps for download and 10 Mbps for upload.⁹

2012 Broadband Access Estimates

DCCA issued the Hawaii Broadband Strategic Plan in December of 2012.¹⁰ At that time, access to wireline Internet services at the then 4 Mbps/1 Mbps broadband speed threshold was estimated to be in the lower 90% range in large part because of the significantly high statewide cable television market penetration of Oceanic Time Warner Cable and given its subscriber numbers and best estimates. (At that time, Oceanic Time Warner Cable reported that most of its subscribers had the ability to upgrade their Internet service to speeds up to 50 Mbps download.)

It should be noted that the FCC, in its Eighth Broadband Report to Congress in August of 2012, estimated a higher penetration of 98.5% at the 3 Mbps/768 kbps speed tier¹¹ based upon data collected under broadband mapping grants awarded by the National Telecommunications & Information Administration (NTIA) under its State Broadband Initiative program (NTIA Data).¹² NTIA Data as of June 30, 2011 was used because it was "the most comprehensive and geographically granular deployment data publicly available"¹³ although the FCC had previously recognized limitations of the data due to, among other things, the voluntary submissions of data by providers generally at the census block level using advertised speeds and with no set criteria

⁷ For example, Aloha Broadband, which received federal funds to extend service to an unserved area of Hawaii Island, offers service in many rural areas on Hawaii Island, currently at speeds up to 20 Mbps. *See infra* n.24; <u>http://alohabroadband.com/</u>.

⁸ See State Broadband Strategic Plan at 14.

⁹ See <u>http://www.speedtest.net/awards/us/hawaii</u>.

¹⁰ Available at: <u>http://files.hawaii.gov/dcca/broadband/arra-1/Hawaii_Broadband_Strategic_Plan_Dec_2012.pdf</u>.

¹¹ This speed tier was used because data was not available for a 4 Mbps/1 Mbps speed tier. *See* Federal Communications Commission, "Eighth Broadband Progress Report," (August 2012) at ¶ 29, available at: <u>http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-90A1.pdf</u>. Note that the benchmark adhered to in the report refers "to actual speeds, not advertised or 'up to' speeds." *Id.* at n.130.

¹² The NTIA Data was collected semi-annually through state grantees of the broadband mapping grants. The NTIA Data was used by the NTIA and FCC to estimate broadband access by Americans and to create the National Broadband Map, available at <u>http://broadbandmap.gov/</u>.

¹³ See Federal Communications Commission, "Eighth Broadband Progress Report," (August 2012) at ¶ 28.

to report a block as served.¹⁴ Because no threshold was set, population within a census block could be counted as served even in instances where only one household in that census block could be served. For these reasons, the estimated penetration levels in the State were likely overstated.

2014-15 Broadband Access Estimates

The FCC's 2015 Broadband Progress Report provides estimates of fixed broadband physical deployment using NTIA Data as of December 31, 2013. The FCC found this data to be sufficiently reliable for its findings, but recognized it was imperfect, particularly because it was a "voluntary data collection."¹⁵ Access estimates were provided at the FCC's newly set 25 Mbps/3 Mbps broadband speed threshold by state, and for urban and rural areas within each state.¹⁶ The report also included access estimates at the 3 Mpbs/768 kbps speed levels and at the 10 Mbps for download and 768 kbps for upload (10 Mbps/768 kbps) speed levels.¹⁷

For Hawaii, the FCC estimated that the population of the State without access to fixed broadband at the 25 Mbps/3 Mbps speed benchmark was 57,000 persons or 4% of the State's population (or conversely that 96% of the population has access). In comparison to the rest of the U.S. states and territories, this estimate placed Hawaii in a tie for 7th lowest percentage of persons without access at this threshold speed. An estimate using subscriber numbers reported by Oceanic Time Warner Cable and Hawaiian Telcom and 2010 U.S. Census occupied housing statistics, discussed below, provides some additional confirmation of that estimate.

For urban areas, the FCC estimated that the number of persons without access was 7,000 persons or 1% of the population, which placed Hawaii in a tie for 2nd lowest percentage of persons in urban areas without access. For rural areas, it was estimated that the number of persons without access was 50,000 persons or 45% of the population, which placed Hawaii in a tie for 22nd lowest percentage of persons in rural areas without access.

¹⁴ See Federal Communications Commission, "Seventh Broadband Progress Report," (May 2011) at ¶ 24 and App. F (recognizing limitations of NTIA Data collected by census block and with advertised speeds, resulting in imperfect deployment estimates) and at ¶ 7, n.26 ("It is unclear whether grantees (or broadband providers who submitted data to the grantees) relied on the threshold in the definition of "unserved areas" in deciding whether a block is one in which broadband service is available to end users. Thus, different grantees could report a block as served if: anyone in that block is served; only everyone in that block is served; the fraction of unserved is below 90% as specified in the definition of "unserved areas;" or something else."), available at:

https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-78A1.pdf.

¹⁵ 2015 Broadband Progress Report at ¶ 68.

¹⁶ See 2015 Broadband Progress Report at Appendix D and E.

¹⁷ See 2015 Broadband Progress Report at Appendix G.

Americans in Urban and Rural Areas Without Access to Fixed 25 Mbps/3 Mbps Broadband by State & U.S. Territory

	1	All Areas		U	rban Areas		R	ural Areas	;
	Pop.	Pop. Without Access	% of Pop	Pop.	Pop. Without Access	% of Pop.	Pop.	Pop. Without Access	% of Pop.
United States	321.325	54.560	17%	260.007	21.932	8%	61.318	32.628	53%
Hawaii	1.406	0.057	4%	1.295	0.007	1%	0.111	0.050	45%

Excerpt from 2015 Broadband Progress Report - Appendix D (population figures in 1,000,000s).

Estimates were also provided by county. The County of Hawaii had the largest percentage of population without access at 19% or 35,000 persons, followed by the County of Maui at 10% or 16,300 persons.

Americans Without Access to Fixed 25 Mbps/3 Mbps Broadband by County

	All Areas		Rural Areas		Urban Areas	
	Population Without Access (1,000s)	Percentage of Population	Population Without Access (1,000s)	Percentage of Population	Population Without Access (1,000s)	Percentage of Population
United States	54,560.0	17%	32,628.3	53%	21,931.7	8%
Hawaii	57.0	4%	49.6	45%	7.4	1%
Hawaii	35.0	19%	32.6	46%	2.5	2%
Honolulu	4.3	0%	2.2	26%	2.2	0%
Kalawao	0.1	100%	0.1	100%		
Kauai	1.2	2%	1.1	12%	0.2	0%
Maui	16.3	10%	13.7	59%	2.6	2%

Excerpt from 2015 Broadband Progress Report - Appendix E.

Hawaiian Homelands estimates showed 9% of the population without access or 2,823 persons.

Tribal Lands Without Access to Fixed 25 Mbps/3 Mbps Broadband by State

Area	Pop.	Pop. Without Access	% of Pop.
All Tribal Lands	3,902,464	2,468,534	63%
Hawaiian Homelands	32,354	2,823	9%

Excerpt from 2015 Broadband Progress Report - Appendix F.

The FCC further estimated that 3% of the State's population, or 45,000 persons, lacked access to fixed services at the 3 Mbps/768 kbps and the 10 Mbps/768 kbps speed threshold.

Americans Without Access to Fixed 3 Mbps/768 kbps or 10 Mbps/768 kbps Services by State & U.S. Territory

Area	Pop. Without Access to 3 Mbps/768 kbps	% of Pop.	Pop. Without Access to 10 Mbps/768 kbps	% of Pop.
United States	13.844	4%	22.64	7%
Hawaii	0.045	3%	0.046	3%

Excerpt from 2015 Broadband Progress Report, Appendix G (population figures in 1,000,000s).

