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

**Before the  
House Committee on Intrastate Commerce  
Tuesday, February 12, 2019  
9:45 a.m.  
State Capitol, Conference Room 430**

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

Chair Ohno 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). The Department supports this bill, which appropriates funds for the fiscal biennium (FB) 2019-2021 operating budget of the DCCA's Cable Television Division (CATV), program ID CCA-102, under the purview of this committee. However, with respect to section 3 (Appropriations), the Department respectfully requests that the line item regarding trust fund monies be deleted since such funding is no longer applicable. Additional information regarding this is set forth in the Non-General Fund Balances section below.

**Functions**

The CATV supports the Director of the DCCA in the issuance of cable franchises, regulation of cable operators, and facilitation of expanded access and usage of

broadband services throughout the State. In determining whether the issuance, renewal, or transfer of a cable franchise is in the public interest, the CATV also:

- (1) Monitors and enforces compliance with applicable orders, laws, and rules, including participation 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 access (PEG) 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.

### **Sources of Revenue**

The CATV's only source of revenue is derived from annual fees assessed to franchised cable operators, calculated based on the cable operators' annual gross revenues and as allowed by state and federal laws.

### **Non-General Fund Balances**

- **Account No. S-XX-302-R:** This account holds the division's operating funds, which are collected from cable operators through the assessment of annual fees. The current balance in this account after encumbrances is \$9,272,177. Please see below, under "Reserve Amount," for an explanation regarding this amount.

- **Account No. T-XX-907:** This account, also known as the Time Warner trust fund or Charter Communications (Charter) trust fund, is use-restricted to INET and broadband-related projects pursuant to DCCA Decision and Order No. 346, related to the Oceanic Time Warner Cable's (OTWC) Oahu cable franchise. Pursuant to Act 53, SLH 2018, the CATV issued a letter order on September 13, 2018, requiring OTWC/Charter to transfer \$7,920,000 from this account to the Department of Education. As of December 31, 2018, the sum remaining in the account totaled \$813,879.81.

### **Base Budget for Fiscal Year (FY) 2019**

The CATV's base budget is \$2,609,370. For additional information on total program costs, please see above regarding non-general fund trust accounts.

#### ***Number of Positions***

The CATV currently has authorization for eight FTE positions.

#### ***Number of Vacancies***

The CATV is currently recruiting to fill one vacancy: one full-time equivalent (1.0 FTE) CATV Program Specialist.

### **Requests for FB 2019-2021**

Except for amounts related to scheduled increases to personal service expenses, including fringe, the CATV has no additional requests for FB 2019-2021.

### **Expenditures**

The CATV's expenditures consist of operating and personnel expenses, and includes funds encumbered yearly for professional services and departmental transfers. In FY 2018, the CATV maintained three professional services contracts, one for \$250,000 for legal services and two separate contracts for accounting services for \$120,000 and \$200,000. The CATV contracts with a Washington, D.C. firm to assist in monitoring and to provide guidance regarding changes and developments in the cable/communication field at the federal level, as well as to assist the CATV in participating and submitting comments in proceedings before the Federal Communications Commission (FCC). In addition, the CATV also has two contracts for auditing, accounting, and financial advisory services. The first contract primarily

addresses general accounting services related to and focused on cable operators, and the second contract provides assistance regarding the PEG access organizations. Through these contracts, the CATV's accountants assist with franchise fee verifications and on-site reviews of PEG assets, among other activities, including general advice and assistance regarding all other financial matters.

### **Reserve Amount**

The CATV currently has a carryover reserve amount of approximately \$9.2 million (or approximately over 3 years of budgeted/estimated expenses). Based upon internal Department-recommended guidelines and consistent with the DCCA's past actions, the CATV 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, while that action was pending, the FCC indicated its intent to, and subsequently in fact did, propose new rules that may drastically reduce future cable franchise fee payments.

Specifically, in September of 2018, 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 five percent 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 will 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 franchise fees. Maintaining current franchise fee assessments until the outcome of the proposed rules are determined would be the most prudent course of action at this time. In addition, anticipated future expenditures, including replacing the air conditioning system of King Kalākaua Building, repairing structural damage and roofing damage caused by Hurricane Lane, and developing a department-wide document management system, will require use of these reserves.

Thank you for the opportunity to testify on this bill.