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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Intrastate Commerce  
Tuesday, February 4, 2020  
9:30 a.m.  
State Capitol, Conference Room 430**

**On the following measure:  
H.B. 2595, RELATING TO CABLE TELEVISION**

Chair Ohno and Members of the Committee:

My name is Ji Sook “Lisa” Kim, and I am the Cable Administrator for the Department of Commerce and Consumer Affairs’ (Department) Cable Television Division. The Department offers comments on this bill.

The purposes of this bill are to: (1) amend the factors the Director of the Department (Director) must consider when determining whether cable service should be made available upon a new application for a cable franchise; and (2) mandate that the Director require cable operators to provide cable service to residences in their service area where there is a minimum density of at least 25 homes per linear mile, with certain exceptions.

The Department appreciates the bill’s intent of improving access to television service to sustain the needs and uses of Hawaii residents. The Department’s franchise orders reflect its longstanding commitment to serving unserved and underserved

populations in the State, including through appropriate, agreed-upon extension requirements.

To that end, the Department does not believe that the current requirement that the Director consider the geography and topography of a proposed service area to be serviced by the applicant (page 3, lines 10 to 15) impedes its franchise considerations, and it urges this committee to retain this subsection. Due to Hawaii's unique and varied landscape, precluding geographical and topographical issues may eliminate valid considerations from entering the decision-making process.

Also, although the Department does not oppose the inclusion of the 25 homes per linear mile criteria in statute, it notes that restricting the Director's ability to apply the service deployment requirement where services from another cable operator or multichannel video programming distributors are available in an area might create mini-monopoly zones in certain existing communities and new developments. This is because a cable operator may decline to extend its system, even though the area meets the 25 homes per linear mile requirement. This may have the unintended consequence of limiting cable television access and choice for Hawaii consumers and thereby inhibit the growth of competition. The U.S. Congress reflected upon the importance of competition in the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). As its title indicates, one of the stated purposes of the 1992 Cable Act is to "promote competition in cable communications." 47 U.S.C. § 521(c). In its findings and policy for the 1992 Cable Act, Congress explained:

[M]ost cable television subscribers have no opportunity to select between competing cable systems. Without the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers and video programmers.

Pub. L. 102-385, §2(a) Oct. 5, 1992, 106 Stat. 1460, 1463.

In addition, the Department is unclear whether a cable operator could claim that all areas throughout the State are already subject to another multichannel video programming distributor and that therefore, no additional buildout will ever be

necessary. This would result in the opposite effect of the bill's claimed purpose to provide cable access necessary to sustain the needs and uses of residents. For example, under the Federal Communications Commission's recent ruling that basic cable rate regulation is no longer necessary on Kauai since AT&T TV Now (formerly known as DirecTV Now) provides effective competition, a cable operator could argue that all regions throughout Hawaii have at least one provider of video service, regardless of how reliable that service may be in certain areas. This could lead to potential "cherry picking" of areas for cable expansion and essentially make the proposed requirement of providing service in areas with 25 homes per a linear mile moot.

To address these concerns, the Department respectfully suggests the following amendments:

- Section 1, page 1, lines 12 to 13 should be amended to read "already available on a competitive basis from other providers."
- Section 2, page 4, lines 9 to 10 should be amended to read "where service is available from at least three other cable franchisees or multichannel video programming distributors, as defined in . . ."

These amendments would help to ensure that the bill's purpose of providing cable access necessary to sustain the needs and uses of residents is realized and that Hawaii residents have an opportunity to choose among competing service providers.

Thank you for the opportunity to testify on this bill.

Charter Communications  
Testimony of Myoung Oh, Director of Government Affairs

**COMMITTEE ON INTRASTATE COMMERCE**

Hawai'i State Capitol, Conference Room 430  
Tuesday, February 4, 2020  
9:30 AM

**SUPPORT OF H.B. 2595, RELATING TO CABLE TELEVISION**

Chair Ohno, Vice-Chair Kobayashi, and Members of the Committee.

Charter Communications, Inc. is pleased to provide testimony in support of H.B. 2595, a bill that promotes access to video programming service throughout the State, applies a reasonable standard for providing such access based on demonstrated cable-related community needs in Hawai'i, and eliminates unnecessary and vague criteria in current law for determining a cable operator's service area, while relying on market forces in lieu of build-out regulations where competition is present.

As our State continues to grow, new home developments and residential communities are offering new housing options for Hawai'i families. We believe that Hawai'i residents and cable operators alike would benefit from application of a reasonable build-out standard, with due considerations to cost. We believe that H.B. 2595 includes such a standard that takes into account the unique geographical and operational considerations of Hawai'i, by requiring cable operators to make cable service available to any residence within the operator's service area located in a portion

of the area where there is a minimum density requirement of 25 homes per linear mile (HPM) of distribution plant.

By applying this access requirement to all cable television providers throughout the State, H.B. 2595 provides a level playing field and ensures that new developments and planned communities that meet the 25 HPM density threshold will gain access to cable service. Of particular importance, the density “floor” provided by the legislation ensures that cable operators – and their customers – will not be mandated to bear the costs and burdens associated with extending service to uneconomic, low-density areas. Of course operators will remain free to exercise their discretion to deploy service to such areas.

Given Charter’s experience with a 25 HPM requirement in all of its existing Hawai’i franchises, Charter believes that H.B. 2595’s 25 HPM requirement reflects the reasonable costs of extending cable service to communities in Hawai’i. Under the new legislation, the Department of Commerce and Consumer Affairs will no longer need to consider vague and open-ended “geography and topography” factors as under current law. H.B. 2595 thereby provides predictability for consumers, home builders, and cable operators regarding access rights and obligations in any portion of the State.

Lastly, H.B. 2595 provides an exception to the minimum density requirement in any portion of a cable operator’s franchise area where service is available from another cable operator or any other multichannel video programming distributor with facilities in the public right of way. By refraining from applying the minimum density requirement in areas of the State subject to competition, H.B. 2595 reflects the different cost considerations that would apply in such a situation and encourages new

entry into the video services business and competitive offers for serving new developments. This approach will promote greater consumer choice and allow market forces to determine the video programming services, features, and capabilities available to Hawai'i residents.

In short, H.B. 2595 is a balanced and well-calibrated bill that will ensure reasonable access to cable service for Hawai'i residents and predictability for cable operators while promoting new entry, competition, and consumer choice. We may offer amendments and will work with the Committee on Intrastate Commerce and the bill's sponsor to ensure that the intent and purpose of this legislation is firm. We respectfully request your favorable adoption and urge its passage.

Mahalo for the opportunity to provide testimony.