The 2015 Broadband Progress Report included a Fixed 25 Mbps/3 Mbps Broadband Deployment Map, shown below.¹⁸ This map is accessible in an online interactive form that allows the user to use shift and zoom functions to see state and county level details.¹⁹



Map 1: Fixed 25 Mbps/3 Mbps Broadband Deployment

¹⁸ 2015 Broadband Progress Report at ¶ 80.

¹⁹Available at: <u>https://www.fcc.gov/maps/2015-broadband-progress-report-fixed-broadband-deployment-map.</u>

Provider Subscriber Numbers

Although not a direct indicator of broadband access, subscriber numbers provide additional data from which inferences as to broadband penetration may be drawn. Upon request by DCCA, Oceanic Time Warner Cable and Hawaiian Telcom provided the following subscriber numbers:

Provider	Residential (End of 2012)	Residential (As of March 2015)	Change
Oceanic Time Warner Cable	288,000	331,182	+43,182
Hawaiian Telcom	88,000	93,090	+5,090
Total	376,000	424,272	+48,272

The combined total number of direct²⁰ residential subscribers for both providers, as of March 2015, is 424,272 subscribers, compared to 376,000 subscribers at the end of 2012, which is a total increase of 48,272 subscribers. For 2013, the U.S. Census Bureau, 2009-2013 American Community Survey, estimate for occupied housing units in Hawaii was 449,771.²¹ Based upon this occupied housing estimate and the above subscriber numbers, an estimate of Internet service access (without a threshold speed set) is approximately 94% of households. Most of these homes would be able to receive service at the 25 Mbps/3 Mbps speed threshold because according to Oceanic Time Warner Cable they are able to offer these speeds in most areas it services.²² However, there are factors that may affect the accuracy of this estimate, including the following:

- Total subscriber numbers may or may not include the number of residential subscribers serviced through wholesale accounts, such as where a condominium association purchases services for all units through one wholesale account.
- Total subscriber numbers do not include customer counts of other smaller Internet service providers.²³
- Total subscriber numbers may include subscriptions for the substantial number of hotels, timeshares, and vacation rentals (approximately 28,000) that are not included in the occupied housing count.

As noted above, based largely on the estimates of Oceanic Time Warner Cable it was estimated at the end of December 2012 that broadband access in the State at the 4 Mbps/1 Mbps benchmark speed was in the lower 90% range. Since that date, Oceanic Time Warner Cable and Hawaiian Telcom have reported an increase in the number of residential subscribers of

 ²⁰ This total does not include the number of residential subscribers serviced through wholesale accounts.
 ²¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk. Note that the 2010

Census reported number of occupied homes in the State is 455,338. http://www.census.gov/2010census/popmap/ipmtext.php?fl=15.

²² The statewide coverage footprint of Oceanic Time Warner Cable and Hawaiian Telcom, with a few exceptions, overlap.

²³ However, DCCA is unaware of any small provider offering service at the 25 Mbps/3 Mbps threshold speed.

approximately 48,272 subscribers.²⁴ This increase in subscribers further supports a current estimate of household wireline broadband access in the mid 90% range.

Since 2012, both Oceanic Time Warner Cable and Hawaiian Telcom have invested significant funds in improving their networks and infrastructure across the State. Hawaiian Telcom has also invested in the Southeast Asia – United States (SEA-US) transpacific cable project that will bring a new transpacific fiber system to Hawaii. However, expansion by both providers of broadband infrastructure to service the rural areas of the State has not been extensive.

Hawaiian Telcom did receive federal funds under Phase I of the FCC's Connect America Fund (CAF) program, which allowed it to extend service at actual speeds of at least 4 Mbps downstream and 1 Mbps upstream.²⁵ According to Hawaiian Telcom, it expanded availability of its High-Speed Internet service to more than 500 locations in the Orchidland Estates subdivision in Keaau on Hawaii Island, utilizing approximately \$400,000 in CAF Phase I funding. In addition, under Round 2 of Phase I funding, Hawaiian Telcom extended service at actual speeds of at least 4 Mbps/1 Mbps to nearly 900 locations in 2015 in the communities of Fern Forest, Fern Acres, Glenwood, Ainaloa, Hawaiian Acres and Milolii on Hawaii Island.²⁶ Hawaiian Telcom has also recently accepted CAF Phase II funding of more than \$4 million annually for six years to deploy service at a minimum of 10 Mbps/1 Mbps speeds to over 11,000 locations in the State identified by the FCC as unserved.²⁷ A map of the eligible areas under CAF Phase II is available at https://www.fcc.gov/maps/connect-america-phase-ii-final-eligible-areas-map.

DCCA has continued to work with providers to obtain more granular data on actual broadband availability within census blocks shown as "served" on the National Broadband Map based upon the NTIA Data. We note that the providers have expressed difficulty in accurately estimating availability in census blocks as well as across the State due to a number of factors. However, both Oceanic Time Warner Cable and Hawaiian Telcom have recently provided more granular data on actual broadband availability within census blocks that may allow DCCA better estimate access. It should be noted, however, that some of the information shared with DCCA is considered by the providers to be confidential business information and may also be confidential under chapter 440J, Hawaii Revised Statutes.

²⁴ The large number of additional subscribers may in part be attributable to the large conversion of military family housing to State-owned or privately run housing, which would not be serviced through a military wholesale account. ²⁵ DCCA is aware of only one other private entity that received federal funding to extend fixed broadband service in the rural areas of the State. In 2009, broadband grant and loans programs were funded through American Recovery and Reinvestment Act (ARRA). Middle mile and last mile infrastructure awards were made through the U.S. Department of Agriculture to build and improve connections to communities lacking sufficient broadband access and to connect end users to their community's broadband infrastructure. Big Island Broadband/Aloha Broadband was awarded a \$106,503 loan with matching funds of \$87,405 to bring broadband services to an unserved area in South Kona on Hawaii Island. *See* <u>https://www.whitehouse.gov/the-press-office/vice-president-biden-kicks-72billion-recovery-act-broadband-program</u>;

http://www.ntia.doc.gov/legacy/broadbandgrants/applications/summaries/2603.pdf.

²⁶ http://ir.hawaiiantel.com/phoenix.zhtml?c=221642&p=irol-newsArticle&ID=2078465.

²⁷ http://ir.hawaiiantel.com/phoenix.zhtml?c=221642&p=irol-newsArticle&ID=2080714.

Internet Service Speeds and Costs

Since 2012, both Oceanic Time Warner Cable and Hawaiian Telcom have significantly increased the Internet service speeds they offer. As shown below, Oceanic Time Warner Cable increased the top speed of its residential plans offered from 50 Mbps in 2012 to 300 Mbps currently. Faster speeds are also available upon special request, including 1 Gigabit per second (Gbps) service. Oceanic Time Warner Cable is able to offer its top speeds in many of the areas it services across the State. As shown below, Hawaiian Telcom increased the top speed of its residential plans offered from 50 Mbps in 2012 to 1 Gbps currently. According to Hawaiian Telcom, it offers all of its service tiers on all of the major islands with the exception of Lanai and Molokai, although all packages may not be available in all locations and will depend on the facilities serving each customer.

Monthly bundled rates (rates that include other services offered by the provider, such as cable television service or landline telephone service) for both providers' have not increased significantly for existing customers, and consumers are in some instances paying less for each megabit per second speed. For example, Oceanic Time Warner Cable's Standard Internet plan offered 15 Mbps download and 1 Mbps upload speeds at the end of 2012 and increased only slightly in cost over the last two years. In 2015, Oceanic Time Warner Cable's Standard Internet plan was relabeled its Extreme Internet plan, offering increases in speed to up to 50 Mbps download and 5 Mbps upload without an accompanying increase in plan cost.

