

**OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII**

In the Matter of the Petition of)	CTV-2013-1
)	
OCEANIC TIME WARNER CABLE LLC,)	STIPULATION TO SETTLE ALL
)	CLAIMS OF THE PARTIES
)	
)	Hearings Officer: David H. Karlen
Petitioner.)	
_____)	

STIPULATION TO SETTLE ALL CLAIMS OF THE PARTIES

IT IS HEREBY STIPULATED AND AGREED TO by and between Petitioner OCEANIC TIME WARNER CABLE LLC ("OTWC"), Respondent DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("DCCA"), and Intervenors 'ŌLELO COMMUNITY MEDIA ("Ōlelo") and THE CITY COUNCIL OF THE CITY AND COUNTY OF HONOLULU ("CCH"), through their respective attorneys, that pursuant to Hawaii Administrative Rules section 16-201-34.1, OTWC's "Petition for Contested Case Hearing Regarding Capital Funding for Government Facilities" ("Petition") that was filed on December 12, 2012 be dismissed with prejudice, each party to bear its own fees and costs.

Notwithstanding anything to the contrary in any Decisions and Orders issued by DCCA, including, but not limited to Decision and Order No. 346 ("D&O No. 346") (January 14, 2010), the parties hereby agree to the following terms and conditions to fully resolve all of the matters raised in the Petition:

- I. CAPITAL FUND PAYMENTS FOR 2012 TO 2014 FOR GOVERNMENT PEG ACCESS PROGRAMMING FACILITIES AND EQUIPMENT AT THE HAWAII STATE CAPITOL AND THE CITY AND COUNTY OF HONOLULU
 - A. OTWC agrees to pay 'Ōlelo a total of **FOUR HUNDRED SIXTY THOUSAND EIGHTY-SEVEN AND NO/100 DOLLARS (\$460,087.00)** in Capital Fund Payments for PEG Access Facilities and Equipment at the Hawaii State Capitol ("Capitol"), and for the City and County of Honolulu "City") for the years 2012, 2013, and 2014.¹

¹ On October 30, 2012, the Deputy Director of DCCA issued her "Deputy Director's Final Order Regarding the Amount of Capital Fund Payments for 2012 to 2014 for Government PEG Access Programming Facilities and Equipment at the Hawaii State Capitol and for the City and County of Honolulu Administration" ("Final Order # 2"). Among other things, the Deputy Director determined in Final

B. This amount shall be paid in one lump sum no later than thirty (30) calendar days after the date this Stipulation is approved by all of the parties.

II. CAPITAL FUND PAYMENTS FOR 2015 AND BEYOND FOR OTWC'S CABLE FRANCHISE ON OAHU

A. For the years 2015 to the expiration of the current franchise term (i.e., January 14, 2030), OTWC agrees to pay the following annual Capital Fund Payments for PEG Access Facilities and Equipment² for OTWC's Oahu cable franchise to the Director of DCCA ("Director") or the Director's designee(s):

<u>Due Date</u>	<u>Amount</u>
February 28, 2015	\$823,000.00 multiplied by the ratio of OTWC's basic service tier Subscribers on Oahu to the total number of basic service tier Subscribers on Oahu served by OTWC, Hawaiian Telcom Services Company ("HTSC"), and any other franchised cable operator on Oahu combined as of December 31 of the previous year.
February 28, 2016 and every February 28 th thereafter to the expiration of the current term of the franchise	\$823,000.00 multiplied by the ratio of OTWC's basic service tier Subscribers on Oahu to the total number of basic service tier Subscribers on Oahu served by OTWC, HTSC, and any other franchised cable operator on Oahu combined as of December 31 of the previous year, multiplied by the percentage change of the United States Department of Labor seasonally adjusted Consumer Price Index for all Urban Consumers Honolulu for all items (1982-1984=100) from the then-most current period available and the comparable preceding year's CPI, but not less than \$823,000.00 total from OTWC,

Order # 2 that OTWC is responsible to provide 'Ōlelo \$532,793.00 in Capital Fund Payments for government PEG access programming facilities and equipment at the Capitol and for City for 2012 to 2014.

