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**PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION**

TO THE HOUSE COMMITTEE ON JUDICIARY

**THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015**

**FEBRUARY 26, 2015
2:00 PM**

TESTIMONY ON H.B. 1219, H.D. 1, RELATING TO CONSUMER PROTECTION.

**TO THE HONORABLE KARL RHOADS, CHAIR,
AND TO THE HONORABLE JOY A. SAN BUENAVENTURA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to testify in support of House Bill No. 1219, H.D. 1, Relating to Consumer Protection. My name is Stephen Levins and I am the Executive Director of the OCP.

House Bill No. 1219, H.D. 1 enhances the regulation of automatic renewal clauses by requiring persons charging a consumer's credit or debit card or account for automatic renewal to: obtain an acknowledgment and affirmative consent of the consumer; establishes notice, disclosure and contact information requirements; and requires a method of cancellation for free trial offers and an opportunity to cancel before the commencement of automatic billing.

An automatic renewal clause in a contract provides that the term of the contract will automatically renew at the end of the specified term, unless a party provides advance notice of its intent to cancel by a designated deadline. If inadequate disclosures are provided to consumers, they will not appreciate the significance of the agreement and may find that they are tied into a lengthy contract that they neither understood nor wanted.

Based on complaints received from consumers over the years, the Office of Consumer Protection has observed that the problematic aspects of automatic renewal clauses fall into three broad categories:

1. failing to disclose adequately or misrepresenting the material terms of the offer;
2. failing to obtain consumers' express informed consent before billing or charging them; and
3. failing to provide effective means for consumers to cancel.

Clear disclosure of all terms and conditions in a consumer contract is a fundamental tenet of consumer protection law. Businesses should not be allowed to slip in binding contractual language without the knowledge of consumers and no consumer should continue to be laden with a legal obligation that they don't understand or affirmatively accept.

Amending section 481-9.5, as proposed by House Bill No. 1219, H.D. 1, will help to ensure that Hawaii consumers will enjoy the same protection from automatic renewal clauses as those in California. This is because the amendments contained in H.D. 1 are very similar in nature to the law in California. See, Cal. Com. Code sections 17600-17606.

This measure is laudable because it specifically addresses the problematic areas of automatic renewal clauses, outlined above, in a clear and meaningful way. It will help to ensure that Hawaii consumers will be made fully aware of all of the terms and conditions of the automatic renewal clause. In view of this, the Office of Consumer Protection is in strong support of this measure.

Thank you for the opportunity to support House Bill No. 1219, H.D.1. I am available for any questions you have regarding this Bill.

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Honorable Karl Rhoads, Chair
House Committee on Judiciary
Hawaii State Capitol
Honolulu, HI 96813

**RE: HB 1219, HD1 – Relating to Consumer Protection
Testimony in Opposition**

February 26, 2015; 2:00 p.m., Hawaii State Capitol Room 325

Aloha Chair Rhoads, Vice Chair San Buenaventura, and members of the committee,

On behalf of Oceanic Time Warner Cable, which provides a diverse selection of entertainment, information, and communication services to over 425,000 Hawaii households, schools and businesses and currently employs more than 1,000 highly-trained individuals, we appreciate the opportunity to express our concerns and opposition to HB 1219, HD1 in its current form.

HB 1219, HD1 amends Section 481-9.5, Hawaii Revised Statutes, to require persons that offer an automatic renewal or continuous service of products and services to obtain the acknowledgement and affirmative consent from the consumer of the renewal terms prior to charging the consumer's credit/debit card or the consumer's account. The bill further amends HRS Section 481-9.5 to require various disclosures from any person who sells or offers products for an automatic renewal or continuous service, including the cancellation policy, contact information and any changes in the material terms of an offer.

While Oceanic continues to be supportive of providing information to consumers so that those consumers may make informed and reasoned decisions, Oceanic believes that the amendments proposed by HB 1219, HD1 go far beyond the original scope of HRS Section 481-9.5 to reasonably limit the applicability of required disclosures to consumer contracts that have a specified term of more than one month and automatic renewals of more than one month. See Haw. Rev. Stat. Sec. 481-9.5(a), (b) and (c). Oceanic believes that for routine month to month contracts for household services that consumers expect to be provided on a regular basis, such as cable television, Internet and related services, consumers reasonably expect to be charged on a month to month basis and further disclosures will not materially assist consumers with respect to such agreements. In addition, given the volume of month to month

agreements that such providers typically process (and in Oceanic's case, many of these agreements are initiated via telephone and made on an oral basis), the benefit of additional disclosures proposed by HB 1219, HD1 for all agreements with automatic renewal provisions (regardless of the term) would be outweighed by the additional costs that will be likely passed on to consumers as businesses implement the required disclosures for all agreements with renewal clauses.

Given the foregoing issues, Oceanic believes that a reasonable approach to protect consumers with respect to automatic renewals would be to make it expressly clear in the bill that the disclosures proposed by subsections (d), (e), (f) and (g) of HRS Section 481-9.5 only apply to consumer contracts with a specified term of more than one month and an automatic renewal clause to renew the contract for more than one month. This revision would be consistent with the intent of HRS Section 481-9.5 to strike a reasonable balance between protecting consumers from longer contracts and renewal clauses and other types of household service contracts that consumers fully and reasonably expect will continue on a regular basis and will be renewed monthly.

Thank you for the opportunity to offer our testimony on this bill.

Sincerely,

Gregg Fujimoto
President of Oceanic Time Warner Cable