Oceanic Time Warner Cable

In 2012, Oceanic Time Warner Cable offered the following residential Internet service speeds for almost all²⁸ of its service footprint:²⁹

Internet Plans:	Advertised Speeds Down (up to)	Advertised Speeds Up (Up to)	Monthly Price (Unbundled)
Lite	1.5 Mbps	1 Mbps	
Basic	3 Mbps	1 Mbps	
Standard	15 Mbps	1 Mbps	50.00
Turbo	20 Mbps	2 Mbps	
Extreme	30 Mbps	5 Mbps	
Ultimate	50 Mbps	5 Mbps	

²⁸ More limited service was available on Molokai, Lanai, and Hana, Maui.

²⁹ See Hawaii Broadband Strategic Plan (December 2012) at 33-4, 44 and n.93.

Currently, Oceanic Time Warner Cable provides the following residential Internet service plans at the non-promotional, unbundled rates shown:³⁰

Internet Plans:	Advertised Speeds Down (Up to)	Advertised Speeds Up (Up to)	Monthly Price (Unbundled)
Everyday	3 Mbps	1 Mbps	14.99
Low Price			
Basic	10 Mbps	1 Mbps	38.99
Extreme	50 Mbps	5 Mbps	57.99
Ultimate 100	100 Mbps	10 Mbps	67.99
Ultimate 200	200 Mbps	20 Mbps	77.99
Ultimate 300	300 Mbps	20 Mbps	107.99

The top speed plans offered may be available in many areas across the State. Currently, plans that offer speeds up to 50 Mbps download and 5 Mbps upload are available on Molokai and Lanai, and plans that offer speeds up to 15 Mbps download and 1 Mbps upload are available for Hana, Maui.

Hawaiian Telcom

In 2012, Hawaiian Telcom offered the following residential Internet service plans:³¹

Internet Plans:	Advertised Speeds Down (Up to)	Advertised Speeds Up (Up to)	Monthly Price (Unbundled)
Basic	7 Mbps	1 Mbps	
Advantage	11 Mbps	1 Mbps	
Premium	15 Mbps	1 Mbps	57.95
Extreme	20 Mbps	3 Mbps*	
Ultimate	25 Mbps	3 Mbps*	
Elite	50 Mbps	3 Mbps*	

*Upgrades to 5 & 10 Mbps available

³⁰ Information on plans, including unbundled prices, provided by Oceanic Time Warner Cable.

³¹ See Hawaii Broadband Strategic Plan (December 2012) at 35, 44 and n.92.

Currently, Hawaiian Telcom provides the following residential Internet service plans at the non-promotional, unbundled rates shown:³²

Internet Plans:	Advertised Speeds Down (Up to)	Advertised Speeds Up (Up to)	Monthly Price (Unbundled)
Basic	7 Mbps	1 Mbps	39.99
Advantage	11 Mbps	1 Mbps	49.99
Premium	15 Mbps	1 Mbps	57.99
Extreme	20 Mbps	3 Mbps (Fiber) 1 Mbps (Copper)	67.99
Ultimate	25 Mbps	3 Mbps (Fiber) 1 Mbps (Copper)	77.99
Elite	50 Mbps	10 Mbps (Fiber) 3 Mbps (Copper)	107.99
Fiber 100	100 Mbps	20 Mbps	125.00
Fiber 300	300 Mbps	50 Mbps	245.00
Fiber 500	500 Mbps	50 Mbps	345.00
Fiber 1 Gig	1000 Mbps	100 Mbps	445.00

Speeds above 50 Mbps download are available in limited areas of the neighbor islands. For Lanai and Molokai, service is available up to and including the Elite plan with advertised speeds up to 50 Mbps for download.

³² Information on plans, including unbundled prices, provided by Hawaiian Telcom.

Utilization of Act 151 Exemption by Providers

As required under Act 151 and after solicitation of input from agencies and companies likely to be impacted, DCCA implemented an electronic calendar and notice system on the DCCA website in advance of the January 1, 2012 effective date of the Act. The electronic calendar was designed to allow notices to be viewed according to the date that the proposed activity would take place. To date, no entity has provided the required notice of action to utilize the Act.

As noted above, the impact of the exemption provided under Act 151 has been lessened because of its amendment related to utility poles. In addition, subsequently enacted Act 264 now provides a permitting shot clock for broadband-related permits. BAAC members and other provider participants have, to date, reported that they have also not yet utilized the shot clock provisions of Act 264.

To prepare this report, DCCA asked the three major broadband providers, Oceanic Time Warner Cable, Hawaiian Telcom and Level 3 Communications (which acquired tw telecom in 2014), whether their respective companies had any intent to utilize the provisions of Act 151, and also whether they had any other comments regarding the Act or other suggested legislation to expedite broadband infrastructure deployment. DCCA received responses from Oceanic Time Warner Cable and Hawaiian Telcom. Attached as Appendix F is a letter from Gregg Fujimoto, President, Oceanic Time Warner Cable to Catherine Awakuni Colón, Director, DCCA, dated August 25, 2015. Attached as Appendix G is a letter from Steven Golden, Vice President, External Affairs, Hawaiian Telcom to Catherine Awakuni Colón, Director, DCCA, dated August 28, 2015. Although neither company had yet used the Act 151 exemptions, both supported the intent of Act 151 and its provisions and wanted to preserve the opportunity to utilize the Act in the future.

Specifically, Oceanic Time Warner Cable stated:

[O]ceanic believes that the streamlined government approval process as provided by the Acts will materially facilitate Oceanic's development and deployment of broadband infrastructure in appropriate future projects and circumstances, and that the provisions of the Acts are important components of the State's overall broadband policy. In addition, given the Federal Communication Commission's recognition that the "lack of reliable, timely, and affordable access to physical infrastructure – particularly utility poles – is often a significant barrier to deploying wireline and wireless [broadband] services" (*See* Report and Order and Order on Reconsideration, 26 F.C.C. Rcd. 5240 (2011)), Oceanic also supports provisions in the Acts recognizing and reinforcing that public utilities must adhere to federal pole attachment requirements and timelines (including the requirement of providing specific reasons and evidence for attachment denials).

Oceanic Time Warner Cable expressed its belief that the Act should be extended for a minimum of five years, although noting that making the provisions of Act 151 and Act 264 permanent would provide the most regulatory certainty for broadband providers (to facilitate infrastructure and budgetary planning).

Hawaiian Telcom also supported extension of Act 151: "While Hawaiian Telcom has not taken advantage of the provisions of Act 151, we continue to support the intent of Act 151, which is to advance the deployment of our state's broadband infrastructure by streamlining the governmental permit process, and we believe this Act should be extended." Hawaiian Telcom further stressed the importance of broadband deployment and stated: "Act 151 is a forwardlooking measure which helps align Hawaii's policy objectives with governmental regulations that encourage greater investment in broadband infrastructure."

Both Oceanic Time Warner Cable and Hawaiian Telcom, thus, support extension of the Act 151 exemptions beyond the Act's current end date of January 1, 2017.

Recommendations

As discussed under "The State of Broadband Communications in Hawaii" section above, significant improvements have been made in the speed of Internet services offered in most areas of the State because of the rapid advances occurring in technology. However, little has occurred to provide access to high speed fixed Internet services at reasonable costs in the rural areas of the State. Based upon the findings provided in this report, DCCA makes the following recommendations:

<u>Act 151</u>

Because BAAC provider members and participants have reported that they have not yet utilized the provisions of Act 151 or Act 264, it is unclear what impact Act 151, alone or in combination with Act 264, may have on expediting the deployment of broadband infrastructure in the State. However, extension of Act 151 is supported by both Oceanic Time Warner Cable and Hawaiian Telcom, the broadband service providers most likely to utilize the Act 151 exemptions. Given this expressed support, DCCA recommends that the exemptions provided under Act 151 be extended for five years to provide additional time for utilization of the Act and a determination on its effectiveness.

