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June 18, 2014

Carlito P. Caliboso, Esq.
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1099 Alakea Street, Suite 2100
Honolulu, Hawai'i 96813

Re: Time Warner Cable/Comcast Corporation Transaction: Notice of
Commencement of Review Period

Dear Mr. Caliboso:

The Cable Television Division of the Department of Commerce and Consumer Affairs ("DCCA") of the State of Hawai'i ("**State**") has reviewed your letter dated May 23, 2014 regarding the timeframe for DCCA's review of the application ("**Application**") submitted by Comcast Corporation ("**Comcast**") and Time Warner Cable, Inc. ("**Applicants**") for the transfer of control of Oceanic Time Warner Cable LLC's ("**OTWC**") Hawai'i cable franchises to Comcast ("**Proposed Transaction**"). Applicants contend that the 120-day period established by Federal law for DCCA to review the Proposed Transaction commenced on April 11, 2014 – the date on which Applicants submitted Federal Communications Commission ("**FCC**") Form 394 – and will end on August 11, 2014. For the reasons discussed below, DCCA does not agree. However, despite serious concerns regarding the limited information that Applicants have provided, DCCA will accept the Application for filing and will seek to complete its review of the Proposed Transaction by September 19, 2014.

Applicants contend that, under Federal law, the 120-day review period begins on the date on which an applicant submits "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 [an applicant's] qualifications."¹ In

¹Letter from Carlito P. Caliboso, Yamamoto Caliboso, to Keali'i S. Lopez, Director, State of Hawai'i, DCCA, dated May 23, 2014, at 3 ("**Applicants' May 23 Letter**").

addition, Applicants assert that information required by the franchise agreement or by state law that does not meet the "reasonably necessary" standard "need not be provided."²

Applicants' position is flatly inconsistent with the applicable Federal law. The FCC's rules provide that:

A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.³

Nothing in the text of the FCC Rule, or in FCC's orders, suggests that an applicant's duty to provide information required by the franchise agreement or state law is limited to information deemed "reasonably necessary" – and most certainly does not give the applicant the right to make this determination. Rather, the FCC has put cable operators "on notice that information requirements may exist in three locations [i.e., Form 394, the franchise agreement, and state law] and that the submission of all such information is necessary for the franchise authority to be bound by the 120-day time period."⁴

The FCC's decisions make clear that the "reasonably necessary" standard applies only to information that a franchise authority requests that goes beyond that required by the franchise agreement or state law. Consistent with Federal requirements, franchise authorities may "request additional information they deem reasonably necessary to determine the qualifications of the proposed assignee or

²Id. at 2.

³47 Code of Federal Regulations ("CFR") § 76.502(a) (emphasis added).

⁴Implementation of Sections 11 and 13 of the Cable Television Consumer Protection Act of 1992, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 4654, 4677 ¶ 52; see also 4675 ¶ 50 ("Our implementing rules provide for commencement of the 120-day period when the cable operator has submitted a completed FCC Form 394 and any additional information required by the terms of the franchise agreement or applicable state or local law."); and id. at 4676 ¶ 52 ("The legislative history also clearly establishes that Congress intended to allow local franchise authorities to request information that is required by the franchise agreement, in addition to that required by Commission regulation.").

transferee[.]”⁵ “[C]able operators are required to respond promptly by completely and accurately submitting all information reasonably requested by the franchise authority.”⁶ However, a franchise authority’s request “for information not explicitly required by the franchise agreement or local law will not toll the statutory 120-day limitation unless the franchise authority and the cable operator agree to an extension of time.”⁷

Hawai`i law requires that an applicant submit an application “in a form designated by the director” of DCCA.⁸ The application must include information regarding “[t]he public interest to be served by the requested . . . transfer of a cable franchise,”⁹ and “[a]ny other matters deemed appropriate and necessary by the director[.]”¹⁰ Pursuant to this requirement, the State of Hawai`i has adopted the State of Hawai`i Application for Transfer of Cable Television Franchise (“**State Transfer Application Form**”), which DCCA provided to Applicants on April 22, 2014. Applicants did not submit this form until May 23, 2014. Therefore, May 23, 2014, is the earliest possible date on which the 120-day review period could begin.¹¹

Applicants’ conduct undermines their contention that the 120-day review period began on April 11, 2014. On May 8, 2014, DCCA informed Applicants that the information provided pursuant to Form 394 was “incomplete (or inaccurate)” and issued

⁵Id. at 4675 (¶ 50).

