

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

In the Matter of)
)
OCEANIC TIME WARNER CABLE LLC) **DECISION AND ORDER NO. 365**
)
Regarding the Provision of Additional)
Institutional Network Services Without)
Charge to the State or Subscribers from)
January 14, 2015 to January 13, 2020)
(i.e., during the Second Five-Year Period)
of the Oahu Cable Television Franchise).)

DECISION AND ORDER NO. 365

I. BACKGROUND

On January 14, 2010, the Director of the Department of Commerce and Consumer Affairs (“DCCA”) issued Decision and Order (“D&O”) No. 346, which renewed Oceanic Time Warner Cable LLC’s (“OTWC”) ¹ Cable Franchise for the island of Oahu (subject to certain terms, conditions, obligations, and requirements) for a term of twenty (20) years.

Among other things, during the first five (5) years of the Oahu Cable Franchise term (at the request of the Director), OTWC is required to install fiber optic lines, materials, and electronics for two (2) -way broadband video, voice, and data capabilities, interconnecting network sites between the institutional network (“INET”) system and twenty (20) additional sites/interconnections, selected within OTWC’s franchise areas statewide, to be determined by the Director, all at no cost to the State of Hawai‘i (“State”) or subscribers during the term of the Cable Franchise.² In addition, after the first five (5) year period of the Cable Franchise term, Section IV.M.1.f. of D&O No. 346 requires OTWC and DCCA to meet and confer no later than April 30th of the preceding calendar year (i.e., April 30, 2014; April 30, 2019; and April 30, 2024) on the number of additional INET sites/interconnection to be provided by OTWC, at no cost to the State or subscribers, for every subsequent five (5) year period.³

¹ OTWC is the successor-in-interest to Time Warner Entertainment Company, L.P. See, D&O No. 355, issued on September 21, 2012.

² See, D&O No. 346 at 31.

³ See, *id.*

On April 28, 2014, OTWC submitted a letter requesting a sixty (60) day extension of time (i.e., from April 30, 2014 to June 30, 2014⁴) to comply with the requirements of Section IV.M.1.f. of D&O No. 346. In the letter, OTWC stated that current meetings between OTWC and DCCA on INET issues connected with OTWC's Big Island franchise renewals may impact the discussions required under Section IV.M.1.f. of D&O No. 346, and asserted that an extension of time to meet and confer regarding the future plans for INET sites/interconnects required by D&O No. 346 would be mutually beneficial to OTWC and DCCA.

After carefully considering OTWC's representations, DCCA issued a May 6, 2014 Letter Order granting OTWC's April 28, 2014 extension request. Thereafter, additional extension requests were granted or mutually agreed upon between OTWC and DCCA regarding the requirements under Section IV.M.1.f. of D&O No. 346, until the final deadline of March 20, 2015.⁵

On March 12, 2015, the Director and representatives of OTWC met and conferred regarding the additional INET sites and services ("**Franchise INET Connections**") at no cost to the State or subscribers for the second five (5) year period (i.e., January 14, 2015 through January 13, 2020), pursuant to Section IV.M.1.f. of D&O No. 346. The parties agreed that OTWC shall provide ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) worth of Franchise INET Connections for the period of January 14, 2015 to January 13, 2020. Among other things, because the parties agreed to a dollar value of services as opposed to a specific "number of additional INET sites/interconnections" as set forth in D&O No. 346,⁶ OTWC and DCCA agreed: (1) to modify D&O No. 346 to reflect this agreement; and (2) that OTWC would submit a letter detailing the specific terms and conditions regarding the Franchise INET Connections, and requesting a modification of D&O No. 346 under to Section IX.E.2. of the D&O.

On March 20, 2015, OTWC submitted a letter memorializing the agreements reached regarding the Franchise INET Connections for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020), and requesting that DCCA modify the terms of D&O No. 346, under Section IX.E.2. of the D&O ("**OTWC's March 20, 2015 Letter**"). In its letter, OTWC states that DCCA and OTWC have mutually agreed that the Franchise INET Connections required under Section IV.M.1.f. of D&O No. 346 should be quantified in terms of a specific monetary value as opposed to specifying a physical number of INET sites/interconnections for the period in question, and that the Franchise INET Connections need not refer to a specific site or connection, but instead could be INET related services (e.g., reconfiguration, upgrades, etc.). OTWC notes that "[a] specified monetary value for the Franchise INET

⁴ Because the 60th day falls on Sunday, June 29, 2014, the computation of time is extended to the next day which is Monday, June 30, 2014. See, Hawaii Administrative Rules section 16-210-14.

⁵ See, Letter Orders dated June 30, 2014; August 28, 2014; September 26, 2014; and November 21, 2014.

⁶ See, D&O No. 346 at 31.

