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Testimony of Damon Stewart
Vice President, State Government Affairs, DIRECTV, Inc.
To the
House Committee on Economic Development and Business
on HRC 88

March 22, 2013
10:30 a.m.

Thank you Chairman Tsuji and members of the Committee.

My name is Damon Stewart, and I am the Vice President of State Government Affairs for DIRECTV. Today however I submit testimony on behalf of DIRECTV, DISH NETWORK, and the Satellite Broadcasting and Communications Association, which essentially encompasses the satellite industry in the State of Hawaii. Combined, DISH and DIRECTV are proud to provide television service to over twenty eight thousand Hawaii families.

I appreciate the opportunity to submit testimony about the House resolution (HCR 88) urging examination of the parity of the current tax and fee structure imposed on video programming service providers. We stand ready to participate as a resource and corporate partner in a balanced discussion of these issues, but we do take issue with some of the assumptions and conclusions embedded in the language of the existing resolution. Frankly, as we see it, the resolution as currently drafted leaves the committee with nothing to study. It reaches conclusions on all the issues without taking a day of testimony or hearing from any of the interested parties, and satellite TV providers in particular.

Most importantly, we object to the conclusion that the state would be leveling the playing field by requiring all video providers to pay the franchise fee. This conclusion is based on an assumption, one that we also disagree with, that satellite TV providers—or any provider that does not bury its equipment on public land—should be required to pay for rights of way that they do not use.

We have offered alternative language for a resolution that first calls for an evaluation of whether there is any disparity for the Hawaii legislature to fix and if so, to consider alternative solutions.

From our perspective, there is no disparity. Currently, both cable and satellite pay state tax of 4.16% in Hawaii. We all pay our share.

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Cable instead is focused on franchise fees, fees that it pays to local government for the right to access public rights of way to lay its equipment.
Cable companies are not special. They are not entitled to free use of other people's property. Like any other corporation or individual, if they seek the use property owned by others, they must first seek the landowner's permission, and landowner may condition such permission on a payment for such use—rent—if they so choose.

This does not change simply because the property is owned by the taxpayer. If a person or corporation seeks the use of city property for private use, they must obtain permission from the city to do so. Mayors and city councils have fiduciary responsibilities to their constituents and not to give away property to private companies for the latter's commercial use.

That is why cable companies have for decades entered into franchise agreements with local government for the right to dig up streets and sidewalks and lay their cables through the public rights-of-way. That rent is called a franchise fee. Cable companies are permitted to, and do, pass on this business cost to their customers in the form of a line item surcharge on the customers' bills. Nothing requires cable companies to pass this on as a line item on the bill – they are simply allowed to and do.

Satellite TV providers do not enter into franchise agreements or pay franchise fees for the simple reason that we don't use public rights of way. Satellite TV companies have developed technology that does not require us to dig up public streets or hang wires from utility poles to deliver TV service to our customers. Our TV signals travel through the air directly to subscribers' homes from satellites orbiting above the Earth. Making our customers pay franchise fees—or an equivalent amount in taxes—would be like making airline passengers pay a fee for using railroad tracks. They don't use them; they shouldn't have to pay for them.

Satellite TV providers have our own business costs that are unique to our method of delivering service. For example, we pay between three hundred fifty to five hundred million dollars to design, build and launch each state-of-the-art communications satellite, of which the companies combined have eighteen.

But we don't see it as anti-competitive that we pay to construct each new satellite, to rent launch pads, to purchase rocket fuel. And we certainly haven't asked

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Congress to give us permission to have a separate surcharge for such items on the bill that we pass on to our customers.

Instead, this is just the price we pay for choosing to deliver service to our customers from satellites orbiting the earth. Franchise fees are no different – they are a cost cable companies pay because they choose to deliver service to their customers by burying cables in public lands.

Cable providers themselves acknowledge that franchise fees are operating costs, not taxes, in the annual reports they provide to investors. These filings are all made under oath, with civil and criminal penalties for falsification.

For example, Comcast, in last year's 10-K, filed with the Securities and Exchange Commission lists the franchise rights it obtains in exchange for paying franchise fees as its most valuable asset, valued at a staggering $59 billion.

It is the same for Time Warner which values its franchise rights at nearly $25 billion. (We've attached excerpts from Comcast's and Time Warner's SEC filings for your reference.)