² These Capital Fund Payments are for all PEG Access Facilities and Equipment on Oahu (including but not limited to PEG Access Facilities and Equipment at the Capitol and City).

HTSC, and any other franchised cable operator on Oahu combined.

The methodology to calculate the amount of Capital Fund Payments for 2015 and beyond in this subsection II.A applies only to OTWC, and does not obligate HTSC or any other franchised cable operator on Oahu as to the amount of its Capital Fund Payments.

- B. The Director reserves the authority to adjust the above Capital Fund Payments to the Director or the Director's designee(s) for any reason, including but not limited to an increase or decrease in the number of basic service tier Subscribers on Oahu.
1. 'Ōlelo, the Director's designee(s), or OTWC shall have the ability to petition the Director to increase or decrease the above Capital Fund Payments based upon the requirements below.
 2. Based upon the number of all basic service tier Subscribers in all Oahu franchises as of December 31, 2013, if the number of basic tier Subscribers on Oahu increases or decreases at least five percent (5%), either 'Ōlelo, the Director's designee(s), or OTWC may petition the Director for an increase or decrease in the Capital Fund Payments; provided that either party may submit such petition only once per calendar year.
 3. The Director shall have the sole authority to grant or deny the petition. Before changing the amount of the above Capital Fund Payments, the Director shall require the petitioning party to provide substantial justification for its request.
 4. If an increase or decrease is granted, the Oahu Subscriber number base shall be adjusted accordingly.
 5. 'Ōlelo may request in writing to DCCA that DCCA confirm whether the minimum increase or decrease in Subscriber numbers has been met; provided that DCCA shall not be required to disclose the confidential Subscriber information to 'Ōlelo, and 'Ōlelo may request this confirmation from DCCA only once per calendar year.

III. OTHER AGREEMENTS AND ACKNOWLEDGEMENTS

A. Franchise Required Channels/Government Access Channels

1. As the result of OTWC's agreement to provide the Government Video On Demand ("VOD") and linear Channels herein, upon approval of this Stipulation and the provision of such Channels,

OTWC shall no longer be required to make the five (5) Franchise Required Channels ("FRCs") available to the State Government and the various County governments described in OTWC's Oahu cable franchise in Section IV.E. of D&O 346.

2. With respect to OTWC's neighbor island cable franchises, DCCA agrees that it shall not require OTWC to provide FRCs to the other County governments when those cable franchises are renewed.
3. Instead, OTWC agrees to make available two (2) statewide video-on-demand ("VOD") Channels ("**Government VOD Channels**") to the following Governmental offices:
 - a. One (1) VOD Channel shall be dedicated collectively to the State government (i.e., Legislature, Office of the Governor, Executive Branch agencies, Judiciary, etc.), which shall be referred to as the "**State Government VOD Channel**"; and
 - b. One (1) VOD Channel shall be dedicated collectively to County governments (i.e., the City, County of Maui, County of Hawai'i, and County of Kauai), which shall be referred to as the "**County Government VOD Channel**."

OTWC shall make these Government VOD Channels available no later than one hundred twenty (120) calendar days after the issuance of a separate Letter Order by DCCA.

4. OTWC agrees to make available one (1) Statewide linear digital Channel dedicated to State governmental programming (i.e., by the Legislature, Office of the Governor, Executive Branch agencies, Judiciary, etc.), which shall be referred to as the "**State Government Linear Digital Channel**." OTWC shall make the State Government Linear Digital Channel available no later than six (6) months after the issuance of a separate Letter Order by DCCA.
5. The parties agree that the Government VOD Channels and State Government Linear Digital Channel (collectively, "**Government Channels**") shall be considered to be PEG Access Channels that are dedicated to government programming; provided that the Director or the Director's designee(s) shall not be prohibited from producing or airing government programming on other Channels. OTWC agrees to coordinate with the Director or Director's designee(s) on the operation and management of the Government Channels.
6. DCCA intends to have the Hawai'i State Legislature, the Office of the Governor, Executive Branch agencies, and Judiciary be

responsible for the content of the State Government VOD Channel and State Government Linear Digital Channel, and to partner with the Director or the Director's designee(s) to implement these Government Channels. DCCA intends to work with the governmental entities towards this end.

