

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

In the Matter of the Joint Application of )	
TIME WARNER CABLE INC. and COMCAST )	
CORPORATION )	<b>DECISION AND ORDER NO. 362</b>
For Approval of the Transfer of Control of )	
Oceanic Time Warner Cable LLC's Cable )	
Television Franchises for the Island of O`ahu, )	
Island of Kaua`i, East Hawai`i (Hilo), West )	
Hawai`i (Kona), County of Maui (excluding )	
Lahaina), and Lahaina from Time Warner )	
Cable Inc. to Comcast Corporation. )	

**DECISION AND ORDER NO. 362**

**I. INTRODUCTION**

On May 23, 2014, Time Warner Cable Inc. ("**TWC**"), the ultimate parent company of Oceanic Time Warner Cable LLC ("**OTWC**"), and Comcast Corporation ("**Comcast**")<sup>1</sup> jointly filed a "State of Hawaii Application for Transfer of Cable Television Franchise" ("**State Transfer Application**") with the Department of Commerce and Consumer Affairs ("**DCCA**") for approval of the transfer of control of all of OTWC's cable television franchises in the State of Hawai`i ("**State**") from TWC to Comcast. Pursuant to Hawaii Revised Statutes ("**HRS**") section 440G-10.1 and Hawaii Administrative Rules ("**HAR**") chapter 16-133, DCCA hereby approves Applicants' request subject to the terms, conditions, and requirements provided in this Decision and Order ("**D&O**").

**II. BACKGROUND**

On April 11, 2014, Applicants submitted a Federal Communications Commission ("**FCC**") Form 394 ("**Form 394**") with DCCA. On May 23, 2014, Applicants filed their State Transfer Application with DCCA.<sup>2</sup> The Application requested the Director of

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<sup>1</sup> Comcast and TWC shall collectively be referred to as "**Applicants**."

<sup>2</sup> Applicants' Form 394 and the State Transfer Application shall collectively be referred to as the "**Application**." Instead of filing an Application for each OTWC cable franchise in the State, Applicants requested that they be allowed to file a consolidated transfer application encompassing all six (6) of OTWC's cable franchises in the State. DCCA approved this request.

DCCA (“**Director**”) to “consent” to or approve the proposed indirect transfer of control<sup>3</sup> of all of OTWC’s cable franchises in the State from TWC to Comcast pursuant to and consistent with the February 12, 2014 “Agreement and Plan of Merger” (“**Proposed Transfer**”) that was entered into by TWC and Comcast. The Application was submitted pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 (the “**Cable Act**”), 47 United States Code (“**U.S.C.**”) section 521 *et seq.*, 47 Code of Federal Regulations (“**C.F.R.**”) section 76.502, and applicable State laws and rules.

A. Description of the Proposed Transfer

In their filings with DCCA, Applicants represent that on February 12, 2014, Comcast, TWC, and Tango Acquisition Sub., Inc. (“**TASI**”), a Delaware corporation and wholly owned subsidiary of Comcast, entered into an “Agreement and Plan of Merger” under which TASI, subject to certain conditions and waivers, intends to merge with and into TWC, with TWC surviving as a wholly owned subsidiary of Comcast (“**Merger Agreement**”).<sup>4</sup> Under the proposed transaction, Comcast will acquire 100 percent (100%) of TWC’s equity in exchange for Comcast Class A Common Stock (i.e., each TWC shareholder will receive approximately 2.875 shares of Comcast Class A Common Stock),<sup>5</sup> and will result in the indirect transfer of control of OTWC and its cable television systems in the State from TWC to Comcast.<sup>6</sup>

According to Applicants, the Proposed Transfer is in the public interest and “Comcast is legally, financially, and technically qualified to provide the services required for each of the [OTWC’s Hawai’i cable] franchises.”<sup>7</sup> Applicants also state that the Proposed Transfer will not impact the cable systems in the State, and that Applicants have no “current” plans to change the terms and conditions of service or operations of the systems.<sup>8</sup> Applicants further state that the franchisee, OTWC, shall remain in place

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<sup>3</sup> In the Application, Applicants characterize the transfer of control as being an “indirect” transfer of control. However, for purposes of D&Os, DCCA does not distinguish between “direct” and “indirect” transfers of control.