The courts agree. The Fifth Circuit has stated that "franchise fees are not a tax, however, but essentially a form of rent; the price paid to rent use of the public rights of way . . . there can be no doubt that franchise fees imposed on the cable operator are part of a cable operator's expense of doing business." *City of Dallas v. FCC*, 118 F.3d 393, 397-98 (5th Cir. 1997).

From our perspective, franchise fees are an operating cost and should be outside the scope of this resolution entirely. States generally don't get involved in leveling the operating costs of companies. It would be no different than taxing music sold on iTunes at a higher rate than music sold at a local record store, because iTunes doesn't have to pay rent for brick and mortar stores.

To this end, we have provided language that fairly and accurately characterizes the nature of franchise fees and provides a more balanced, industry-neutral approach to any study.

Thank you.

Federal Case Law:
Franchise fees are rent

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"Franchise fees are not a tax . . . but essentially a form of rent [i.e.,] the price paid to rent use of public right-of-ways . . . there can be no doubt that franchise fees imposed on the cable operator are part of a cable operator's expense of doing business."

City of Dallas v. FCC, 118 F.3d 393, 397-98 (5th Cir. 1997)

Cable Companies:

Franchise fees are rent

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Franchise fees, in turn, are commonly understood to be consideration for the contractual award of a government benefit. Many cases have treated franchise fees as a form of "rent." Cable franchises are enforceable as contracts, even though they are traditionally awarded by ordinance. . . . The contractual nature of cable franchise fees removed them far from "taxes." Taxes simply have no contractual element; they are a demand of sovereignty. The consent of the taxpayer is not necessary to their enforcement.

Brief submitted by Time Warner in the case of Time Warner Ent't – Advance Newhouse P'ship v. City of Lincoln, Case No. 8:04- CV-2049 (D. Neb. 2004).

2011 Annual Report to the SEC

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2011

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM TO

Commission file number 001-32871

COMCAST CORPORATION
(Exact name of registrant as specified in its charter)

PENNSYLVANIA (State or other jurisdiction of incorporation or organization)	**27-0000798** (I.R.S. Employer Identification No.)
One Comcast Center, Philadelphia, PA (Address of principal executive offices)	**19103-2838** (Zip Code)

Registrant's telephone number, including area code: (215) 286-1700

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Title of Each Class	Name of Each Exchange on which Registered
Class A Common Stock, $0.01 par value	NASDAQ Global Select Market
Class A Special Common Stock, $0.01 par value	NASDAQ Global Select Market
2.0% Exchangeable Subordinated Debentures due 2029	New York Stock Exchange
5.50% Notes due 2029	New York Stock Exchange
6.625% Notes due 2056	New York Stock Exchange
7.00% Notes due 2055	New York Stock Exchange
8.375% Guaranteed Notes due 2013	New York Stock Exchange
9.455% Guaranteed Notes due 2022	New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
NONE

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☒ No ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes ☐ No ☒

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.
Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).
Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments to this Form 10-K. ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act).
Yes ☐ No ☒

As of June 30, 2011, the aggregate market value of the Class A common stock and Class A Special common stock held by non-affiliates of the Registrant was $52.897 billion and $15.494 billion, respectively.

As of December 31, 2011, there were 2,095,476,503 shares of Class A common stock, 601,012,813 shares of Class A Special common stock and 9,444,375 shares of Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Part III — The Registrant's definitive Proxy Statement for its annual meeting of shareholders presently scheduled to be held in May 2012.

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"Other operating expenses include franchise fees, pole rentals, plant maintenance, vehicle-related costs, expenses related to our regional sports and news networks, advertising representation and commission fees, and expenses associated with our business services."

customers and increase the number of delivery platforms, such as online and through our mobile applications for smartphones and tablets; and as fees for retransmission of broadcast networks increase.

Technical Labor Expenses

Technical labor expenses include the internal and external labor costs to complete service call and installation activities, as well as network operations, fulfillment and provisioning costs. These expenses remained relatively stable in 2011 and 2010 due to improvements in our service call metrics and decreases in customer activity.

Customer Service Expenses

Customer service expenses include the personnel and other costs associated with handling service calls and customer support. Customer service expenses remained relatively stable in 2011. Customer service expenses decreased in 2010 primarily due to operating efficiencies and due to higher levels of activity in 2009 related to the transition by broadcasters from analog to digital transmission and our all digital conversion.

Marketing Expenses

Marketing expenses increased in 2011 and 2010 primarily due to increases in spending associated with the continued expansion of business services and costs associated with the XFINITY® brand and competitive marketing, and due to increases in direct sales efforts.