7. The parties agree that the Government VOD Channels are not intended to be used as an archive with unlimited storage capacity, and their content shall be managed by the Government towards this end. OTWC agrees to provide two hundred (200) total hours of storage capacity for the State Government VOD Channel and two hundred (200) hours of storage capacity per County Government, for a total of eight hundred (800) hours for the County Government VOD Channel; provided that the State and/or individual Counties may purchase additional storage capacity, at cost, from OTWC.
8. DCCA intends to have the Director or the Director's designee(s) be responsible to organize, manage, and maintain the technical operation of the County Government VOD Channel in their respective franchise areas, including but not limited to encoding the content to OTWC VOD specifications, managing the content metadata to OTWC specifications, and providing the content to OTWC. DCCA will request that 'Ōlelo be responsible to organize, manage and maintain the technical operations of the State Government VOD Channel, including, but not limited to, encoding content to OTWC VOD specifications, managing the content metadata to OTWC specifications, and providing the content to OTWC.
9. OTWC agrees to provide initial training to the Director or Director's designee(s) on the operation of the VOD equipment at a mutually agreeable date and time at no cost to the State, DCCA, the Director, and/or the Director's designee(s). Such training shall be offered by OTWC to the Director or the Director's designee(s) at a mutually agreeable date, but no later than within sixty (60) days of the installation and implementation of the VOD equipment and system. OTWC shall not be required to provide ongoing training to new employees of the Director or the Director's designee(s) on the operation of the VOD equipment; however, OTWC shall be responsible for additional training when changes are made to the VOD system, which in turn, require a change to the original processes and/or procedures being performed by the Director or the Director's designee(s) as part of their responsibilities. Such additional training shall be offered by OTWC to the Director or the Director's designee(s) at a mutually agreeable date, but no later than within sixty (60) days after the date the changes were made to the VOD system.

10. DCCA will request that 'Ōlelo or the Director's designee(s) be responsible to organize, manage, and maintain the technical operations of the State Government Linear Digital Channel and will request that it be responsible for the costs of the implementation (i.e., the software and terminal equipment required to activate and use the connection) at its facility and manage the content on the State Government Linear Digital Channel as provided herein. OTWC shall be solely responsible for all costs and maintenance of the connection required to feed the scheduled content for the State Government Linear Digital Channel from 'Ōlelo or the Director's designee to OTWC so that there will be no ongoing reoccurring costs to 'Ōlelo, the State Government, the Director, or the Director's designee(s).
11. The CCH agrees to be responsible for its respective content being provided on the County Government VOD Channel, and shall work and partner with 'Ōlelo or the Director's designee to implement this VOD Channel. With respect to the other Counties, DCCA intends to have the respective County governments be responsible for the content on the County Government VOD Channel as related to their respective Counties, and for them to partner with the Director or the Director designee(s) in their respective Counties to implement the County Government VOD Channel. DCCA shall work with the neighbor island County governments to implement the County Government VOD Channel.
12. Content on the Government VOD Channels shall be uploaded via the Internet for storage and distribution (or such other means as mutually agreed to by DCCA and OTWC), and OTWC agrees to be responsible for all costs and equipment at its headend and facility (including the connection required) to receive the content.
 - a. DCCA will request that 'Ōlelo or the Director's designee(s) be responsible for the costs of the implementation (i.e., the software and terminal equipment required to activate and use the connection) at its facility and for the Internet connection to its facility, and be required to upload and manage the content on the Government Channels as provided herein. If, in the future, another type of connection is required to upload content to these VOD Channels, OTWC shall timely provide that connection at no cost to the State, DCCA, Counties, Director, or Director's designee.
 - b. DCCA intends to have the Director or the Director's designee(s) be responsible for the cost of any facilities, software, and equipment to implement and operate the

Government Channels in their respective franchise areas as provided herein.