<sup>4</sup> See Comcast’s Form 8-K filed on February 13, 2013 for the Period Ending February 12, 2014 with the United States Securities and Exchange Commission (“**SEC**”), filed on April 11, 2014, at 3 (Item 1.01).

<sup>5</sup> See *id.*

<sup>6</sup> Applicants note that upon completion of the merger, “Comcast intends to retain all of TWC’s existing assets, except for the divestiture of cable systems of approximately 3 million subscribers in total.” Comcast Summary of Joint Application for Approval of Indirect Transfer of Control of Cable Television Franchisee due to the Acquisition of Time Warner Cable Inc. by Comcast Corporation (“**Comcast’s Summary of Transfer**”), filed on April 11, 2014, at 4.

<sup>7</sup> Comcast’s Summary of Transfer at 9.

<sup>8</sup> See State Transfer Application at 3.

following the transaction and that OTWC shall remain subject to all of the State's franchise requirements.<sup>9</sup>

Among other things, Applicants represent that the Proposed Transfer will "generate substantial public interest benefits for Time Warner Cable's customers in Hawaii."<sup>10</sup> In particular, Applicants represent that: (1) the Proposed Transfer shall accelerate deployment of advance video technologies and the development of new and innovative video productions and services; and (2) through the Proposed Transfer, TWC customers shall enjoy more choices in programming, particularly in terms of video-on-demand (i.e., Comcast's XFINITY On Demand) and TV Everywhere,<sup>11</sup> and the benefits of Comcast's new next generation entertainment operating system, the X1 platform, which is already available throughout its existing footprint.<sup>12</sup> Moreover, Applicants contend that there will be additional benefits of the Proposed Transfer, including that the transaction would "accelerate broadband deployment, intensify broadband competition, promote innovation, and expand broadband adoption."<sup>13</sup>

**B. Applicants Comcast and TWC**

Comcast, a Pennsylvania corporation with principal offices located in Philadelphia, Pennsylvania, is a global media and technology company with networks and facilities located in thirty-nine (39) states and the District of Columbia.<sup>14</sup> Comcast asserts that it "is a leading provider of video, high-speed Internet, digital voice, and other next-generation services and technologies to residential customers and small- and medium-sized businesses."<sup>15</sup>

TWC, a Delaware corporation with principal offices located in New York, New York, is a provider of video, high-speed data, and voice services to residential and business class customers in thirty (30) states, including Hawai'i.<sup>16</sup> TWC is the ultimate parent company of OTWC.

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<sup>9</sup> See id. at 19.

<sup>10</sup> See Form 394, Exhibit 7 "Public Interest Considerations" at 1.

<sup>11</sup> See id. at 1-3.

<sup>12</sup> See id. at 4.

<sup>13</sup> Id. at 5 (footnote omitted).

<sup>14</sup> See Comcast's Summary of Transfer at 3.

<sup>15</sup> Id.

<sup>16</sup> See id. at 1.

C. OTWC and Its Cable Franchises in the State

OTWC, a Delaware limited liability company, is authorized to conduct business in the State. In 2012, pursuant to D&O No. 355, DCCA authorized the transfer of the State's cable franchises for the island of O`ahu, island of Kaua`i, East Hawai`i (Hilo), West Hawai`i (Kona), County of Maui (excluding Lahaina), and Lahaina from Time Warner Entertainment Company, L.P. ("**TWE**") to OTWC in connection to an internal reorganization or restructuring of TWC's subsidiaries and companies.