Other Recommendations/Proposed Legislation

DCCA recommends that it continue to work with the BAAC to identify best practices, policies and legislation to expedite deployment that is supported by the stakeholders, and to implement these activities in coordination with the relevant stakeholders. This includes the best practices identified in DCCA's Capacity Building Plan and in the HCR 189 Report. Specifically, these best practices would establish a broadband projects database of current and prospective projects, as well as other practices that may support and enhance the effectiveness of such a database to reduce deployment time for broadband infrastructure and to maximize state and county resources. As next steps, DCCA will work with the BAAC and other relevant stakeholders to gather input, determine priorities, and work towards implementation of best practices recommended in the HCR 189 Report.

DCCA is also currently working towards the development of a comprehensive plan and program to best utilize and leverage its existing funds for institutional network (INET) and broadband activities (INET/Broadband Fund) to facilitate access to high speed Internet services for those residents in unserved and underserved areas across the State that lack adequate access, as well as to strengthen and expand the State's INET. Because the current balance of these funds is insufficient to address all of the infrastructure needs in the unserved and underserved areas of the State, CATV believes that planning is crucial to best utilize these funds to expand broadband access across the State.

It is DCCA's intent to complete this planning in 2016, and to make its budget requests for this purpose to the 2017 Legislature. In addition to the activities related to a broadband projects database, activities may include data collection and mapping, pilot projects to provide WiFi services in underserved areas in partnership with the respective counties, and efforts that will

encourage cooperation in broadband build outs. For this reason, DCCA recommends no proposed legislation at this time.

Conclusion

Act 151 should be extended for five years to allow providers the opportunity to utilize the exemptions under the Act and to determine the effectiveness of the Act, alone and in conjunction with Act 264, in expediting broadband infrastructure deployment in the State.

DCCA will continue to work with the BAAC and other relevant stakeholders to gather input, determine priorities, and work towards implementation of best practices and specific activities to facilitate the deployment of broadband infrastructure. An assessment will be made to determine if statutory amendments are necessary. DCCA will be ready to present its comprehensive plan for its future actions and activities, to make any legislative proposals necessary, and to make its budget requests to implement its plans to the 2017 Legislature.

APPENDIX A

Approved by the Governor

ORIGINAL

JUN 2 1 2011 on . HOUSE OF REPRESENTATIVES TWEN TY-SIXTH LEGISLATURE, 2011 STATE OF HAWAII

ACT NO 1342

H.D. 1 S.D. 2 C.D. 1

A BILL FOR AN ACT

RELATING TO TELECOMMUNICATIONS.

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

1 SECTION 1. Act 199, Session Laws of Hawaii 2010, 💧 2 established a broadband work group to develop procedures for streamlining permitting functions applicable to the development 3 4 of broadband services and broadband technology. The legislature finds that the broadband work group has recommended the creation 5 6 of an exemption from various permitting requirements for the 7 installation of new or upgraded broadband infrastructure along 8 existing poles and conduits that are already used for 9 telecommunications. Another discussion item of the broadband 10 work group is the streamlining of the processing of pole, 11 conduit, and duct applications.

12 The purpose of this Act is to facilitate the deployment of 13 high-speed broadband infrastructure in Hawaii by exempting the 14 installation, improvement, construction, or development of infrastructure relating to broadband service or broadband 15 16 technology from state and county permitting requirements, under certain conditions, and reducing the time and costs associated 17 18 with requests for access to utility poles and conduits. This HB1342 CD1 HMS 2011-4055

H.B. NO. ¹³⁴² H.D. 1

Act also makes the director of commerce and consumer affairs a
 member and chairperson of the broadband assistance advisory
 council and a member and convenor of the broadband work group
 established under Act 199, Session Laws of Hawaii 2010, and
 removes the cable television administrator from the broadband
 assistance advisory council and the broadband work group.

7 SECTION 2. From January 1, 2012, to January 1, 2017, actions relating to the installation, improvement, construction, 8 or development of infrastructure relating to broadband service 9 or broadband technology, including the interconnection of 10 11 telecommunications cables, shall be exempt from county 12 permitting requirements, state permitting and approval 13 requirements, which includes the requirements of chapters 171, 205A, and 343, Hawaii Revised Statutes, and public utilities 14 15 commission rules under Hawaii Administrative Rules, chapter 6-16 73, that require existing installations to comply with new pole 17 replacement standards at the time of any construction or 18 alteration to the equipment or installation, except to the 19 extent that such permitting or approval is required by federal 20 law or is necessary to protect eligibility for federal funding, services, or other assistance; provided that the installation, 21

H.B. NO. 1342 H.D. 1 S.D. 2 C.D. 1

1	improvement, construction, or development of infrastructure
2	shall:
3	(1) Be directly related to the improvement of existing
4	telecommunications cables or the installation of new
5	telecommunications cables:
6	(A) On existing or replacement utility poles and
7	conduits; and
8	(B) Using existing infrastructure and facilities;
9	(2) Take place within existing rights-of-way or public
10	utility easements or use existing telecommunications
11	infrastructure; and
12	(3) Make no significant changes to the existing public
13	rights-of-way, public utility easements, or
14	telecommunications infrastructure.
15	A person or entity shall use reasonable best efforts to
16	comply with all applicable safety and engineering requirements
17	relating to the installation, improvement, construction, or
18	development of infrastructure relating to broadband service.
19	A person or entity taking any action under this section
20	shall, at least thirty calendar days before the action is taken,
21	provide notice to the director of commerce and consumer affairs

H.B. NO. ¹³⁴² H.D. 1 S.D. 2

1 by electronic posting in the form and on the site designated by 2 the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given 3 by a public utility or government entity for an action relating 4 5 to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband 6 7 technology where the action taken is to provide access as the 8 owner of the existing rights-of-way, utility easements, or 9 telecommunications infrastructure.

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:

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



H.B. NO. ¹³⁴² H.D. 1 S.D. 2

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

4 The public utilities commission may allow a public utility 5 to recover all prudently incurred costs as approved through 6 rates, charges, or clauses approved or established by the public 7 utilities commission pursuant to section 269-16, Hawaii Revised 8 Statutes, including but not limited to planning, engineering, 9 construction, installation, or replacement of utility poles undertaken to accomplish the objectives of this Act. Recovery 10 11 of all prudently incurred costs shall also apply to a broadband 12 service provider.

13 If access to a utility pole is not granted within forty-five 14 days of a written request for access, the utility must confirm 15 the denial in writing by the forty-fifth day, consistent with 16 the requirements established by the Federal Communications Commission under Title 47, Chapter 1, Code of Federal 17 18 Regulations. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting 19 20 its denial, and shall explain how such evidence and information



1 relate to a denial of access for reasons of lack of capacity, 2 safety, reliability, or engineering standards. 3 SECTION 4. No later than January 1, 2016, the director of 4 commerce and consumer affairs shall: 5 Review the state of broadband communications in Hawaii (1)6 and the permitting exemptions granted pursuant to this 7 Act; and 8 (2)Make a recommendation whether to extend the exemptions provided by this Act. 9 10 The director of commerce and consumer affairs shall submit a 11 report of the director's findings and recommendations, along 12 with any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 13 14 2016. SECTION 5. Act 199, Session Laws of Hawaii 2010, is 15 amended by amending section 3 to read as follows: 16 "SECTION 3. Telework promotion and broadband assistance 17 18 advisory council; establishment; purpose. (a) The 19 [administrator of the cable television division of the 20 department of commerce and consumer affairs] director of commerce and consumer affairs shall convene and chair the 21

H.B. NO. 1342 H.D. 1 S.D. 2

1 broadband assistance advisory council to advise the 2 [administrator] director of commerce and consumer affairs on policy and funding priorities to promote and encourage use of 3 4 telework alternatives for public and private employees, and 5 expedite deployment of affordable and accessible broadband 6 services in Hawaii. 7 (b) The council shall be composed of the [administrator of 8 the cable television division] director of commerce and consumer 9 affairs, or the director's designee, and the following twelve 10 members who shall be equally appointed by the president of the 11 senate and by the speaker of the house of representatives as 12 follows: Two members of the senate, appointed by the president 13 (1)14 of the senate;

15 (2) Two members of the house of representatives, appointed
16 by the speaker of the house of representatives;
17 (3) Four representatives of federal, state, and county
18 government entities having a role in infrastructure
19 deployment; management of public rights-of-way,
20 regulation, and franchising; information technology;

21 and economic development; and

H.B. NO. ¹³⁴² H.D. 1

(4) Four representatives of Hawaii's private sector
 technology, telecommunications, and investment
 industries.
 Except for the [administrator of the cable television division]

5 director of commerce and consumer affairs, all members shall
6 serve for a term of four years. Any vacancies occurring in the
7 membership of the advisory council shall be filled for the
8 remainder of the unexpired term in the same manner as the
9 original appointments.