13. OTWC agrees that the costs for equipment required by Director or the Director's designee(s) to organize, maintain, and manage the technical operations of the Government Channels, and to encode and upload content to the Government VOD Channels, may be included in future cable franchises on the neighbor islands, both new and renewed, and shall be subject to further discussions with DCCA. DCCA reserves the right to propose these costs in future cable franchises.
14. OTWC may activate the statewide County Government VOD Channel prior to the renewal of any of its neighbor island cable franchises; and such activation shall be reflected in the appropriate cable franchise.

B. PEG Access Channels

1. As the result of OTWC's agreement to provide the PEG Access VOD and linear digital Channels herein, upon approval of this Stipulation, and the provision of such Channels, OTWC shall no longer be required to make the statewide PEG digital Channel for public-related PEG Access programming available to the Oahu PEG Access Organization described in Section IV.F. of D&O 346.
2. Instead, OTWC agrees to make available one (1) statewide VOD Channel to be utilized by the Director or the Director's designee(s) ("**PEG VOD Channel**") and one (1) linear statewide PEG Access digital Channel ("**PEG Linear Digital Channel**") to be shared by the Director or the Director's designee(s). OTWC shall make these Channels available no later than one hundred twenty (120) calendar days after the issuance of a separate Letter Order by DCCA.
3. The parties acknowledge that the issuance of the Letter Order and the implementation of the PEG VOD Channel and the PEG Linear Digital Channel are dependent upon agreement by the Director or the Director's designee(s) regarding the operation, cost, and management of these Channels.
4. For the PEG VOD Channel, DCCA intends to have the Director or the Director's designee(s) be responsible to encode, upload, manage, and operate its own content, including but not limited to encoding the content to OTWC VOD specifications, managing the content metadata to OTWC VOD specifications, and providing the content to OTWC.

5. Content on the PEG VOD Channel shall be uploaded via the Internet for storage and distribution (or such other means as mutually agreed to by DCCA and OTWC), and OTWC agrees to be responsible for all costs and equipment at its headend and facility, including the connection required, to receive the content. If, in the future, another type of connection is required to upload content to the VOD Channels, OTWC shall provide that connection at no cost to the State, DCCA, Counties, Director, or Director's designee(s) upon request.
6. Content for the PEG Linear Digital Channel shall be uploaded to 'Ōlelo or the Director's designee(s) in a manner mutually agreed upon by the Director or the Director's designee(s).
 - a. DCCA intends to have the Director or the Director's designee(s) be responsible for the cost of any facilities, software, and equipment to implement and operate the PEG Linear Digital Channel as provided herein.
 - b. OTWC shall be solely responsible for all costs and maintenance of the connection required to feed the scheduled content for the State PEG Linear Digital Channel from 'Ōlelo or the Director's designee(s)' existing main facility to OTWC so that there will be no ongoing reoccurring costs to 'Ōlelo, the State Government, the Director, or the Director's designee(s). If 'Ōlelo or the Director's designee(s) voluntarily relocates its main facility, 'Ōlelo or the Director's designee(s) shall be solely responsible for all costs required to re-establish the connection described in this paragraph
7. The parties agree that the PEG VOD Channel is not intended to be used as an archive with unlimited storage capacity, and DCCA intends to require that its content shall be actively managed by the Director or the Director's designee(s) towards this end.
 - a. OTWC agrees to provide two hundred (200) hours of storage capacity for each designee, for a total of eight hundred (800) hours of storage capacity for all designees; provided that the Director or the Director's designee(s) may purchase additional storage capacity, at cost, from OTWC.
 - b. DCCA intends to have the PEG VOD Channel be jointly utilized by the Director or the Director's designee(s).
8. OTWC agrees that it will not object to the Director's or the Director's designee(s)' use of the same PEG Access Facilities and

Equipment to upload programming on the Government VOD Channel and to upload programming on the PEG VOD Channel.

9. OTWC may activate the statewide PEG VOD Channel and PEG Linear Digital Channel prior to the renewal of any of its cable franchises; and such activation shall be reflected in the appropriate cable franchise.