TWE, OTWC's predecessor-in-interest, had begun providing cable service in the State in 1992 on O`ahu as Oceanic Time Warner Cable and then later expanded its service to encompass the entire State through the acquisition of cable franchises in the other counties. The latest acquisitions for TWE in the State were the 2002 acquisitions of the cable franchises formerly held by G Force, LLC and Kaua`i Cablevision serving the island of Kaua`i. These two franchises were subsequently combined, and OTWC now provides cable service on the island of Kaua`i under a single cable franchise.<sup>17</sup>

OTWC currently holds the following six (6) separate cable franchises covering the entire State:

- (1) East Hawai`i (Hilo): D&O Nos. 185, 242, 261, 335, 355, and 357;
- (2) West Hawai`i (Kona): D&O Nos. 173, 244, 261, 318, 322, 355, and 358;
- (3) Maui County (excluding Lahaina): D&O Nos. 241, 261, 317, 355, and 360;
- (4) Lahaina: D&O Nos. 174, 245, 261, 355, and 359;
- (5) Kaua`i: D&O Nos. 291, 319, 355, and 356; and
- (6) O`ahu: D&O Nos. 346 ("**O`ahu D&O**") and 355.

Collectively, these cable franchises shall be referred to as the "**Franchise D&Os.**"

Certain provisions of these Franchise D&Os have been amended by the Director through subsequent D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&Os and State law. In addition, OTWC (and its predecessor-in-interest, TWE) entered into various stipulations and agreements impacting its services in the franchise areas.<sup>18</sup>

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<sup>17</sup> See D&O No. 291, issued on July 12, 2002.

<sup>18</sup> HRS section 440G-3 defines "franchise area" or "service area" as "the geographic area for which a cable operator has been issued a cable franchise."

On April 27, 2009, OTWC notified DCCA of its intent to renew its East Hawai`i (Hilo) and West Hawai`i (Kona) franchises, and filed a written consolidated application on July 20, 2011, incorporating the renewal of both cable television franchises into a single Hawai`i Island cable television franchise. The East Hawai`i (Hilo) franchise, which was scheduled to expire on December 31, 2011, and the West Hawai`i (Kona) franchise, which was scheduled to expire on December 31, 2011, have been extended to November 30, 2014, pending final disposition of the renewal application.

On June 2, 2011, OTWC notified DCCA of its intent to renew its Maui County (excluding Lahaina) and Lahaina cable franchises, and filed a written consolidated application on August 30, 2013, incorporating the renewal of both franchises into a single Maui cable franchise. The Maui County (excluding Lahaina) franchise, which was scheduled to expire on December 31, 2013, and the Lahaina cable television franchise, which was scheduled to expire on December 31, 2013, have been extended to December 31, 2014, pending final disposition of the renewal application.

On April 24, 2014, OTWC notified DCCA of its intent to renew its Kaua`i cable television franchise, which is scheduled to expire on December 31, 2016. A renewal application has not yet been filed regarding OTWC's Kaua`i franchise.

The O`ahu franchise is scheduled to expire on January 13, 2030.

#### D. Public Hearings and Other Procedural Matters

Pursuant to HRS sections 440G-10.1 and 440G-7, DCCA conducted public hearings in an effort to obtain written or oral comments, views, and/or arguments from OTWC's customers, interested persons, and the general public regarding the Proposed Transfer. Public hearings were held in each of the six (6) franchise areas, consistent with State laws and regulations, as follows:

- Kaua`i -- July 14, 2014, at 4:30 p.m., Lihue Civic Center, in Lihue;
- West Hawai`i (Kona) -- July 14, 2014, at 4:30 p.m., West Hawai`i Civic Center, in Kailua-Kona;
- Maui County (except for Lahaina) -- July 15, 2014, at 4:30 p.m., Cameron Center Auditorium, in Wailuku;
- East Hawai`i (Hilo) -- July 16, 2014, at 4:30 p.m., Aupuni Center Conference Room, in Hilo;
- Lahaina -- July 17, 2014, at 4:30 p.m., West Maui Senior Center, in Lahaina; and
- O`ahu -- July 18, 2014, at 4:30 p.m., King Kalakaua Building, in Honolulu.

