



Testimony before the **House Finance Committee**

Monday, February 25, 2019, 2:30 p.m.
State Capitol, Conference Room 308

On the following measure:

H.B. 1124, HD 1: Relating To Department Of Commerce and Consumer Affairs

Dear Chair Luke, Vice Chair Cullen and fellow House Finance Committee Members,

Mahalo for this opportunity to submit testimony on HB 1124 HD 1. My name is Leslie Wilcox and I am the President and CEO of Hawai'i Public Television Foundation, dba PBS Hawai'i, a private, nonprofit 501(c)3 educational multimedia organization. We are Hawai'i's only locally owned statewide television station; Hawai'i's only member of the trusted national Public Broadcasting Service (PBS); Hawai'i's only federally licensed statewide educational broadcaster; and we have the largest broadcast footprint of any Hawai'i television station, serving 25 of the 25 most financially disadvantaged communities in the state.

Via cable, broadcast and satellite, we present **PBS NewsHour, Frontline, Insights on PBS Hawai'i, HIKI NŌ Statewide Student News** and other reliable news and public affairs; **Sesame Street, Curious George, Daniel Tiger's Neighborhood** and other fun, curriculum-rich shows for young children; more local programming including **Na Mele: Traditions in Hawaiian Song, Long Story Short with Leslie Wilcox** and **PBS Hawai'i Presents**; national flagship shows **NOVA, Nature** and **Masterpiece Theatre**; and international offerings from the **BBC** and **NHK-Asia**, as part of a diverse array of offerings in science, history, and arts and culture.

We are opposed to Section 3 (only) of HB 1124 HD 1, which changes DCCA process in its direction of cable franchise fees to educational and Native Hawaiian services and the Islands' PEGs, at a time that the Federal Communications Commission is engaged in sweeping rule-making regarding the calculation and collection of these franchise fees. Any action taken by the FCC will have an impact in Hawai'i, and HB 1124 HD 1's proposed changes to the franchise fee process while federal rule-making is underway may have unintended consequences.

On behalf of PBS Hawai'i, I respectfully ask that you place HB 1124 HD 1's Section 3 on hold until the FCC's proposed rules are adopted and undergo likely judicial review.

Thank you very much for this opportunity to be heard. Please let us know if we can provide further information.

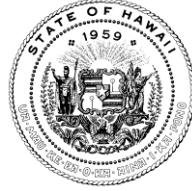
Sincerely,

A handwritten signature in cursive script that reads "Leslie Wilcox".

Leslie Wilcox
President and CEO
lwilcox@pbshawaii.org
Ph. 462.5020

PBS Hawai'i | Tel: 808.462.5000 | pbshawaii.org

LATE



DAVID Y. IGE
GOVERNOR

JOSH GREEN
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
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Monday, February 25, 2019
2:30 p.m.
State Capitol, Conference Room 308**

**On the following measure:
H.B. 1124, H.D. 1, RELATING TO THE DEPARTMENT
OF COMMERCE AND CONSUMER AFFAIRS**

Chair Luke and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department). H.B. 1124, H.D. 1 relates to the base budget of the DCCA's Cable Television Division (CATV), program ID CCA-102. Except for amounts related to scheduled increases to personal service expenses, including fringe, the CATV has no additional requests for fiscal biennium (FB) 2019-2021.

The Department:

- (1) **Supports parts I and II of this bill**, which appropriate funds for the FB 2019-2021 operating budget of the CATV; and
- (2) **Opposes part III of this bill**, which: (a) revises Hawaii Revised Statutes (HRS) 440G-15 to statutorily set the fee assessed to cable operators at 4.5% of the income received from subscribers for cable services rendered

during the preceding calendar year; (b) authorizes the DCCA Director to reduce the fee by decision and order if the amount exceeds the amount necessary to administer HRS chapter 440G; and (c) creates a formula to determine the annual fee to be assessed to cable operators.

Testimony on Parts I and II

The Department supports parts I and II of this bill that make program appropriations for the CATV to carry out its duties. These duties include supporting the DCCA Director in the issuance of cable franchises, regulation of cable operators, and facilitation of expanded access and usage of broadband services throughout the State. Among other things, the CATV:

- (1) Monitors and enforces compliance with applicable orders, laws, and rules, including participating in the federal telecommunications legislation and rulemaking process, and oversees cable operator technical inspections and reporting requirements;
- (2) Identifies and addresses community concerns through complaint monitoring and resolution procedures, as well as the administration of the Cable Advisory Committee;
- (3) Supports public, educational, and governmental (PEG) access to promote diversity of programming while procuring contracts for PEG services pursuant to Act 93, Session Laws of Hawaii (SLH) 2014;
- (4) Facilitates enhancements to the broadband infrastructure of the State and local government and educational institutions through administration of the institutional network (INET); and
- (5) Supports and facilitates broadband expansion and adoption initiatives by working with both government and private stakeholders, disseminating broadband information, and providing administrative support to the Broadband Assistance Advisory Council.