Other Costs and Expenses

Other operating costs and expenses include franchise fees, pole rentals, plant maintenance, vehicle-related costs, advertising and representation fees, and expenses associated with our business services. These expenses increased in 2011 and 2010 primarily due to the continued expansion of business services and other service enhancement initiatives. During 2011, 2010 and 2009, we implemented personnel and cost reduction programs that were focused on streamlining our Cable Communications operations. In connection with these initiatives, during 2011, 2010 and 2009, we recorded $36 million, $66 million and $81 million, respectively, of severance costs.

NBCUniversal Segments Overview

The discussion below compares the NBCUniversal segments' pro forma combined results for 2011 and 2010, as well as our Cable Networks segment actual results for 2010 and 2009. Management believes reviewing our operating results by combining actual and pro forma results for the NBCUniversal segments for 2011 and 2010 is more useful in identifying trends in, or reaching conclusions regarding, the overall operating performance of these segments for the current year. Our pro forma segment information includes adjustments as if the NBCUniversal and Universal Orlando transactions had occurred on January 1, 2010. Our pro forma data was also adjusted for the effects of acquisition accounting and the elimination of costs and expenses directly related to the transactions but does not include adjustments for costs related to integration activities, cost savings or synergies that have been or may be achieved by the combined businesses. Pro forma amounts are not necessarily indicative of what our results would have been had we operated the NBCUniversal contributed businesses or Universal Orlando since January 1, 2010, nor of our future results.

2011 Franchise Rights Valuation: **$59,376 Billion**

$59,376 Billion
Rights Valuation:

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Consolidated Balance Sheet

December 31 (in millions, except share data)	2011	2010
Assets		
Current Assets:		
Cash and cash equivalents	$ 1,620	$ 5,984
Receivables, net	4,351	1,855
Programming rights	987	122
Other current assets	1,615	925
Total current assets	8,573	8,886
Film and television costs	5,227	460
Investments	9,854	6,670
Property and equipment, net	27,559	23,515
Franchise rights	59,376	59,442
Goodwill	26,874	14,958
Other intangible assets, net	18,165	3,431
Other noncurrent assets, net	2,190	1,172
Total assets	$ 157,818	$ 118,534
Liabilities and Equity		
Current Liabilities:		
Accounts payable and accrued expenses related to trade creditors	$ 5,705	$ 3,291
Accrued participations and residuals	1,255	—
Deferred revenue	790	83
Accrued expenses and other current liabilities	4,124	3,060
Current portion of long-term debt	1,367	1,800
Total current liabilities	13,241	8,234
Long-term debt, less current portion	37,942	29,615
Deferred income taxes	29,932	28,246
Other noncurrent liabilities	13,034	7,862
Commitments and contingencies (Note 19)		
Redeemable noncontrolling interests	16,014	143
Equity:		
Preferred stock—authorized, 20,000,000 shares; issued, zero	—	—
Class A common stock, $0.01 par value—authorized, 7,500,000,000 shares; issued, 2,460,937,253 and 2,437,281,651; outstanding, 2,095,476,503 and 2,071,820,901	25	24
Class A Special common stock, $0.01 par value—authorized, 7,500,000,000 shares; issued, 671,947,577 and 766,168,658; outstanding, 601,012,813 and 695,233,894	7	8
Class B common stock, $0.01 par value—authorized, 75,000,000 shares; issued and outstanding, 9,444,375	—	—
Additional paid-in capital	40,940	39,780
Retained earnings	13,971	12,158
Treasury stock, 365,460,750 Class A common shares and 70,934,764 Class A Special common shares	(7,517)	(7,517)
Accumulated other comprehensive income (loss)	(152)	(99)
Total Comcast Corporation shareholders' equity	47,274	44,354
Noncontrolling interests	381	80
Total equity	47,655	44,434
Total liabilities and equity	$ 157,818	$ 118,534

See accompanying notes to consolidated financial statements.

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“**Our largest asset, our cable franchise rights**, results from agreements we have with state and local governments that allow us to construct and operate a cable business within a specified geographic area.”

specified geographic area.” cable business within a construct and operate a

Valuation and Impairment Testing of Cable Franchise Rights

Our largest asset, our cable franchise rights, results from agreements we have with state and local governments that allow us to construct and operate a cable business within a specified geographic area. The value of a franchise is derived from the economic benefits we receive from the right to solicit new customers and to market new services, such as advanced video services and high-speed Internet and voice services, in a particular service area. The amounts we record for cable franchise rights are primarily a result of cable system acquisitions. Typically when we acquire a cable system, the most significant asset we record is the value of the cable franchise rights. Often these cable system acquisitions include multiple franchise areas. We currently serve approximately 6,400 franchise areas in the United States.