10 (c) The [administrator of the cable television division] 11 director of commerce and consumer affairs shall serve as 12 chairperson of the council. The council shall meet at times as 13 may be called by the chairperson. Members shall be reimbursed for reasonable expenses, including travel expenses, necessary 14 15 for the performance of their duties. Administrative support to 16 the council shall be provided by the department of commerce and 17 consumer affairs.

18 (d) The council shall:

19 (1) Monitor the broadband-based development efforts of
20 other states and nations in areas such as business,
21 education, and health;





1	(2)	Advise the department on other states' best practices
2		involving telework promotion and policies and
3		strategies related to making affordable broadband
4	-	services available to every Hawaii home and business;
5	(3)	Monitor broadband-related activities at the federal
6	2	level;
7	(4)	Monitor regulatory and policy changes for potential
8		impact on broadband deployment and sustainability in
9		Hawaii; and
10	(5)	Encourage public-private partnerships to increase the
11		deployment and adoption of broadband services and
12		applications."
13	SECTI	ION 6. Act 199, Session Laws of Hawaii 2010, is
14	amended by	y amending subsection (a) of section 4 to read as
15	follows:	
16	"(a)	The [administrator-of the cable television-division
17	of the de r	partment of commerce and consumer affairs] director of
18	commerce a	and consumer affairs shall convene a work group to
19	develop pr	ocedures for streamlined permitting functions that are
20	applicable	e to the development of broadband services and
21	broadband	technology that are normally available to state and

H.B. NO. ¹³⁴² H.D. 1 S.D. 2 C.D. 1

local governments for the use or development of broadband
 service or broadband technology. Members of the work group
 shall include:

4	(1)	The [administrator of the cable television division]
5	~	director of commerce and consumer affairs, or the
6		[administrator's] director's designee;
7	(2)	The mayor of the county of Hawaii, or the mayor's
8		designee;
9	(3)	The mayor of the city and county of Honolulu, or the
10		mayor's designee;
11	(4)	The mayor of the county of Kauai, or the mayor's
12		designee;
13	(5)	The mayor of the county of Maui, or the mayor's
14		designee;
15	(6)	The chairperson of the Hawaii broadband task force
16		established by Act 2, First Special Session Laws of
17	*	Hawaii 2007; and
18	(7)	Two representatives of state agencies with
19		jurisdiction over land use and permitting at the state
20		level."

H.B. NO. ¹³⁴² H.D. 1 S.D. 2 C.D. 1

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

3 SECTION 8. This Act shall take effect on July 1, 2011.

APPROVED this 21 day of JUN , 2011 al abercromb

GOVERNOR OF THE STATE OF HAWAII



Approved by the Governor JUL 3 2013

HOUSE OF REPRESENTATIVES TWENTY-SEVENTH LEGISLATURE, 2013 STATE OF HAWAII

ACT 264

H.B. NO. 635 H.D. 2 S.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO BROADBAND.

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

1	SECTION 1. Chapter 27, Hawaii Revised Statutes, is amended	
2	by adding a new section to part VII to be appropriately	
3	designated and to read as follows:	
4	"§27- Broadband-related permits; automatic approval.	
5	(a) The State shall approve, approve with modification, or	
6	disapprove all applications for broadband-related permits within	
7	sixty days of submission of a complete permit application and	
8	full payment of any applicable fee; provided that this	
9	subsection shall not apply to a conservation district use	
10	application for broadband facilities. If, on the sixty-first	
11	day, an application is not approved, approved with modification,	
12	or disapproved by the State, the application shall be deemed	
13	approved by the State.	
14	(b) The State shall approve, approve with modification, or	
15	disapprove use applications for broadband facilities within the	
16	conservation district within one hundred forty-five days of	
17	submission of a complete application and full payment of any	
18	applicable fee. If, on the one hundred forty-sixth day, an	
	HB635 CD1 HMS 2013-3519-1	

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1	application is not approved, approved with modification, or	
2	disapproved by the State, the application shall be deemed	
3	approved by the State.	
4	(c) Permits issued pursuant to this section shall contain	
5	the following language: "This is a broadband-related permit	
6	issued pursuant to section 27- , Hawaii Revised Statutes."	
7	(d) An applicant and a public utility shall comply with	
8	all applicable safety and engineering requirements relating to	
9	the installation, improvement, construction, or development of	
10	infrastructure relating to broadband service or broadband	
11	technology.	
12	(e) No action shall be prosecuted or maintained against	
13	the State, its officials, or employees on account of actions	
14	taken in reviewing, approving, modifying, or disapproving a	
15	permit application pursuant to this section, or against public	
16	utilities resulting from such actions.	
17	(f) The sixty day time period established by subsection	
18	(a) shall be extended in the event of a natural disaster, state	
19	emergency, or union strike that prevents the applicant, agency,	
20	or department from fulfilling application review requirements.	
21	(g) If an application is incomplete, the State shall	
22	notify the applicant in writing within ten business days of	
	HB635 CD1 HMS 2013-3519-1	

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1	submittal of the application. The notice shall inform the
2	applicant of the specific requirements necessary to complete the
3	application. The sixty-first day automatic approval provisions
4	under subsection (a) shall continue to apply to the application
5	only if the applicant satisfies the specific requirements of the
6	notice and submits a complete application within five business
7	days of receipt of the notice.
8	(h) Nothing in this section shall affect the provisions of
9	section 3 of Act 151, Session Laws of Hawaii 2011.
10	(i) For the purposes of this section, "broadband-related
11	permits" means all state permits required to commence actions
12	with respect to the installation, improvement, construction, or
13	development of infrastructure relating to broadband service or
14	broadband technology, including the interconnection of
15	telecommunications cables, cable installation, tower
16	construction, placement of broadband equipment in the road
17	rights-of-way, and undersea boring, or the landing of an
18	undersea communications cable. The term does not include any
19	state permit for which the approval of a federal agency is
20	explicitly required pursuant to federal law, rule, or
21	regulation, prior to granting final permit approval by the
22	State."

