LATE

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Wednesday, February 10, 2010
9:15 a.m.

TESTIMONY ON S.B. No. 2788
RELATING TO CABLE TELEVISION SYSTEMS

TO THE HONORABLE ROSALYN BAKER, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth and I am the Director of the Department of Commerce and Consumer Affairs ("**Department**"). The Department appreciates the opportunity to provide written comments on this bill.

Under the current law, the term of a new cable franchise is fifteen (15) years. S.B. No. 2788 amends Hawai'i Revised Statutes section 440G-8 by adding a new provision that makes a new cable television franchise subject to review or amendment every five (5) years if the Director of DCCA determines that substantial technological or regulatory changes necessitate a review. In essence, because the Director would have the authority to amend the cable franchise every five (5) years, the term of a new cable franchise effectively would be reduced from fifteen (15) years to five (5) years.

The Department is concerned that an unintended consequence of this bill may be that the Department will lose a significant amount of leverage with a cable operator in working out terms of a franchise that are most advantageous to the public and the State. This flexibility was used most recently in the TWE-Oahu Franchise renewal when the Department was able to include a 5-year technical review but still obtain valuable commitments from the cable operator including high-speed, business class Internet service to all public schools in the State, and eight new digital channels (1 additional statewide digital PEG channel and 7 new digital statewide franchise required channels).

In addition, because the five-year time period may be insufficient to allow the new cable operator to build out its infrastructure and recover a sufficient portion of its costs, it may be less amenable to agreeing to provide services, assets, or money for public use, particularly if those require a long-term amortization.

Moreover, the incentive for a new cable operator to enter the market knowing that the terms of its franchise might change substantially in only five years would be substantially reduced and may in turn have the unintended consequence of limiting competition.

The Department notes that it does not object to subjecting cable franchises to periodic reviews. However, the Department does not believe that the law should explicitly establish the review and amendment process as we are already able to provide for a periodic review under the current law. In fact, the Department made periodic reviews a requirement in the 2010 renewal of Oceanic Time Warner Cable's cable franchise for Oahu.

However, should this bill move forward, the Department suggests amending the language for purposes of clarity by authorizing the Director to: (1) require a cable operator to conduct a review and develop an updated technological plan every five (5) years in the event the Director determines that technological or regulatory changes necessitate a review, (2) pursuant to the findings of such review, require the cable operator to upgrade its cable system, and (3) take any other appropriate action consistent with the cable franchise. A proposed revision of the bill is attached for your consideration.

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

SECTION 2. Section 440G-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In issuing a cable franchise under this chapter, the director is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the cable franchise terms, limitations, and conditions which the director deems the public interest may require. The cable franchise shall be nonexclusive, shall include a description of the service area in which the cable system is to be constructed, extended, or operated and the approximate date on which the service is to commence and shall authorize the cable operator to provide service for a term of fifteen years[~~.~~]; provided that the director may require the cable operator to conduct a review and develop a technology upgrade plan for its cable system after every five-year period during the franchise term in the event that the Director determines that substantial technological or regulatory changes necessitate a review and, pursuant to the findings of the review, may also require the cable operator to upgrade its cable system or take any other appropriate action consistent with the cable franchise."