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**Testimony of the Department of Commerce and Consumer Affairs
Before the
Senate Committee on Commerce, Consumer Protection, and Health
Thursday, February 20, 2020
10:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 2432, S.D. 1, RELATING TO CABLE TELEVISION**

WRITTEN TESTIMONY ONLY

Chair Baker 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 work of the previous Committee to address concerns raised in its original testimony regarding language that potentially inhibited

consumer choice by eliminating the need for a cable operator to extend service to areas where a single other provider of cable service is already providing services.

The Department notes, however, that although it does not oppose the inclusion of the 25 homes per linear mile criteria in statute, it does question the overall necessity of this measure, which serves to circumvent previously negotiated franchise agreements that already include similar service extension requirements, while also providing the Department with administrative discretion and flexibility to address provider-raised cost and practicality concerns.

If the 25 homes per linear mile criteria is codified, the Department suggests that amendments be made with strong considerations toward the promotion of competition between cable operators. 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.

Accordingly, upon further review, although the Department feels that an increase in the number of providers necessary to trigger the 25 homes per mile exemption is a step in the right direction, ambiguity as to the role of multichannel video programming distributors (MVPD) in the applicability of the exemption still appears problematic, especially given fastmoving changes in the technological landscape. For example, the Federal Communications Commission recently ruled that basic cable rate regulation is no longer necessary on Kauai since AT&T TV Now (formerly known as DirecTV Now), a MVPD streaming service available to anyone in the State with an internet connection, provides effective competition. In the context of this measure, given the ambiguity in the language of this proposed bill, a cable operator could make a similar argument that

any area in the State with internet access (e.g., an area served by any single cable operator that also provides internet services over its cable system) is already subject to three or more MVPDs (which may include YouTube TV, AT&T TV Now, as well as others since they are offered “everywhere” internet service is available), thereby creating a blanket exemption for most areas in the State. In turn, this blanket exemption would allow a cable operator to “cherry pick” the areas for its cable service extension and make the proposed codification of the 25 homes per a linear mile requirement moot.

Given the potential for the misinterpretation of the exemption to the requirement, especially with the ambiguity in its application to various technologies, if the intent of the measure is to ensure that cable services are being offered to meet and sustain the needs and uses of residents of Hawaii, the Department suggests the following amendments:

1. Restoring all of the language in subsection (c) on page 3, lines 10 to 15 to provide the Director with the discretion to consider the geography and topography of the proposed service area and the present, planned, or potential expansion of an applicant’s cable system when determining the area to be served when issuing a cable franchise; and
2. Striking the language on page 4, lines 3 to 18 starting “. . . ; provided that the director shall not apply . . . service area” to remove any language that may potentially limit competition and consumer choice in providers.

These amendments will help to ensure that Hawaii residents will have the ongoing opportunity to access cable services and to remove any limitations that may diminish consumer choice among competing cable service providers.

Thank you for the opportunity to testify on this bill.



Charter Communications
Testimony of Myoung Oh, Director of Government Affairs

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Hawai'i State Capitol, Conference Room 229
Thursday, February 20, 2020
10:00 AM

STATEMENT REGARDING S.B. 2432, S.D.1, RELATING TO CABLE TELEVISION

Chair Baker, Vice-Chair Chang, and Members of the Committee.

Charter Communications, Inc. is pleased to provide testimony regarding S.B. 2432, S.D.1. Charter strongly supports the bill's intent but believes the amendments to the bill have frustrated its original purpose and are not in line with the sponsor's intent. As we have previously testified before in the Senate Committee on Technology, the original version of S.B. 2432 promoted access to video programming service throughout the State by adopting a reasonable build-out requirement based on demonstrated cable-related community needs in Hawai'i, while relying on market forces in lieu of build-out regulations where competition is present in the form of a competing provider of cable service. Changes to the bill since then, however, have altered the careful balance in the original bill. Charter therefore takes this opportunity to respectfully urge the Committee to adopt two amendments to the current version of S.B. 2432, S.D.1 to address the concern that led to the amendment but to make sure the original intent of the bill is not lost.

First, we are concerned that the current version establishes an exception to the build-out requirement only for areas served by three or more cable franchisees or multichannel video

programming distributors (MVPDs). This exception ignores today's video marketplace, in which cable operators face as much, if not more robust competition from online services like Hulu Live TV, AT&T TV NOW, Sling TV, and YouTube TV that are not technically considered multichannel video programming distributors but who provide video programming nonetheless and offer dozens of channels of live and on-demand programming comparable to the offerings of traditional cable and satellite providers. We therefore respectfully urge the Committee to add language for the exception to also include entities that offer video programming or a video programming service that is comparable to the video programming service provided by a cable operator or other MVPD.

It has been argued that basing the density exemption on the availability of service from one other cable operator or other MVPD would create "mini-monopolies" or allow cable providers to "cherry-pick" where to build out their systems. But this argument reflects the video marketplace of nearly 30 years ago, when cable operators were the predominant means of video entertainment. The video programming landscape has changed dramatically since the 1990s. As noted above, online video providers are now major competitors to cable as an increasing number of households no longer maintain a cable television subscription. One report projects that more than a fifth of U.S. households discontinue a traditional cable television subscription by 2021.

Today, almost 97% of Hawai'i residents have access to high-speed fixed wireline broadband, and with it access to these online video options. In those areas, if there is also access to competing cable operators, MVPDs or other entities that provide comparable video programming (like Hulu Live TV, AT&T TV NOW, Sling TV, and YouTube TV), there is simply no need to mandate costly cable build-

out. This revised exception will promote greater consumer choice and allow market forces to determine the video programming services, features, and capabilities available to Hawai'i residents.

Second, we would respectfully urge the Committee to add language to the bill that the minimum density requirement does not apply if the cable operator cannot obtain reasonable access to the facilities necessary to build out its cable system, such as access to poles or conduits or access to easements on private property; if it experiences permitting delays; or if the DCCA determines that a waiver is warranted. Under these circumstances, it would be unreasonable to enforce the minimum density requirement against the cable operator. These limited exceptions are also consistent with the Federal Cable Act's directive that build-out requirements must be reasonable and take the costs of meeting such requirements into account.

Charter commends the Committee for its efforts to ensure reasonable access to video programming for Hawai'i residents. The amendments that Charter proposes today would allow S.B. 2432, S.D.1 to achieve this goal without imposing unreasonable build-out requirements where competition is now present. With these amendments, we respectfully request your favorable adoption and urge its passage.

Mahalo for the opportunity to provide testimony.