Connections, among other benefits, will assist both parties in budgeting, planning and allocating the INET resources.”⁷

In addition, OTWC states that DCCA and OTWC agreed that for the second five (5) year period of OTWC’s Oahu Cable Franchise term (i.e., January 14, 2015 through January 13, 2020), OTWC shall provide the State ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) worth of Franchise INET Connections,⁸ and among other things, OTWC noted the following:

From year to year within the five year period, DCCA may carry over any unused balance of the \$1 million allocation. However, with respect to the carry over unused balance, DCCA will be mindful of [OTWC]’s scheduling, manpower, resource limitations and the cost of the connections compared to the public benefits provided. In addition, if DCCA has a balance remaining from the \$1 million allocation at the end of the five year period (i.e. a balance remaining as of January 13, 2020), DCCA may utilize the remaining balance in the immediately following five year period only (i.e. the five year period of January 14, 2020 to January 13, 2025); provided, however, that DCCA shall identify during the current period (i.e. prior to January 13, 2020) the Franchise INET Connections that the balance shall be applied to in the immediately following five year period.

See, OTWC’s March 20, 2015 Letter at 2.

Moreover, OTWC states that aside from certain specific terms specified in OTWC’s March 20, 2015 Letter, nothing in the letter is intended to affect any of the other provisions of D&O No. 346, including those regarding the Franchise INET Connections that: (1) DCCA shall be cognizant of OTWC’s scheduling, manpower, resource limitations and the cost of the connections compared to the public benefits provided; and (2) the Franchise INET Connections or INET related services identified by DCCA can be selected/provided in OTWC’s Cable Franchise areas statewide. OTWC also described other matters regarding the Franchise INET Connections for the period of January 14, 2015 through January 13, 2020 in its March 20, 2015 Letter. OTWC’s March 20, 2015 Letter is attached as Exhibit “A”, and is hereby incorporated into and made a part of this D&O. Finally, pursuant to Section IX.E.2. of the D&O, OTWC requests that DCCA modify the D&O because some of the provisions in OTWC’s March 20, 2015 Letter modify some of the provisions of D&O No. 346. In closing, OTWC states that it believes that the agreed-upon terms and conditions are fair to both the

⁷ See, OTWC’s March 20, 2015 Letter at 2.

⁸ See, id.

public and OTWC, and that the modifications requested will facilitate the implementation of the Franchise INET Connections.

II. DISCUSSION

Pursuant to Section IX.E.2. of D&O No. 346, OTWC may at any time request the Director to modify any of the terms, conditions, and requirements of the D&O during the term of OTWC's Oahu Cable Franchise, and the Director has the sole discretion to consider OTWC's request and issue a modification to the D&O. In making the decision, the Director "shall take into account any appropriate factor(s) provided under applicable Law as may be amended and ensure that the terms and conditions upon which Cable Service is provided are fair to both the public and [OTWC]."⁹

Upon careful consideration of OTWC's March 20, 2015 Letter, DCCA finds that the letter fully and accurately memorializes the terms and conditions agreed to by OTWC and DCCA regarding the Franchise INET Connections for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020). Accordingly, DCCA finds it reasonable and appropriate to adopt OTWC's letter in its entirety. In addition, DCCA determines that a modification of the provisions of D&O No. 346 to accommodate the terms and conditions agreed to by OTWC and DCCA regarding the Franchise INET Connections for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020) is reasonable and appropriate in this case.

As described above, instead of specifying a physical number of INET sites/interconnection as contemplated in D&O No. 346, the agreement to quantify the Franchise INET Connections in terms of a specific monetary value (i.e., ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) worth of Franchise INET Connections) for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020) is fair to both the public and OTWC. Among other things, DCCA agrees with OTWC's statement that a "specific monetary value for the Franchise INET Connections, among other benefits, will assist both parties in budgeting, planning and allocating the INET resources."¹⁰ Thus, a modification to the provisions of D&O No. 346 to allow OTWC to provide Franchise INET Connections in terms of a monetary value as opposed to a specific "number of additional INET sites/interconnection"¹¹ is fair and appropriate, in this case.

⁹ See, D&O No. 346 at 48.

¹⁰ See, OTWC's March 20, 2015 Letter at 2.

¹¹ See, D&O No. 346 at 31 (emphasis added).

III. **ORDER**

NOW, THEREFORE, DCCA hereby orders that:

- A. OTWC's March 20, 2015 Letter, attached as Exhibit "A", is adopted in its entirety.
- B. OTWC shall, among other things, provide the State with ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) worth of Franchise INET Connections for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020), as described in this D&O and OTWC's March 20, 2015 Letter.
- C. OTWC's request for a modification of the provisions of D&O No. 346 to accommodate the terms and conditions agreed to by OTWC and DCCA regarding the Franchise INET Connections for the second five (5) year period of OTWC's Oahu Cable Franchise (i.e., January 14, 2015 through January 13, 2020) is hereby granted.
- D. Except as otherwise provided in this D&O, all of the remaining provisions of D&O No. 346 shall continue to remain in full force and effect.

Dated: Honolulu, Hawai'i, May 12, 2015.