⁶Id. at 4677 (¶ 52).

⁷Id. at 4675 (¶ 50).

⁸Hawai`i Administrative Rules (“**HAR**”) § 16-133-9(b).

⁹HAR § 16-133-9(a)(4).

¹⁰HAR § 16-133-9(a)(5).

¹¹Even if the “reasonably necessary” standard applied to information requests made under State law, Applicants do not dispute that at least some of the information requested by the State Transfer Application Form meets this standard. See Applicants May 23 Letter, at 1 (“Some of the information requested in the DCCA Transfer Application and Information Request is . . . [not] reasonably necessary to determine Comcast’s qualifications pursuant to applicable law.” (emphasis added)). Therefore, even under Applicants’ own interpretation, the earliest date on which the 120-day review period could begin is May 23, 2014, when Applicants submitted the State Transfer Application Form.

a request for further information ("**Information Requests**").¹² If Applicants believed that the review period had already started then, consistent with Federal law, they should have submitted their response within ten (10) days of receiving the Information Requests.¹³ Applicants, however, did not respond to the Information Requests until May 23, 2014 – five days after the statutory deadline.

DCCA has reviewed Applicants' May 23, 2014 submittal. DCCA is extremely disappointed that rather than providing the information requested, Applicants, in most cases, have simply cross-referenced prior filings, asserted that the transaction will have no effect on compliance with existing obligations, or contended that DCCA lacks the authority to request the information. DCCA believes that it would be well within its authority to issue further requests for information before beginning the review period. However, in an effort to move the review process for the Proposed Transaction forward, DCCA will consider the Application acceptable for filing.¹⁴ DCCA will continue the process of gathering information regarding the Proposed Transaction, including conducting public hearings in each cable franchise area.¹⁵ DCCA also reserves the right to issue further information requests to Applicants.¹⁶

DCCA notes that, under State law, the Director of the DCCA ("**Director**") may only grant the Application if she "is convinced that it is in the public interest to do so."¹⁷ In the present case, there are reasons for concern that the Proposed Transaction would harm the public interest. For example, the indirect acquisition of OTWC by Comcast will

¹²See Letter from Catherine P. Awakuni, Administrator, DCCA, to Carlito P. Caliboso, Yamamoto Caliboso, dated May 8, 2014, at 1.

¹³See 47 CFR § 76.502(b).

¹⁴Pursuant to HAR § 16-133-10(b), the 120-day period will commence on the date of issue of this notice. However, in order to avoid any question as to whether 47 CFR 76.502(a), which provides that the 120-day period runs "from the date of submission" of all required information, preempts HAR § 16-133-10(b), the DCCA intends to complete its review and render a decision by September 19, 2014, which is within 120 days of the date on which Applicants submitted the State Transfer Application.

¹⁵See Hawai'i Revised Statutes ("**HRS**") § 440G-8(b).

¹⁶Comcast, through its local legal counsel, has informally advised DCCA that it intends to file supplemental responses to DCCA's Information Requests on or about June 20, 2014.

¹⁷HRS § 440G-8(b).

eliminate the possibility that Comcast might, in the future, enter the Hawai'i cable market as a competitor to OTWC. The Proposed Transaction also could adversely affect the market for locally created video content by enhancing Comcast's buyer-side market power in the content market.

At this juncture as we discussed on June 4, 2014, the information submitted by Applicants does not provide a basis on which the Director could be convinced that the Proposed Transaction will provide sufficient public interest benefits to outweigh the potential adverse effects. Therefore, the Director will need to consider whether to impose conditions that could offset the concerns raised by the Proposed Transaction.¹⁸ DCCA is prepared to enter into discussions with Applicants regarding the commitments that they are prepared to make in order to convince the Director that the Proposed Transaction is in the public interest.

If you have any question regarding the above, please contact me at (808) 586-2620. Thank you for your cooperation and assistance in this matter.

Sincerely,



Catherine P. Awakuni
Cable Television Administrator
Department of Commerce and
Consumer Affairs

c: John A. Gutierrez, Comcast Cable
Bob Barlow, Oceanic Time Warner Cable
Gregg Fujimoto, Oceanic Time Warner Cable
Keali'i Lopez, Director
Department of the Attorney General

¹⁸See HRS § 440G-8(d).