C. Set-Top Boxes to View the PEG Access Channels, Including the Government Channels

1. OTWC agrees to make two (2) different types of set top boxes available to Subscribers to access PEG Access Channels, including the Government Channels.
2. The first type of set top box (i.e., DTA or digital transport adapter, or the "basic box") allows analog Subscribers to view linear analog PEG Access Channels that OTWC migrates to digital format. This "basic box" cannot access functions and services that require two-way functionality including but not limited to Pay-Per-View and VOD services.
 - a. For analog Subscribers who wish to view the State Government Linear Digital Channel, PEG Linear Digital Channel, and/or any linear analog PEG Access Channel migrated to digital format, OTWC agrees to provide upon request at any time within the periods described herein, a basic box free of charge to an analog Subscriber (and an additional basic box upon further request) as follows:
 1. For Oahu, OTWC shall provide the free boxes until OTWC no longer provides analog service on Oahu, or for a period of thirty (30) months after the date this Stipulation is approved, whichever period is longer; and
 2. For neighbor island Subscribers, OTWC shall provide the free boxes until OTWC no longer provides analog service on the respective neighbor island, or for a period of thirty (30) months after the date this Stipulation is approved, or for a period of thirty (30) months after the date a franchise for a neighbor island area has been renewed, whichever period is longer.
 - b. The sunset period for free boxes that are provided to Subscribers pursuant to Paragraph III.C.2.a. above shall not apply to free set top digital boxes that were requested by Subscribers prior to the date of this Stipulation for the

purpose of viewing FOCUS Channel 49 or the TEC or TEACH Education Channels on Oahu. In the event a free set top digital box no longer is operational, then OTWC may replace the set top digital box with a basic box for these Subscribers.

- c. OTWC agrees to make the requested basic boxes available to Subscribers, with an option for Subscribers to pick up the boxes through its customer service centers or for delivery by mail service at no additional charge to the Subscriber.
 - d. At least forty-five (45) days prior to the expiration of the free box period described above, OTWC shall provide specific written notice to Subscribers with the free basic boxes informing them of the upcoming charges for the boxes and also providing Subscribers instructions for returning the boxes to OTWC without charge for the returns, including drop off at customer service centers or return by mail service at no charge to the Subscriber. Furthermore, OTWC shall provide assistance in the return of free boxes to Subscribers at no charge.
 - e. After the expiration of the free box period, OTWC may charge Subscribers its published rate for each basic box.
 - f. If, during the period that the basic box is being provided free of charge, a Subscriber upgrades to a service that requires an upgraded box, OTWC may charge the Subscriber its published rate for the upgraded box, provided that OTWC notifies the Subscriber in advance of the new charge.
3. The second type of set top box (i.e., the "VOD box") allows analog Subscribers to view migrated PEG linear Channels to digital format and also allows Subscribers to access PEG content and services that require two-way communication with OTWC's cable television distribution system such as but not limited to PEG Channels, including the Government VOD Channels.
- a. OTWC agrees to provide, upon request, within the time period described in Paragraph III.C.3.c. below, analog Subscribers who require a VOD box to view the PEG VOD Channels, including the Government VOD Channels, a minimum discount of thirty percent (30%) off OTWC's published rate for each such VOD box.
 - b. OTWC agrees to make the requested VOD boxes available to Subscribers through its customer service centers for pick

up or for delivery by mail service at no additional charge to the Subscriber.

- c. OTWC agrees to provide the discounted VOD boxes as follows:
 - 1. For Oahu, OTWC shall provide the discounted VOD boxes until OTWC no longer provides analog service on Oahu, or for a period of thirty (30) months after the date this Stipulation is approved, whichever period is longer; and
 - 2. For neighbor island Subscribers, OTWC shall provide the discounted VOD boxes until OTWC no longer provides analog service on the respective neighbor island, or for a period of thirty (30) months after the date this Stipulation is approved, or for a period of thirty (30) months after the date a franchise for a neighbor island area has been renewed, whichever period is longer.
- d. At least forty-five (45) days prior to the expiration of the discounted VOD box period described above, OTWC shall provide specific written notice to Subscribers with the discounted boxes informing them of the upcoming charges for the VOD boxes and also providing Subscribers instructions for returning the VOD boxes to OTWC without charge for the returns (i.e., drop off at customer service centers or for return by mail service at no charge to the Subscriber). Furthermore, OTWC shall provide assistance in the return of discounted VOD boxes to Subscribers at no charge.
- e. After the expiration of the discounted VOD box period, OTWC may charge Subscribers its published rate for each VOD box.
- f. If, during the period that the VOD box is being provided at the discounted rate to view the PEG VOD Channels, including the Government VOD Channel, a Subscriber upgrades to a commercial service that requires a VOD box, OTWC may charge the Subscriber its published rate for the VOD box, provided that OTWC notifies the Subscriber in advance of the new charge.