Testimony on Part III

The Department opposes part III of H.D. 1 because it appears to conflate the annual fee referred to in the current HRS section 440G-15 with the cable franchise fee

that is established through the director's authority as the State's cable franchise authority and set forth in the cable franchise agreements and issued orders. In doing so, H.D. 1 at a minimum creates confusion as to the amount of the annual fee and the cable franchise fee, and at worst, severely reduces both fees.

For the Committee's information, the State annually assesses a provider that is issued a cable television franchise in the State a **cable franchise fee**, which amount is set by negotiation of the cable franchise agreement entered into upon issuance or renewal of the cable franchise. The **annual fee**, which is established by HRS section 440G-15 and Hawaii Administrative Rules (HAR) section 16-132-2, is currently set at 1% of the income received from subscribers for cable services rendered during the preceding calendar year, and is subject to increase or decrease by the DCCA Director upon determining that the annual fee is insufficient or exceeds the amount necessary, respectively, to cover the costs of administering HRS chapter 440G. Although the annual fee is separately set by statute and rule, the annual fee (currently set at 1%) that is paid to the State to fund the CATV is counted toward the total federal cap on franchise fees of 5% of the cable operator's gross revenues for the preceding calendar year. Therefore, the annual fee is considered 1% of the current cable franchise fee.

If the Legislature's intent in amending HRS section 440G-15(a) is to reduce the CATV's carryover balance from the collection of annual fees, the DCCA already has the authority to immediately and administratively reduce the amount of the annual fees assessed without this legislation. In fact, based upon internal department-recommended guidelines and consistent with the DCCA's past actions, the CATV had intended to develop a plan to reduce or suspend the collection of annual fees from cable operators, to be consistent with reserve guidelines while also being cognizant of the changing landscape of the cable industry.

However, in September 2018, the FCC indicated its intent to, and subsequently in fact did, propose new rules that could drastically reduce future cable franchise fee payments. Specifically, the FCC proposed new rules that would change how cable franchise fees are calculated. The new proposed rules would allow all cable-related, "in-kind" contributions (other than PEG capitals costs and build-out requirements) to be

treated as part of the franchise fees subject to the federal 5% franchise fee cap. In-kind contributions that could be deducted from cable franchise fee payments may be interpreted to include the fair market value of other franchise requirements, such as PEG channel capacity and INET connections. Thus, if adopted, these proposed rules could drastically reduce future franchise fee payments to the State by allowing cable operators to offset the value of all contributions to the State's INET (which constitutes much of the communications infrastructure for state and local government agencies and educational institutions) and for PEG cable channels and PEG services. The DCCA has submitted comments to the FCC on behalf of the State regarding the detrimental impacts of these proposed new rules. The FCC has not yet issued its decision; however, judicial appeal is expected if the new proposed rules are adopted.

If the new proposed rules are adopted by the FCC and upheld by the courts on appeal, it would likely substantially reduce the monies collected by the CATV, INET benefits for government agencies and educational institutions, and services funding for PEG organizations throughout the State. Due to the uncertainty created by the FCC's proposed action and its possible adverse impact on future collection of franchise fees, the CATV deferred its plan to reduce or suspend the collection of annual fees. Maintaining current franchise fee assessments in the form of the State's assessed cable franchise fees and annual fees until the final outcome of the proposed rules is determined and any impacts quantified would be the most prudent course of action for the State at this time. The current franchise fees and benefits are crucial to provide the State's communications network (i.e., INET), to administer HRS chapter 440G, and to support other important services for the public, including PEG access services and PBS Hawaii.

For the reasons set forth above, the Department strongly recommends that this committee amend H.D. 1 by deleting section 4 in its entirety and defer any reduction in the CATV's reserves until the FCC takes action on its proposed rules. If, alternatively, the Committee prefers an immediate reduction in reserves pending a decision on the proposed rules, the Committee may wish to provide that the DCCA Director reduce annual fee assessments to 0.5% until reserves reach 24 months of the CATV's

budgeted expenses, unless the FCC's new proposed rules are implemented. If the Committee desires to put this directive in statute, the Department recommends amending HRS section 440G-15(a) by adding that the "annual fees set forth in this section shall not exceed 0.5% of the cable operator's gross revenues for the preceding calendar year."

Thank you for the opportunity to testify on this bill.