Notices of the public hearings were published on June 22 and June 29, 2014, in the Honolulu Star-Advertiser, The Maui News, West Hawaii Today, Hawaii Tribune Herald and the Garden Island. Copies of the Form 394, the State Transfer Application, all supporting documents, and any submitted supplemental information were made available for review during normal business hours at OTWC's offices in each franchise area in the State and at DCCA's Cable Television Division ("**CATV**") office. This information was also posted on CATV's webpage. DCCA established July 25, 2014, as the deadline for the receipt of public comments concerning the Proposed Transfer. Comments received during the public hearings were varied. Some participants expressed support, while others expressed numerous and diverse concerns regarding the Proposed Transfer. Written testimonies and comments filed by OTWC's customers, interested persons, the general public, institutional organizations, and community leaders regarding the Proposed Transfer can be viewed at the CATV's webpage located at:  
[http://cca.hawaii.gov/catv/cable\\_operators/comcast-time-warner-merger/](http://cca.hawaii.gov/catv/cable_operators/comcast-time-warner-merger/).

The Proposed Transfer was placed on the agenda of the August 21, 2014 meeting of the Cable Advisory Committee ("**CAC**"). At the meeting, CAC members expressed a few concerns but did not object to approval of the Proposed Transfer.

As part of DCCA's review and for purposes of clarification, DCCA issued two (2) sets of information requests ("**IRs**") to Applicants. DCCA issued its first set of IRs on May 8, 2014, and Applicants filed their responses on May 23, 2014 ("**Responses to First Set of IRs**"). DCCA issued its second set of IRs on August 14, 2014, and Applicants filed responses on August 29, 2014 ("**Responses to Second Set of IRs**"). DCCA had numerous discussions with Applicants regarding the Proposed Transfer. Applicants subsequently filed certain supplemental information and clarifications regarding their Application, including the June 20, 2014 filing entitled "Supplemental Information to Parties' Application Form and to Parties' Responses to Information Requests" ("**June 20, 2014 Supplement Information**"), the September 24, 2014 letter filed by Comcast ("**September 24, 2014 Letter**"), and the "Additional Supplemental Information to Parties' Responses to First Set of Information Requests" filed on September 25, 2014.

### **III. APPLICABLE LAW**

#### **A. Federal Law**

Federal laws and regulations authorize local franchising authorities ("**LFAs**"), including the State, to act on an application to transfer control of a cable system.<sup>19</sup> As such, the transfer of a cable franchise is made under the authority of State law, which is detailed in the section below, and is consistent with the federal Cable Act.

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<sup>19</sup> See section 617 of the Cable Act. See also 47 U.S.C. section 537, and 47 C.F.R. section 76.502(a). Pursuant to HRS section 440G-4, the Director of DCCA is authorized to issue cable franchises and administer and enforce HRS chapter 440G.

Among other things, section 624 of the Cable Act authorizes LFAs to impose certain requirements on cable-related facilities and equipment, including but not limited to channel capacity, system configuration, and institutional and subscriber networks. Section 611 of the Cable Act permits LFAs to require channel capacity be designated for Public, Educational, or Governmental (“PEG”) access use. In addition, section 622 of the Cable Act allows LFAs to assess franchise fees up to five percent (5%) of the cable operator’s annual gross revenues, any portion of which may be used for PEG access or any other purpose.

Federal regulations require LFAs to act within one hundred twenty (120) days of the submittal of the FCC’s Form 394, various exhibits, and any additional information required by the terms of the franchise agreement and state laws; and if an LFA fails to act within that prescribed time, the transfer is deemed approved.<sup>20</sup> Initially, Applicants and DCCA disagreed as to when the one hundred twenty (120) day review period would end. However, on August 25, 2014, DCCA and Applicants agreed that the review period for the Proposed Transfer would be deemed to end on September 19, 2014, unless otherwise extended by mutual agreement. On September 15, 2014, DCCA and Applicants agreed to further extend the review period without prejudice to the existing position of any party to September 30, 2014, to give DCCA additional time to complete its review of the Proposed Transfer and issue a D&O, which was later further extended, by mutual agreement, to October 8, 2014.