CATHERINE P. AWAKUNI COLÓN
Director of Commerce and Consumer Affairs

EXHIBIT A

Watanabe Ing
A LIMITED LIABILITY LAW PARTNERSHIP

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March 20, 2015

✓ ✓ ✓
FILE

VIA HAND DELIVERY

Ji Sook Kim, Esq.
Administrator
Cable Television Division
Department of Commerce & Consumer Affairs
King Kalakaua Building
335 Merchant Street, Room 101
Honolulu, Hawaii 96813

**Re: INET Sites/Interconnections At No Charge to the State or Subscribers
for Period of 01/14/15 – 01/13/20**

Dear Ms. Kim:

Pursuant to Section IV.M.1.f. of Decision and Order No. 346 (January 14, 2010) (“D&O 346”), the Department of Commerce and Consumer Affairs (“DCCA”) and Oceanic Time Warner Cable LLC (“Oceanic”) are required to meet and confer no later than April 30th of the preceding year of each five year period of the franchise term (i.e., on April 30, 2014, April 30, 2019 and April 30, 2024) to discuss the number of additional INET sites / interconnections to be provided by Oceanic without charge to the State or subscribers (the “Franchise INET Connections”) for the following five year period.

By mutual agreement, and for the reasons more fully described in letter orders from DCCA dated May 6, 2014, June 30, 2014, August 28, 2014, September 26, 2014, and November 21, 2014, DCCA extended the April 30, 2014 deadline to discuss the Franchise INET Connections for the next five year period (i.e., January 14, 2015 through January 13, 2020) to the current deadline of March 20, 2015.

Although D&O 346 contemplates that the Franchise INET Connections shall be quantified by the physical number of such INET sites / interconnections, the parties, having met and conferred prior to March 20, 2015, have mutually agreed that the Franchise INET Connections, going forward, should be quantified in terms of a specified monetary value, which shall include the actual cost of all labor and materials for the Franchise INET Connections, as more fully described and specified in Section IV.M.1.b.

("Cost of Labor and Materials") of D&O 346, and mutually agreed that the Franchise INET Connections need not be a specific site or connection but could be an INET related service (e.g., reconfiguration, upgrades, etc.). A specified monetary value for the Franchise INET Connections, among other benefits, will assist both parties in budgeting, planning and allocating the INET resources.

The parties have further agreed that Oceanic, for the franchise period of January 14, 2015 through January 13, 2020, shall provide to the State Franchise INET Connections with a total monetary value of \$1 million. From year to year within the five year period, DCCA may carry over any unused balance of the \$1 million allocation. However, with respect to the carry over unused balance, DCCA will be mindful of Oceanic's scheduling, manpower, resource limitations and the cost of the connections compared to the public benefits provided. In addition, if DCCA has a balance remaining from the \$1 million allocation at the end of the five year period (i.e. a balance remaining as of January 13, 2020), DCCA may utilize the remaining balance in the immediately following five year period only (i.e. the five year period of January 14, 2020 to January 13, 2025); provided, however, that DCCA shall identify during the current period (i.e. prior to January 13, 2020) the Franchise INET Connections that the balance shall be applied to in the immediately following five year period.

Other than the specific terms noted above, nothing herein is intended to affect any other provisions of D&O 346, including, but not limited to, the provisions regarding the Franchise INET Connections, which include a requirement that DCCA, when determining the Franchise INET Connections to implement, shall be cognizant of Oceanic's scheduling, manpower, resource limitations, and cost of the connections compared to the public benefits provided, and that the Franchise INET Connections or INET related services as identified by DCCA can be selected/provided in OTWC's franchise areas statewide. Moreover, the parties recognize and agree that the Franchise INET Connections for subsequent five year periods (i.e. periods beginning on January 14, 2020 and January 14, 2025) are subject to separate and distinct negotiations between DCCA and Oceanic, and nothing herein shall be cited or otherwise used by either party as precedent for matters related to the Franchise INET Connections in the subsequent five year periods of the franchise.

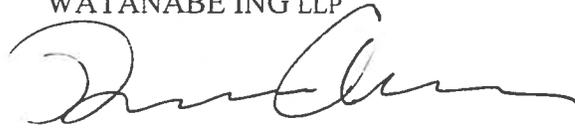
Finally, as the foregoing terms modify the provisions of D&O 346, Oceanic respectfully requests that DCCA, as authorized by Section IX.E.2. of that order, modify D&O 346 to the extent noted in this letter. Oceanic believes, for the reasons noted above, that these agreed-upon terms are fair to both the public and Oceanic, and that these modifications will facilitate the implementation of the Franchise INET Connections.

Ji Sook Kim, Esq.
March 20, 2015
Page 3

Thank you for your attention to this matter, and please contact me with any questions.

Very truly yours,

WATANABE ING LLP

A handwritten signature in black ink, appearing to read 'Brian A. Kang', written over the printed name below.

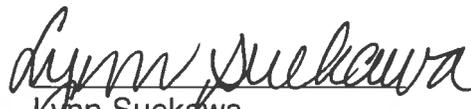
BRIAN A. KANG

cc: Oceanic Time Warner Cable LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 365 was served upon the following person at the address shown below by mailing the same, postage prepaid, on this 12th day of May, 2015.

Brian A. Kang, Esq.
Watanabe Ing LLP
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813


Lynn Suekawa
Secretary