D. Educational Access Channels

1. Upon approval of this Stipulation, the statewide FRC for Educational Programming and the statewide FRC for VOD Educational Programming in Section IV.E.6. and IV.E.7. of D&O 346 shall no longer be considered FRCs; these Channels shall now be considered as Educational Access Channels.
2. Under OTWC's current cable franchises, there are four (4) Educational Access Channels on Oahu, Hawai'i, Kauai, and Maui County.
 - a. The Educational Access Channels on Oahu have been transferred to the Hawai'i Educational Network Consortium ("HENC").
 - b. 'Ölelo shall no longer have any responsibility for these Channels on Oahu.
 - c. 'Ölelo agrees to continue to maintain the signals from any of the Educational Access Channels that currently pass through its facilities to the cable operator(s)' headends and to continue to assume the cost of any electrical power for these connections.
3. DCCA reserves the right to address the direct payment of funds to support the Educational Access Channels through the PEG designation process under HRS, section 440G-8.3 (as amended) and/or through subsequent D&Os.

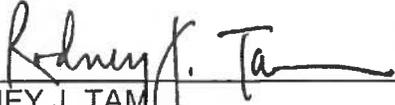
E. Miscellaneous Provisions

1. Upon full execution of this Stipulation, OTWC agrees to terminate action on (i.e., terminate all efforts to continue) its intervention request in the current PEG designation application of 'Ölelo.
2. OTWC agrees that it does not object and shall no longer object in the future to PEG Access programming being streamed on the Internet by the Director or the Director's designee(s) that is produced using PEG Access Facilities and Equipment that was funded by Capital Fund Payments; provided that such programming was originally produced for and carried on a PEG Access Channel prior to, or concurrently with, being streamed on the Internet.
3. DCCA intends to require the Director or the Director's designee(s) to maintain and disclose to DCCA upon request their annual Capital Fund budgets, expenditures (including PEG Access facilities and

equipment purchased with Capital Fund payments), and other reasonably related information.

4. DCCA agrees to specifically require that Capital Fund expenditures for the Director and the Director's designee(s) be subject to periodic financial agreed-upon procedures review, and/or audits by DCCA, the results of which shall be made available to the public.
5. DCCA acknowledges that it has directed its financial consultant to review specific capital expenditures by 'Ōlelo, which occurred during the years 2006 to 2010.
 - a. DCCA shall make the financial consultant's report available for public inspection.
 - b. None of the parties waive any of its rights of redress with respect to the past use of Capital Fund Payments.
6. DCCA agrees to withdraw its opposition to OTWC's Petition for Effective Competition on Oahu, CSR-8562-E, before the Federal Communications Commission, within ten (10) calendar days after the date this Stipulation is approved in exchange for OTWC's agreement to maintain its extension of service requirement of twenty-five (25) homes per mile for its Oahu franchise throughout the term of the renewed cable franchise.
7. Except as otherwise provided in this Stipulation, the remaining provisions of D&O 346 shall continue to remain in full force and effect.
8. The parties agree that all claims of all parties are hereby dismissed with prejudice. There are no remaining parties or issues.

DATED: Honolulu, Hawai'i, March 4, 2014.



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Re: Case No. CTV-2013-1; In the Matter of the Petition of OCEANIC TIME WARNER CABLE LLC; STIPULATION TO SETTLE ALL CLAIMS OF THE PARTIES