#### B. State Law

The regulatory powers of the Director regarding the transfer of a cable franchise are set forth in HRS sections 440G-7, 440G-8, 440G-10.1, and 440G-12. In particular, HRS section 440G-10.1(a) states that:

No cable franchise, including the rights, privileges, and obligations thereof, may be assigned . . . or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including the transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. (Emphasis added).

HRS section 440G-10.1(b) further states that the provisions of HRS sections 440G-7 and 440G-8 also apply to the transfer of cable franchises. HRS section 440G-8(b) establishes the criteria to be considered by the Director prior to issuing a cable franchise, and states in pertinent part:

The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when

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<sup>20</sup> See section 617 of the Cable Act. See also 47 U.S.C. section 537, and 47 C.F.R. section 76.502(a) and (c).

the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances. (Emphasis added).

Based on the above, Applicants are required to satisfactorily demonstrate that the transfer of control of OTWC's six (6) cable television franchises in the State from TWC to Comcast is in the public interest.

#### C. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a non-exclusive right to use and occupy certain limited and scarce public places, public highways, and rights-of-way for the construction, use, operation, and maintenance of a cable system for a fixed period. Substantial economic benefits may flow to the recipient as a consequence of this privilege; however, the franchise confers no right, title, or interest in any public places, public highways, and rights-of-way beyond those expressly conferred herein and in the applicable cable franchise Orders.

The privilege of a cable franchise also carries with it associated obligations. The franchisee (and Applicants) should recognize that there are certain responsibilities assumed when issued or transferred a cable franchise(s). These include operating cable systems that are reliable, responsive, and responsible to the public that the franchisee serves. In addition, the franchisee is responsible for providing the widest possible diversity of information and services to subscribers at reasonable costs and enhancing communications capabilities to the communities it serves by supporting institutional network ("INET") connections, public television, and PEG access programming (as requested by the Director).

### IV. DISCUSSION

#### A. Introduction

DCCA has thoroughly reviewed and considered Applicants' representations in the filed Form 394, State Transfer Application, various exhibits and documents, and subsequently submitted supporting materials including their responses to the issued



IRs. DCCA has also considered Applicants' representations at the public hearings and the CAC meeting, and the comments received from the general public, government agencies, educational institutions and administrators, community organizations and leaders, and CAC members. In addition, Comcast has assured the Director of the many potential public benefits the transaction would bring to the State.

After reviewing the information provided, DCCA determines that Comcast has demonstrated the requisite financial, legal, and technical ability to maintain the cable systems and to provide the services, facilities, and equipment as required in OTWC's cable franchise agreements. In particular, Comcast is a well-known and established provider of video, high-speed Internet, digital voice, and other services and technologies, providing services to an estimated 53 million residential and business customers in thirty-nine (39) states and the District of Columbia.<sup>21</sup>

Comcast was initially founded in 1963,<sup>22</sup> and therefore has a long history of providing cable television service. In 2013, Comcast reported that it generated over \$65 billion in revenues and had assets totaling over \$158 billion.<sup>23</sup> Upon completion of the Proposed Transfer, OTWC under Comcast's control (hereafter referred to as "**Comcast/OTWC**", whenever applicable) shall continue to be owned and controlled by TWC; however, TWC shall be a subsidiary of Comcast. Nonetheless, "OTWC" would continue to be the franchisee and cable provider in the six (6) cable franchise areas in the State.

Comcast represents that the cost of the Proposed Transfer itself shall not result in increased rates for services in the State since the transaction involves rights to shares in Comcast stock, not the issuance of any debt. Based on the material representations made by Applicants,<sup>24</sup> DCCA reasonably concludes that Comcast appears to be able to continue operations and maintenance of the cable systems at the same levels of service to subscribers throughout the State, and that the management, operations, systems, and financial obligations of Comcast/OTWC, at least in the short-term, should remain materially unchanged.