We have concluded that our cable franchise rights have an indefinite useful life since there are no legal, regulatory, contractual, competitive, economic or other factors which limit the period over which these rights will contribute to our cash flows. Accordingly, we do not amortize our cable franchise rights but assess the carrying value of our cable franchise rights annually, or more frequently whenever events or changes in circumstances indicate that the carrying amount may exceed the fair value (“impairment testing”). We estimate the fair value of our cable franchise rights primarily based on a discounted cash flow analysis that involves significant judgment. When analyzing the fair values indicated under the discounted cash flow models, we also consider multiples of operating income before depreciation and amortization generated by underlying assets, current market transactions and profitability information.

If we were to determine that the value of our cable franchise rights was less than the carrying amount, we would recognize an impairment charge for the difference between the estimated fair value and the carrying value of the assets. For purposes of our impairment testing, we have grouped the recorded values of our various cable franchise rights into our Cable Communications divisions or units of account. We evaluate the unit of account periodically to ensure our impairment testing is performed at an appropriate level.

Since the adoption of the accounting guidance related to goodwill and intangible assets in 2002, we have not recorded any significant impairment charges to cable franchise rights as a result of our impairment testing. A future change in the unit of account could result in the recognition of an impairment charge.

We could also record impairment charges in the future if there are changes in long-term market conditions, in expected future operating results, or in federal or state regulations that prevent us from recovering the carrying value of these cable franchise rights. Assumptions made about increased competition and economic conditions could also impact the valuations used in future annual impairment testing and result in a reduction of fair values from those determined in the July 1, 2011 annual impairment testing. The table below illustrates the impairment related to our Cable Communications divisions that would have occurred had the hypothetical reductions in fair value existed at the time of our last annual impairment testing.

Percent Hypothetical Reduction in Fair Value and Related Impairment

(in millions)	10%	15%	20%	25%
Northeast Division	$ —	$ (492)	$ (1,842)	$ (3,192)
Central Division	—	—	—	(576)
West Division	—	—	—	(423)
	$ —	$ (492)	$ (1,842)	$ (4,191)

2011 Annual Report to the SEC

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2011

Commission file number 001-33335

TIME WARNER CABLE INC.

(Exact name of registrant as specified in its charter)

Delaware	**84-1496755**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

60 Columbus Circle
New York, New York 10023
(Address of principal executive offices) (Zip Code)

(212) 364-8200
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value $0.01	New York Stock Exchange
5.750% Notes due 2031	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☑ Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☑

As of the close of business on February 15, 2012, there were 314,086,417 shares of the registrant's Common Stock outstanding. The aggregate market value of the registrant's voting and non-voting common equity securities held by non-affiliates of the registrant (based upon the closing price of such shares on the New York Stock Exchange on June 30, 2011) was approximately $25.6 billion.

DOCUMENTS INCORPORATED BY REFERENCE

Description of document	Part of the Form 10-K
Portions of the definitive Proxy Statement to be used in connection with the registrant's 2012 Annual Meeting of Stockholders	Part III (Item 10 through Item 14) (Portions of Items 10 and 12 are not incorporated by reference and are provided herein)

2011 Franchise Rights Valuation: **$25,194 Billion**

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TIME WARNER CABLE INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

On February 9, 2012, Comcast and Verizon Wireless received a Request for Additional Information and Documentary Materials from the U.S. Department of Justice in connection with their required notification filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Separately, on December 2, 2011, TWC, Comcast, Bright House and Verizon Wireless also entered into agency agreements that will allow the cable companies to sell Verizon Wireless-branded wireless service, and Verizon Wireless to sell each cable company's services. After a four-year period, subject to certain conditions, the cable companies will have the option to offer wireless service under their own brands utilizing Verizon Wireless' network. In addition, the parties entered into an agreement that provides for the creation of an innovation technology joint venture to better integrate wireless and cable services. On January 13, 2012, TWC received a civil investigative demand from the U.S. Department of Justice requesting additional information about these agreements.

