

May 15, 2014

CABLE TELEVISION DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of )  
 )  
HAWAIIAN TELCOM SERVICES )  
COMPANY, INC. )  
 )  
Public, Educational, or Governmental )  
Access Capital Fund Payment Schedule for )  
the Years 2015 to 2019. )  
\_\_\_\_\_ )

**DECISION AND ORDER NO. 361**

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By this Decision and Order, the Cable Television Division of the Department of Commerce and Consumer Affairs ("**Department**") of the State of Hawaii approves the capital fund payment schedule for the years 2015 to 2019, as set forth in the agreement dated April 30, 2014, by and between `Ōlelo Community Media ("**Ōlelo**"), as the current Oahu public, educational, or governmental ("**PEG**") access organization, and Hawaiian Telcom Services Company, Inc. ("**HTSC**").

I. INTRODUCTION

On June 24, 2011, the Department issued Decision and Order No. 352 ("**D&O No. 352**") granting a non-exclusive franchise to HTSC to provide digital cable service to all areas on the island of Oahu, subject to the terms, conditions, and requirements set forth in D&O No. 352.

Section IV.J.2 of D&O No. 352, required HTSC to meet with the Oahu PEG access organization(s) to develop a schedule for capital fund payments for the PEG access facilities and equipment for the years 2015 to 2019 and submit the agreed-upon schedule to the Director of the DCCA ("**Director**") by April 30, 2014.<sup>1</sup> On April 30, 2014, HTSC submitted its agreement dated April 30, 2014, with `Ōlelo, the current Oahu PEG access organization, which memorializes HTSC's and `Ōlelo's ("**Parties**") agreed-upon capital fund payment schedule for the years 2015 to 2019 ("**Agreement**"), as required under Section IV.J.2 of D&O No. 352.

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<sup>1</sup>See D&O No. 352 at 36-37.

## II. Discussion

Under the Agreement, HTSC agrees to pay `Ōlelo, the Director's PEG designee for Oahu, capital fund payments for PEG access facilities and equipment, as follows:

<u>Due Date</u>	<u>Amount</u>
January 31, 2015	\$823,000.00 multiplied by the ratio of HTSC's basic service tier Subscribers on Oahu to the total number of basic service tier Subscribers on Oahu served by Oceanic Time Warner Cable LLC ("OTWC"), and any other franchised cable operator on Oahu combined as of December 31 of the previous year.
January 31, 2016; January 31, 2017; January 31, 2018; and January 31, 2019	\$823,000.00 multiplied by the ratio of HTSC's basic service tier Subscribers on Oahu to the total number of basic service tier Subscribers on Oahu served by HTSC, OTWC, 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 HTSC, OTWC, and any other franchised cable operator on Oahu combined. <sup>2</sup>

In addition, the Parties agree: (1) that the Director has the authority to adjust the capital funds payments agreed to by the Parties, as set forth in the Agreement, subject to HTSC's franchise order (i.e., D&O No. 352); and (2) on certain conditions when they may petition the Director to adjust the capital fund payment amounts. Specifically, the Parties agree to the following:

- (1) 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 or HTSC 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.

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<sup>2</sup>See Agreement at 1.

- (2) The Director shall have the sole authority to grant or deny the petition, and before changing the amount of the capital fund payments, the Director shall require the petitioning party to provide substantial justification for its request.
- (3) If an increase or decrease is granted, the Oahu Subscriber number base shall be adjusted accordingly.
- (4) `Ōlelo may request in writing to the DCCA that the DCCA confirm whether the minimum increase or decrease in Subscriber numbers has been met; provided that the DCCA shall not be required to disclose the confidential Subscriber information to `Ōlelo, and `Ōlelo may request this confirmation from the DCCA only once per calendar year.<sup>3</sup>

Upon review, the DCCA determines that the capital fund payment schedule agreed to by the Parties, as memorialized in the Agreement, is in the public interest. The other terms and conditions of the Agreement are reasonable and consistent with D&O No. 352. Based on the foregoing, the DCCA concludes that the Agreement should be approved.

### III. ORDER

Now, therefore, the Director hereby orders that:

In accordance with D&O No. 352, the Director approves the Agreement, described herein, between HTSC and `Ōlelo for HTSC's Oahu franchise area. Accordingly, HTSC shall pay `Ōlelo capital fund payments for the years 2015-2019 as set forth in the Agreement.

Except as otherwise provided in this Decision and Order, the remaining provisions of D&O No. 352 (to the extent not otherwise amended), shall remain in full force and effect.

Dated: Honolulu, Hawaii, May 15, 2014

  
KEALI'I S. LOPEZ  
Director of Commerce and Consumer Affairs

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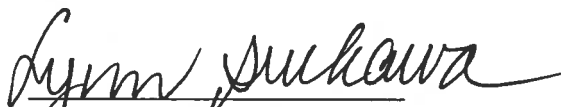
<sup>3</sup>See id. at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order No. 361 was served upon the following at the address shown below by mail the same, postage prepaid, on this 15th day of May, 2014.

Scott K. Barber  
Chief Operating Officer  
Hawaiian Telcom Services Company, Inc.  
P.O. Box 2200  
Honolulu, Hawaii 96841

Francis K. Mukai, Esq.  
Vice President & Associate General Counsel  
Hawaiian Telcom Services Company, Inc.  
P.O. Box 2200  
Honolulu, Hawaii 96841

  
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Lynn Suekawa  
CATV, DCCA Secretary