1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended 2 by adding a new section to be appropriately designated and to 3 read as follows: "\$46- Broadband-related permits; automatic approval. 4 5 (a) A county shall approve, approve with modification, or disapprove all applications for broadband-related permits within 6 7 sixty days of submission of a complete permit application and full payment of any applicable fee. If, on the sixty-first day, 8 9 an application is not approved, approved with modification, or 10 disapproved by the county, the application shall be deemed 11 approved by the county. 12 (b) Permits issued pursuant to this section shall contain 13 the following language: "This is a broadband-related permit issued pursuant to section 46- , Hawaii Revised Statutes." 14 (c) An applicant and a public utility shall comply with 15 all applicable safety and engineering requirements relating to 16 the installation, improvement, construction, or development of 17 infrastructure relating to broadband service or broadband 18 technology. 19 (d) No action shall be prosecuted or maintained against 20 any county, its officials, or employees on account of actions 21 taken in reviewing, approving, modifying, or disapproving a 22 HB635 CD1 HMS 2013-3519-1

H.B. NO. H.D. 2

H.B. NO. ⁶³⁵ H.D. 2 S.D. 1 C.D. 1

1	permit application pursuant to this section, or against public
2	utilities resulting from such actions.
3	(e) The sixty day time period established by subsection
4	(a) shall be extended in the event of a natural disaster, state
5	emergency, or union strike that prevents the applicant, agency,
6	or department from fulfilling application review requirements.
7	(f) If an application is incomplete, the county agency
8	shall notify the applicant in writing within ten business days
9	of submittal of the application. The notice shall inform the
10	applicant of the specific requirements necessary to complete the
11	application. The sixty-first day automatic approval provisions
12	under subsection (a) shall continue to apply to the application
13	only if the applicant satisfies the specific requirements of the
14	notice and submits a complete application within five business
15	days of receipt of the notice.
16	(g) Nothing in this section shall affect the provisions of
17	section 3 of Act 151, Session Laws of Hawaii 2011.
18	(h) For the purposes of this section, "broadband-related
19	permits" means all county permits required to commence actions
20	with respect to the installation, improvement, construction, or
21	development of infrastructure relating to broadband service or
22	broadband technology, including the interconnection of

H.B. NO. ⁶³⁵ H.D. 2 S.D. 1 C.D. 1

1	telecommunications cables, cable installation, tower
2	construction, placement of broadband equipment in the road
3	rights-of-way, and undersea boring, or the landing of an
4	undersea communications cable. The term does not include any
5	county permit for which the approval of a federal agency is
6	explicitly required pursuant to federal law, rule, or
7	regulation, prior to granting final permit approval by the
8	county."
9	SECTION 3. Act 151, Session Laws of Hawaii 2011, is
10	amended by amending sections 2 and 3 to read as follows:
11	"SECTION 2. From January 1, 2012, to January 1, 2017,
12	actions relating to the installation, improvement, construction,
13	or development of infrastructure relating to broadband service
14	or broadband technology, including the interconnection of
15	telecommunications cables, shall be exempt from county
16	permitting requirements, state permitting and approval
17	requirements, which includes the requirements of chapters 171,
18	205A, and 343, Hawaii Revised Statutes, and public utilities
19	commission rules under Hawaii Administrative Rules, chapter
20	6-73, that require existing installations to comply with new
21	pole replacement standards at the time of any construction or

22 alteration to the equipment or installation, except to the

H.B. NO. ⁶³⁵ H.D. 2 S.D. 1 C.D. 1

7

1	extent that such permitting or approval is required by federal	
2	law or is necessary to protect eligibility for federal funding,	
3	services, or other assistance; provided that the installation,	
4	improvement, construction, or development of infrastructure	
5	shall:	
6	(1) Be directly related to the improvement of existing	
7	telecommunications cables or the installation of new	
8	telecommunications cables:	
9	(A) On existing or replacement utility poles and	
10	conduits; and	
11	(B) Using existing infrastructure and facilities;	
12	(2) Take place within existing rights-of-way or public	
13	utility easements or use existing telecommunications	
14	infrastructure; and	
15	(3) Make no significant changes to the existing public	
16	rights-of-way, public utility easements, or	
17	telecommunications infrastructure.	
18	[A person or entity] An applicant shall [use reasonable	
19	best efforts to] comply with all applicable safety and	
20	engineering requirements relating to the installation,	
21	improvement, construction, or development of infrastructure	
22	relating to broadband service.	

H.B. NO. ⁶³⁵ H.D. 2 S.D. 1

1 A person or entity taking any action under this section 2 shall, at least thirty calendar days before the action is taken, 3 provide notice to the director of commerce and consumer affairs 4 by electronic posting in the form and on the site designated by 5 the director for such posting on the designated central State of Hawaii Internet website; provided that notice need not be given 6 7 by a public utility or government entity for an action relating 8 to the installation, improvement, construction, or development 9 of infrastructure relating to broadband service or broadband 10 technology where the action taken is to provide access as the 11 owner of the existing rights-of-way, utility easements, or 12 telecommunications infrastructure.

13 SECTION 3. Consistent with federal law, no person or 14 entity shall be required to upgrade or replace an existing 15 utility pole when using that utility pole to install new 16 telecommunications cables or to improve existing 17 telecommunications cables; provided that:

18 (1) The overall weight load and the diameter of the
19 attachment on the utility pole following the
20 installation or improvement does not exceed the
21 overall weight load and diameter of the attachment
22 prior to the installation or improvement; [and]

H.B. NO. ⁶³⁵ H.D. 2 S.D. 1

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

5 [(2)] (3) The utility pole is not damaged or made less safe
6 or reliable due to the installation or improvement of
7 telecommunications cables.

The public utilities commission may allow a public utility 8 to recover all prudently incurred costs as approved through 9 rates, charges, or clauses approved or established by the public 10 utilities commission pursuant to section 269-16, Hawaii Revised 11 Statutes, including but not limited to planning, engineering, 12 construction, installation, or replacement of utility poles 13 14 undertaken to accomplish the objectives of this Act. Recovery of all prudently incurred costs shall also apply to a broadband 15 service provider. 16

17 If access to a utility pole is not granted within forty-18 five days of a written request for access, the utility must 19 confirm the denial in writing by the forty-fifth day, consistent 20 with the requirements established by the Federal Communications 21 Commission under Title 47, Chapter 1, Code of Federal 22 Regulations. The utility's denial of access shall be specific, 23 Augustic and a second access shall be specific.

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H.B. NO. ⁶³⁵ H.D. 2 S.D. 1

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."

5 SECTION 4. Statutory material to be repealed is bracketed6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on January 1, 2014,
8 and shall be repealed on June 30, 2018; provided that this Act
9 shall apply to permit applications filed with the State or
10 county after December 31, 2013.

APPROVED this 3 day of JUL , 2013 GOVERNOR OF THE STATE OF HAWAII



<u>APPENDIX B</u>

ACT 199 PERMITTING WORK GROUP AND A POLE ATTACHMENT SUBGROUP MEMBERS

Main Committee Members

David Lassner	University of Hawaii
Gordon Bruce	City & County of Honolulu
Wallace Rezentes	County of Kauai
Bert Tsuchiya	County of Hawaii
Ralph Nagamine	County of Maui
David Shimokawa	Department of Transportation
Morris M. Atta	Department of Land and Natural Resources
Sen. Carol Fukunaga	Senate, Hawaii State Legislature
Rep. Kyle Yamashita	House of Representatives, Hawaii State Legislature

Subcommittee Members

Hawaiian Telcom
tw telecom
Clearwire
Oceanic Time Warner Cable
Waimana Enterprises
tw telecom
Clearwire
Oceanic Time Warner Cable

Pole Attachment Sub-Work Group

Steve Nagata	Hawaiian Electric Company
Paul Nakagawa	Hawaiian Electric Company
Lance Miyahara	Hawaiian Electric Company
Tracy Nishibun	Hawaiian Electric Company
Ralph Nagamine	County of Maui
David Shimokawa	Department of Transportation
Morris M. Atta	Department of Land and Natural Resources
Chris Zane	University of Hawaii
Lance Uno	Oceanic Time Warner Cable
Steve Golden	Hawaiian Telcom
Lynette Yoshida	Hawaiian Telcom
Ken Hiraki	Hawaiian Telcom
Norman Santos	Oceanic Time Warner Cable

ADDITIONAL PARTICIPANTS FOR MEETING REGARDING H.B. 1342 (2011)