In early 2012, TWC ceased making its existing wireless service available to new wireless customers. As a result, during the fourth quarter of 2011, the Company impaired $60 million ($36 million on an after-tax basis) of assets related to the provision of wireless service that will no longer be utilized. Of the $60 million noncash impairment, $44 million related to fixed assets and wireless devices and $16 million related to the remaining value of the wireless wholesale agreements with Sprint and Clearwire discussed above.

Upon the closing of the SpectrumCo transaction, the Company expects to record a pretax gain of approximately $430 million (approximately $260 million on an after-tax basis), which will be included in other income (expense), net, in the Company's consolidated statement of operations. Additionally, in the quarter in which the SpectrumCo transaction closes, the Company expects to record a noncash income tax benefit of approximately $45 million related to an adjustment to the Company's valuation allowance for deferred income tax assets associated with its investment in Clearwire Communications.

8. INTANGIBLE ASSETS AND GOODWILL

As of December 31, 2011 and 2010, the Company's intangible assets and related accumulated amortization consisted of the following (in millions):

	December 31, 2011			December 31, 2010		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Intangible assets subject to amortization:						
Customer relationships	$ 50	$ (7)	$ 43	$ 6	$ (5)	$ 1
Cable franchise renewals and access rights	252	(94)	158	220	(94)	126
Other	37	(10)	27	42	(37)	5
Total	$ 339	$ (111)	$ 228	$ 268	$ (136)	$ 132
Intangible assets not subject to amortization:						
Cable franchise rights	$ 25,194	$ (922)	$24,272	$25,013	$ (922)	$24,091

The Company recorded amortization expense of $33 million in 2011, $168 million in 2010 and $249 million in 2009. Based on the remaining carrying value of intangible assets subject to amortization as of December 31, 2011, amortization expense is expected to be $40 million in 2012, $37 million in 2013, $34 million in 2014, $30 million in 2015 and $23 million in 2016. These amounts may vary as acquisitions and dispositions occur in the future, including the pending Insight acquisition.

TAX FOUNDATION
OF HAWAII
126 Queen Street, Suite 304, Honolulu, Hawaii 96813, Telephone 536-4587

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March 22, 2013

The Honorable Clift Tsuji, Chair
House Committee on Economic Development
& Business
State Capitol, Room 318
Honolulu, Hawaii 96813

RE: HCR 88/HR 68 - Requesting the Department of Commerce and Consumer Affairs and the Department of Taxation to Conduct a Study Examining the Parity of the Current Tax Fee Structure imposed on Video Programming Service Providers

Dear Chair Tsuji & Committee Members:

One of the beauties of Hawaii's general excise tax is that is predicated on the concept that the tax is imposed for the "privilege" of doing business in Hawaii. As a result, regardless of the goods or services a taxpayer is selling, the tax is imposed for the privilege of doing business of selling products or services in Hawaii. The general excise tax has relatively few exemptions and unlike the retail sales tax, the tax is imposed on the seller and not the purchaser because it is the seller who chooses to have the privilege of doing business in Hawaii.

Therefore, HCR 88/HR 68 raises the similar issue of whether or not all providers of video programming services are being treated the same with respect to the imposition of taxes and fees. Currently, only providers of video programming in Hawaii are subject to the utility franchise fee as they utilize rights of ways in order to transmit their product called video programming. However, cable companies are in direct competition with providers of video programming who do not utilize that technology. While past attempts to impose the franchise tax on other providers of video programming failed because there was a lack of nexus for purposes of the franchise tax, we believe that the form or technology utilized to transmit such video programming should not dictate how or on whom the imposition of the state's taxes should be undertaken. Further, we would point out that the technology is still evolving such that we cannot predict how such video programming products will be transmitted in the future.

HCR 88HR 68 calls on the department of commerce & consumer affairs and the department of taxation to not only identify who these providers of video programming are but to also study the current tax and fee structure that should bring about equity to providers of video programming. A quick review of other states indicates that policymakers in those states which have attempted to recast their current laws to accomplish parity among providers of video programming have failed to achieve equity and fairness in taxing this product.

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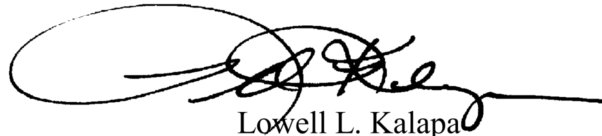
A review of the issue of video programming that focuses on the product rather than the technology is a far more comprehensive and sensitive strategy to achieving parity among all providers of the video programming product.

Thus, we urge that this committee to give judicious consideration to the calling for this review.

Sincerely,



Lowell L. Kalapa
President

LLK/jad