

May 23, 2014

Via Hand Delivery

Ms. Keali'i S. Lopez, Director
State of Hawaii
Department of Commerce and Consumer Affairs
333 Merchant Street
Honolulu, Hawaii 96813

Re: Time Warner Cable/Comcast Corporation Transaction

Dear Ms. Lopez:

On April 11, 2014, Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") (collectively, the "Parties") filed their joint application with the Director of the Department of Commerce and Consumer Affairs ("DCCA") requesting consent for the indirect transfer of control of cable television franchisee Oceanic Time Warner Cable LLC ("OTWC") (the "Joint Application"). The Joint Application included the Federal Communications Commission's ("FCC") Form 394 setting forth the relevant qualifications of Comcast to acquire indirect control of OTWC.

On April 22, 2014, the DCCA provided the Parties with a newly-issued form entitled "Application For Transfer Of Cable Television Franchise" ("DCCA Transfer Application"). In addition, on May 9, 2014, the Parties received the DCCA's "Notice of Incompleteness and Transmittal of Information Requests" dated May 8, 2014 ("Information Requests"). Accordingly, the Parties hereby submit their DCCA Transfer Application and Information Request responses completed consistent with the requirements and limitations of applicable law.

Please note that the DCCA Transfer Application and Information Requests seek substantial information, much of which the Parties respectfully submit was already provided in the original Joint Application. Further, the Parties respectfully submit that some of the information requested in the DCCA Transfer Application and Information Requests is neither necessary to establish Comcast's legal, technical and financial qualifications nor reasonably necessary to determine Comcast's qualifications pursuant to applicable law.

Federal law limits the scope of review and information the franchise authority may require as part of the approval process for transfer of a franchise.¹ In addition to the information specifically solicited by the FCC Form,² franchise authorities "are permitted to request such

¹ See 47 U.S.C. § 537. See also *Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992*, Report and Order, 8 F.C.C.R. 6828, ¶¶ 85-86 (1993) ("1993 FCC Order").

² The FCC adopted Form 394 to capture "the information necessary to establish the legal, technical and financial qualifications of the proposed transferee" and to "ensure that franchise authorities are provided with sufficient information to evaluate and render prompt decisions with respect to such transfer requests." *1993 FCC Order*,

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additional information as may be reasonably necessary to determine the qualifications of the proposed transferee.”³ Information that is outside this scope need not be provided.

Notwithstanding the above, in an effort to be responsive to the DCCA’s inquiry, the Parties have completed the DCCA Transfer Application as well as responses to the Information Requests and have endeavored to provide as much information as reasonably possible without undue burden and in accordance with legal requirements. By responding, the Parties do not waive any arguments regarding either the relevance of such information or the DCCA’s authority to request such information.

Pursuant to federal law, the franchise authority has one hundred twenty (120) days from the date of submission of the information required by FCC Form 394, the franchise agreement and state or local law, to act on a request for transfer approval.⁴ In this case, the Parties believe that it is

at ¶¶ 85-86. See *Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, Memorandum Opinion and Order on Reconsideration (“1995 FCC Reconsideration Order”), 10 F.C.C.R. 4654, 4676, ¶ 55 (“Form 394 specifies the information requirements we [FCC] deemed sufficient to establish the legal, technical and financial qualifications of the proposed transferee of a cable system held for three years.”).

³ 1993 FCC Order, at ¶ 86. Note that state law provides that an application for transfer shall include facts as to:

- (1) The citizenship and character of the applicant;
- (2) The financial, technical and other qualifications of the applicant;
- (3) The principals and ultimate beneficial owners of the applicant;
- (4) The public interest to be served by the requested issuance or transfer of a cable franchise; and
- (5) Any other matters deemed appropriate and necessary by the director, including the proposed plans and schedule of expenditures for or in support of the use of public, educational, and governmental access facilities.

Hawaii Administrative Rules (“HAR”) § 16-133-9(a). However, as noted above, according to the FCC, beyond information required in the Form 394, franchising authorities may only request additional information “as is reasonably necessary to determine the qualifications of the proposed transferee.” 1993 FCC Order at ¶ 86 (emphasis added). The term “reasonably necessary” is construed in conjunction with the FCC orders relating to Form 394 and its criteria for financial, legal, and technical qualifications of a transferee. Notably, the FCC rebuffed the attempts of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors and the National Association of Counties (collectively, “NATOA”) to have the FCC grant franchising authorities unfettered “discovery” rights with respect to prospective cable operators. The FCC expressly rejected NATOA’s (and the Counties’) argument that Section 617 of the Cable Act contains “no limit on the information a franchising authority may require a cable operator to submit in connection with a request for approval of a sale or transfer.” See 1995 FCC Reconsideration Order, at ¶ 47. Note that a franchising authority may seek information clarifying any unclear or inaccurate information in the Form 394 and related materials within 30 days of submission. See 47 C.F.R. § 76.502.

⁴ See 1995 FCC Reconsideration Order, at ¶¶ 50-53. The 120-day period begins to run when a franchising authority receives: (1) a completed FCC Form 394, together with all exhibits, and (2) any additional information required by the terms of the franchise agreement or by state or local law where such information is reasonably necessary to

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reasonable to conclude that the 120-day time period commenced on April 11, 2014, which was the date the Joint Application was filed, given that the Joint Application included a completed Form 394, together with all exhibits, and all information required by the terms of the franchise agreement or by state law that is reasonably necessary to determine Comcast's qualifications. Accordingly, the 120-day period will expire on August 11, 2014.

If you have any questions or would like any additional information, please let us know and we will promptly respond. We look forward to working with you and will be in touch shortly to discuss next steps regarding the DCCA's review of the Joint Application. Thank you again for your attention to this matter.

Very truly yours,



Carlito P. Caliboso
for
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A Limited Liability Law Company

Enclosures

determine the qualifications of the proposed transferee. *See* 47 C.F.R. § 76.502(a); *1995 FCC Reconsideration Order*, at ¶ 50. *See also* 47 U.S.C. § 537. Accordingly, in the 1995 FCC Order, the FCC denied "NATOA's request that the 120-day period not commence until the cable operator is affirmatively advised that the franchise authority has received all information it seeks." *See 1995 FCC Reconsideration Order*, at ¶ 50. Information requested by a franchising authority that is *not* reasonably necessary to assess the legal, financial, and technical qualifications of a proposed transferee has *no* bearing on the 120-day period, or on the final approval of the transaction. *See 1995 FCC Reconsideration Order*, at ¶¶ 50-51. Note that state law provides that the 120-day period begins upon the issuance of a notice of acceptance of the application for filing. *See* HAR §§ 16-133-16(a) and -10. The Parties respectfully submit that this position is inconsistent with and preempted by federal law as discussed above. Likewise, the Parties believe that state law that provides that any application not approved within the 120-day period is deemed denied (unless an extension is mutually agreed upon by the franchising authority and the applicant) is inconsistent with and preempted by federal law which states that if a final decision on the application is not rendered within the 120-day period, the application shall be deemed granted (unless an extension is agreed upon). *See* HAR § 16-133-16(a); 47 U.S.C. § 537. Extensions of time may be agreed upon by the franchising authority and the applicant. *See* 47 U.S.C. § 537; HAR § 16-133-11(b).