Alvin Sunahara	Information Technology, City & County of Honolulu
David Tanoue	Planning & Permitting, City & County of Honolulu
Richard Lim	Department of Business, Economic Development & Tourism
William Aila	Department of Land & Natural Resources
Hermina Morita	Public Utilities Commission

Dean Yogi Jadine Urasaki Glenn Okimoto Eric Yeaman Bob Barlow Lyndall Nipps Richard Rosenblum Steve Yoshida Pratt Kinimaka Jamie Ho Department of Transportation Department of Transportation Department of Transportation Hawaiian Telcom Oceanic Time Warner Cable tw telecom Hawaiian Electric Company Hawaiian Electric Company Department of Transportation Department of Transportation

APPENDIX C

BROADBAND ASSISTANCE ADVISORY COUNCIL (BAAC) PERMITTING WORK GROUP STATE OF HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

REPORT TO BAAC

by Gordon Bruce, Chair October 18, 2012

The Permitting Work Group has met four times in 2012. The following summarizes the activities of the Group:

I. Permitting Work Group Recommendations

Based upon its discussions, the Work Group agreed on the following recommendations that could be instituted to expedite deployment:

- (1) Create a centralized database that includes all pole calculations and life expectancies. This will expedite review of pole requests, allow identification of what infrastructure needs to be fixed, and assist providers in determining routing of their networks.
- (2) "Make ready" existing underground infrastructure, including consolidation of cables to free up space in conduits, and place inventory into a database.
- (3) Create a new alternate path as an option for providers. The process, funding, and rules for this will evolve over time.
- (4) Streamline easement process under C&C of Honolulu. Chair Bruce will circulate prior proposal submitted to the Council. If all members agree, the proposal will be submitted by the Work Group to the BAAC with the recommendation that the BAAC support its passage.
- (5) Streamline DOT Use and Occupancy process by use of a standard form and fee structure.
- (6) Streamline C&C of Honolulu permitting process. Once the C&C of Honolulu approves a design, subsequent permit requests using the same design should receive cookie cutter approval through an electronic filing.
- (7) Create fee/fund to pay for shared database for poles. Incorporation of all pole load information (existing, proposed, reserved) into database will allow for load calculation in advance.

PWG Report to BAAC October 18, 2012 Page 2

II. Compilation of Procedure Flowcharts for Broadband Infrastructure Projects

The Work Group has compiled flowcharts and timeline documenting the various processes and procedures for broadband infrastructure deployment. The following documents were provided to or created for the Work Group by its members:

Hawaiian Telcom

1. Procedures to Request Attachment to Hawaiian Telcom, Inc. Poles or Occupation of Hawaiian Telcom Conduits (August 1, 2010) (Guidelines)

<u>HECO</u>

- 1. HECO Facilities Attachment Program Process (Flowchart)
- 2. HECO-Only Pole Attachment Request (Flowchart)
- 3. HECO Service Requests Flow Chart

City & County of Honolulu

1. Timeline for Obtaining City & County of Honolulu Easement for Attachment or Running of Cable Lines

Joint Pole Owners

 Joint Pole Manual – By Hawaiian Electric Co., Inc.; Hawaiian Telcom, Inc.; City & County Of Honolulu, Department of Design and Construction; and State of Hawaii, Department of Transportation, Highways Division (November 25, 2005)

State

1. Simplified DOT Permit Process

III. Demonstration Projects

In response to request from Keali'i Lopez, DCCA Director, Work Group has been working to identify potential broadband infrastructure projects that could overseen by the Work Group in order to gather information on specific permitting and approval "choke points" and other impediments to infrastructure deployment. This information can then be used to identify specific legislative proposals that could expedite deployment and information sharing across the counties on ways to expedite the process.

PWG Report to BAAC October 18, 2012 Page 3

IV. Create Centralized Database of All Pole Calculations and Life Expectancies

The Work Group has agreed that the creation of a shared master database of pole information would expedite pole access. The City only has listings of the location of properties, which can be shared at no cost. HECO has an existing database. The Work Group generally agreed that it should start first with basic statewide information, such as pole location in GIS format, pole identifier, and pole owner. Issues raised for discussion include:

- (1) need for "buy in" by all pole owners
- (2) method of funding of database
- (3) funding for maintenance of the system
- (3) ownership of the system
- (4) who has access to database

Chair Bruce is to report to BAAC on centralized database and request letter from BAAC to HECO regarding the sharing of pole location information, identifiers and owners.

V. Streamlining of C&C of Honolulu Easement Process

Chair Bruce provided the Work Group with members with proposed C&C of Honolulu ordinance and draft administrative rules that would allow City's IT Director to set procedures, fees and terms for use of city property by telecommunications providers. Chair Bruce explained that the proposed ordinance would take the Council out of the easement approval process and place responsibility for approval with the IT division. HT and OTW have been asked to review and provide comment on whether they would support these proposals. These comments have not yet been provided.

VI. Standardize Form and Fee Structure for DOT Use and Occupancy Process

The Work Group believes that infrastructure deployment may be expedited by the creation of a standard form and fee structure for DOT's use and occupancy process. This is a Work Group recommendation that has been identified as a current project.

APPENDIX D

BROADBAND ASSISTANCE ADVISORY COUNCIL (BAAC) PERMITTING WORK GROUP State of Hawaii Department of Commerce and Consumer Affairs

Report to BAAC by Everett Kaneshige, Acting Chair January 14, 2014

The Permitting Work Group met three times in 2013. The following summarizes the major recommendations worked on during the year:

1. Demonstration Projects for Broadband Permit Streamlining/Infrastructure Project Summaries

The Work Group considered whether utilizing demonstration projects would be useful to facilitate permit streamlining efforts by allowing the Work Group to identify permitting roadblocks and to form specific recommendations on legislation to expedite the permitting process. Because of expressed limitations and concerns with utilizing current provider projects, the Work Group instead decided to utilize historical timelines and summaries of past experiences from completed projects as successful models or as examples of processes that hindered deployment.

Provider Work Group members submitted examples of broadband projects on various islands in which the permitting process was either generally reasonable or prolonged. The Work Group discussed methods to address these situations such as revisions to State laws or Counties ordinances, the establishment of a central permitting authority and the development of standardized forms. Given the commencement of the new law (effective January 1, 2014) requiring a 60-day review process of broadband permits (Act 264), the Group will evaluate the effectiveness of this measure in conjunction with reviewing what other steps, if any, need to be taken to streamline broadband permit approvals. Provider Work Group members have been asked to share their experiences with any submissions made under the Act.

2. Streamlining Department of Transportation (DOT) Use & Occupancy Process

The Work Group requested that DCCA engage in discussions with the DOT on possible streamlining of its Use & Occupancy process. DCCA met with DOT on the impact of this process on broadband infrastructure deployment, and DCCA's possible assistance in streamlining processes. Based upon the Federal Highway Administration's published papers pursuant to Presidential Executive Order that

Permitting Work Group Report to BAAC January 14, 2014 Page 2

> focus on different processes to expedite broadband deployment, DCCA has begun discussions with DOT on how the papers' recommendations might be implemented at the state level. The Group supports DCCA's efforts and will provide assistance and input.

3. Capacity Building Planning Projects

DCCA reported to the Group that, as part of its Broadband Capacity Building grant project, it is looking at potential broadband infrastructure planning projects statewide, particularly those that can help to address un-served and underserved areas. DCCA reported that it has, in coordination with one county, prepared a resource report which reviews existing broadband fiber and microwave assets on a selected island and what steps might be taken to improve both infrastructure deployment and network reliability for both government and private users. DCCA is waiting for input from that county. In the event that recommendations in the report are undertaken, the Working Group will likely be utilized to assist in creating a joint framework that could be applied to expedite future deployment of broadband infrastructure.

The Work Group was asked to suggest other potential projects that might similarly assist in providing greater broadband access in un-served and underserved areas of other counties. DCCA will be seeking input from the Working Group on any planning projects undertaken.

4. Creation of Centralized Pole Database.

The Work Group continued discussions on the creation of a shared centralized pole database with pole loading information. During the year, providers reported on the use of a third party company to process pole applications on Oahu, which significantly improved the process and would likely be used on the other islands. Provider members believe that the gathering of information could still be streamlined through the use of a third party database, but believed that such a project may be better pursued through a joint effort of the private companies involved. OTWC will be taking the lead with relevant stakeholders. The Group is thus suspending any further review or action on this recommendation. OTWC was asked to provide updates on the progress of this project to the Work Group.

<u>APPENDIX E</u>

BROADBAND ASSISTANCE ADVISORY COUNCIL (BAAC) PERMITTING WORK GROUP STATE OF HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

REPORT TO BAAC by Everett Kaneshige, Acting Chair November 2014

I. Continue to Pursue/Review

- a. Broadband Utilities and Project Coordinator. After discussions with the State Department of Transportation (DOT), DCCA prepared a draft scope of work for a position to facilitate and coordinate broadband infrastructure projects utilizing government roadways and rights of way. Duties would include review of broadband projects for compliance with DOT right of way and use and occupancy requirements, liaison between the broadband applicant and DOT, and coordination among projects to promote the dig once concept. The objective is to improve the efficiency and turnaround time for these types of approvals in exchange for providing the State with a "big picture" view that could allow for strategic cooperation between government, utility companies and communications companies. The Work Group is supportive of DCCA's efforts as a solution to expedite broadband deployment.
- b. Act 264. The Work Group continues to be interested in the effectiveness of this measure which requires a 45-day review process of broadband permit applications. To date, no member of the Group has had submitted an application for approval that would be subject to the Act.
- c. Hawaii Island Fiber Gap. This is a joint project by DCCA, the County of Hawaii and various stakeholders to close the existing fiber network "gap" of approximately 25 miles between Naalehu and Volcano. Most of the Work Group's members attended an on-island kick-off meeting at the end of April to discuss the project and potential roles and responsibilities of the participants. Also in attendance were representatives of the National Park Service and the U.S. Geological Service. As a result of the meeting, the first step identified to implement the project was the inclusion of the proposed new fiber line in the environmental analysis that is being prepared by Hawaii Electric Light Company in conjunction with the proposed relocation of its existing poles in this area.
- II. Evaluate for Future Action

PWG Report to BAAC November 12, 2014 Page 2

- a. DCCA provided the Work Group with a report prepared by its consulting engineer entitled Broadband Capacity Building Resource Report: Proposals To Implement Broadband And Internet Service To Underserved And Un-Served Locations In South And Southeast Hawaii Island. The report reviewed different wireless broadband solutions that could be used to provide service to unserved and underserved areas of Hawaii Island (The engineer also prepared a "white paper" that focused on using "TV White Space" technology as a transmission method). DCCA is currently working with the County of Hawaii to fund coverage studies, pilot projects and a community assessment for the Puna and Hamakua districts. Completion of these initial projects is scheduled for January 31, 2015. The results of these projects will be shared with the Work Group. DCCA and the County also received a briefing by Hawaiian Telcom of existing and proposed projects to extend broadband service on Hawaii Island pursuant to monies received under the Federal government's Connect America Fund.
- b. As part of its grant activities DCCA is compiling and analyzing State and County statutes, administrative rules, ordinances as well as agency policies and procedures (if publicly accessible) related to the deployment of broadband (wireless and wireline) infrastructure on public lands. This includes laws and procedures related to easements, licenses, permits, approvals, zoning and construction. The scheduled completion for this project is January 31, 2015, and the final report will be shared with the Work Group.

<u>APPENDIX F</u>



August 25, 2015

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Gregg Fujimoto

President

DIRECTOR'S OFFICE COMMERCE AND CONSUMER AFFAIRS

Catherine P. Awakuni Colón, Esq. Director Department of Commerce and Consumer Affairs P.O. Box 541 Honolulu, Hawaii 96809

Re: Act 151 (2011) Relating to Telecommunications; and Act 264 (2013) Relating to Broadband

Dear Ms. Colón:

Thank you for your letter dated July 28, 2015 requesting comments regarding Act 151 (2011) Relating to Telecommunications, and Act 264 (2013) Relating to Broadband (collectively, the "Acts").

Although Oceanic Time Warner Cable is continually working to expand and improve its broadband services to its customers (including increasing broadband speeds and adding to its over 2,200 WiFi hotspots statewide), Oceanic, since approval of the Acts, has not encountered circumstances to date requiring expedited governmental approvals for the development and implementation of its broadband infrastructure.

Nevertheless, Oceanic believes that the streamlined government approval process as provided by the Acts will materially facilitate Oceanic's development and deployment of broadband infrastructure in appropriate future projects and circumstances, and that the provisions of the Acts are important components of the State's overall broadband policy. In addition, given the Federal Communication Commission's recognition that the "lack of reliable, timely, and affordable access to physical infrastructure – particularly utility poles – is often a significant barrier to deploying wireline and wireless [broadband] services" (*See* Report and Order and Order on Reconsideration, 26 F.C.C. Rcd. 5240 (2011)), Oceanic also supports provisions in the Acts recognizing and reinforcing that public utilities must adhere to federal pole attachment requirements and timelines (including the requirement of providing specific reasons and evidence for attachment denials).

Given the foregoing, Oceanic supports the continuation of the Acts beyond the current sunset dates of January 1, 2017 (for Act 151) and June 30, 2018 (for Act 264). Although Oceanic believes that making the provisions of the Acts permanent would provide the most regulatory certainty for broadband providers (thus facilitating infrastructure and budgetary

planning), Oceanic believes the Acts should be extended, at a minimum, for five additional years. Oceanic encourages the Department of Commerce and Consumer Affairs to request the Legislature to extend the Acts accordingly.

Thank you again for the opportunity to comment on the Acts, and please contact me should you have any questions regarding this matter.

Very traly yours Gregg

President Oceanic Time Warner Cable

APPENDIX G

Hawaiian Telcom

August 28, 2015

Ms. Catherine P. Awakuni Colón Director Department of Commerce and Consumer Affairs 335 Merchant Street, Room 310 Honolulu, Hawaii 96813

Re: Act 151 Relating to Telecommunications (2011)

Dear Ms. Awakuni Colón:

Thank you for the opportunity to provide input on Act 151 Relating to Telecommunications (2011) and whether this Act should be extended.

While Hawaiian Telcom has not taken advantage of the provisions of Act 151, we continue to support the intent of Act 151, which is to advance the deployment of our state's broadband infrastructure by streamlining the governmental permit process, and we believe this Act should be extended.

During our internal discussions regarding the extension of Act 151, Hawaiian Telcom identified a project that may have benefitted from the permitting exemption provided under Act 151. If a project with similar circumstances occurs in the future, Hawaiian Telcom will seriously consider applying for an exemption under Act 151.

Advanced broadband services are essential infrastructure for an invocation economy and a knowledge society in the 21st century. Broadband deployment drives opportunities for business, education and healthcare. Act 151 is a forward-looking measure which helps align Hawaii's policy objectives with governmental regulations that encourage greater investment in broadband infrastructure.

At this time, we do not have any other suggested legislation to expedite broadband infrastructure deployment. Hawaiian Telcom remains committed to extending the reach of its next generation broadband network and with the recent award of CAF Phase II support, we will be deploying broadband service over the next six years to more than 11,000 substantially unserved locations primarily in rural areas.

Thank you again for allowing Hawaiian Telcom to provide input on Act 151.

Sincerely,

It P. sh Steven P. Golden

Vice President, External Affairs

Always on.[™]

PO Box 2200, Honolulu, HI 96841 hawaiiantel.com