However, DCCA is cognizant of various concerns and issues raised by the general public, educational institutions, governmental agencies, and community leaders during the course of this transfer proceeding.<sup>25</sup> Many of the issues and concerns raised

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<sup>21</sup> See Form 394, Exhibit 7 at 2.

<sup>22</sup> See *id.*

<sup>23</sup> See Comcast's Form 10-K for the period ending December 31, 2014 that was filed with the SEC on or about February 12, 2014, at 45.

<sup>24</sup> DCCA notes that all representations made by Applicants in connection with the Proposed Transfer and State Transfer Application are considered to be material representations.

<sup>25</sup> See [http://cca.hawaii.gov/catv/cable\\_operators/comcast-time-warner-merger/](http://cca.hawaii.gov/catv/cable_operators/comcast-time-warner-merger/) which is the link to the written comments submitted on the Application.

by the general public, educational institutions, governmental agencies, and community leaders, although significant, fall outside of DCCA's jurisdiction in this transfer proceeding. Nevertheless, DCCA raised many of the concerns in discussions with Comcast during the federally mandated review period and attempted to obtain Comcast's commitments on significant issues.

In addition, while Comcast made various representations with respect to investment in infrastructure, increased programming choices and broadband options, and accelerated deployment of innovative and advanced technologies and services, Comcast initially provided few details and declined to give any specific scheduling commitments regarding these purported public benefits, but later provided some additional information and commitments, a few of which are described below.

Accordingly, DCCA has determined that the following terms, conditions, and requirements shall be imposed on Comcast and/or Comcast/OTWC, as applicable, to ensure that the Proposed Transfer is in the public interest.

#### B. Franchise Obligations

In addition to State statutory and administrative requirements, upon completion of the Proposed Transfer, Comcast/OTWC shall continue to fully adhere to and comply with the franchise obligations set forth in the Franchise D&Os.

Comcast/OTWC agrees to assume and be bound by all of the terms, conditions, and requirements of the various D&Os, Orders, Letter Orders, and any other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&Os and State law.

Comcast/OTWC also agrees to assume and be bound by all of the terms, conditions, and requirements of all agreements and understandings of any type entered into between OTWC (and its predecessor-in-interest, TWE) and the State (including but not limited to educational and/or governmental agencies of the State), in connection with and arising out of OTWC's franchise obligations for the various franchise areas. Comcast/OTWC voluntarily agrees to assume and be bound by all of the terms, conditions, and requirements in this D&O, recognizing that such commitments benefit Comcast/OTWC by fostering goodwill and benefit the public interest.

Franchise obligations related to system upgrades, INET connections, franchise fee contributions, PEG access, Hawaii Public Television Foundation, and other franchise related matters are set forth in the Franchise D&Os, and these obligations remain binding on Comcast/OTWC.

In addition, OTWC (and, later Comcast/OTWC) shall fully adhere to and comply with all of the D&Os, orders, letter orders, and any other directives related to and

concerning OTWC's Hawai'i cable franchises issued by DCCA during the interim period between the issuance of this D&O and the completion of the Proposed Transfer.

C. Material Representations and Commitments Made by Comcast

During this transfer proceeding, Comcast made certain representations and commitments regarding the cable franchise obligations and the operation and management of Comcast/OTWC's cable systems in the State and the public benefits related to the Proposed Transfer including, among other things, that:

1. "OTWC" shall remain the cable franchisee in the State and shall continue to "remain subject to the franchise requirements."<sup>26</sup>
2. Comcast has "no current plans to change the terms and conditions of service or operations of the systems."<sup>27</sup>
3. The Proposed Transfer shall not impact any ongoing franchise renewal negotiations and if the franchises are not renewed at the close of the Proposed Transfer, "Comcast fully intends to continue to work with the DCCA towards renewal of the franchises."<sup>28</sup>
4. After the Proposed Transfer is completed, the franchisee shall "remain obligated to continue [INET] support pursuant to the franchise agreement in the same manner and to the same extent as before the Transaction."<sup>29</sup>
5. The Proposed Transfer shall not impact the franchisee's obligations and support of PEG access programming pursuant to the franchise agreements "in the same manner and to the same extent as before the Transaction."<sup>30</sup>
6. The Proposed Transfer shall "generate substantial public interest benefits for Time Warner Cable's customers in Hawaii."<sup>31</sup>

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<sup>26</sup> State Transfer Application at 19.

<sup>27</sup> Id. at 3.

<sup>28</sup> Id.

<sup>29</sup> Id. at 30.

<sup>30</sup> Response to First Set of IRs at 4 (Response to IR-5).

<sup>31</sup> Form 394, Exhibit 7 "Public Interest Considerations" at 1.

7. The Proposed Transfer shall accelerate deployment of advance video technologies and the development of new and innovative video productions and services.<sup>32</sup>
8. With respect to transition to digital service, Comcast notes that the Proposed Transfer shall “allow Time Warner Cable’s transition to all-digital to be accelerated[.]”<sup>33</sup>
9. Comcast shall bring consumers in Hawai‘i “faster Internet speeds – more programming choices – more robust Wi-Fi – and our best-in-class X1 entertainment operating system.”<sup>34</sup>
10. Comcast shall extend many “public interest benefits from the NBCUniversal transaction to the Time Warner Cable footprint – including its commitment to diversity and to an Open Internet.”<sup>35</sup>
11. The Proposed Transfer shall accelerate broadband deployment, promote innovation, and expand broadband adoption.<sup>36</sup>
12. Comcast “plans to invest at least” \$50 million to upgrade OTWC’s cable systems in the State.<sup>37</sup>
13. Comcast commits to providing Net Neutrality protection in the State.<sup>38</sup>
14. Comcast commits to continue to provide OTWC’s “Everyday Low Price” stand-alone Internet service to customers for a minimum of twelve (12) months after the completion of the Proposed Transfer, and agrees to provide customers at least thirty (30) days’ notice of any change to this product.<sup>39</sup>
15. Comcast has certified to “use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related

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<sup>32</sup> See id.

<sup>33</sup> State Transfer Application at 28-29.

<sup>34</sup> Id. at 4.

<sup>35</sup> Id. at 4-5.

<sup>36</sup> See Form 394, Exhibit 7 “Public Interest Considerations” at 5 (footnote omitted).

<sup>37</sup> September 24, 2014 Letter at 1.

<sup>38</sup> See id. at 3.

<sup>39</sup> See id. at 4.

regulations, and to effect changes, as promptly as practicable, in the operation system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.”<sup>40</sup>

Because DCCA considers all of the representations and commitments made by Comcast in this transfer proceeding, including but not limited to those enumerated above, to be material representations, it is appropriate, reasonable, and in the public interest to hold Comcast, OTWC, and Comcast/OTWC, as applicable, to all of the representations and commitments made in this proceeding.

#### D. Broadband Adoption

Access to the Internet and broadband services has increasingly become important in the lives of Americans and has been viewed by some as an essential service. Many people rely upon and use the Internet for work, education, family, and entertainment. The importance of broadband to the State, its residents, visitors, and businesses is captured in the following quote:

Like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care, manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.<sup>41</sup>

The State has long since recognized the importance of broadband service. In December 2012, the State issued the “Hawaii Broadband Strategic Plan” setting forth goals and specific objectives, and work plans to increase broadband adoption and use of the Internet with the ultimate purpose of ensuring that all Hawaiʻi citizens have access to high-speed broadband service at affordable rates.

In compliance with an FCC requirement related to its acquisition of NBCUniversal, Comcast launched its *Internet Essentials* program in 2011. Through its *Internet Essentials* program, which was revised since its inception and extended beyond the original commitment it made to the FCC, Comcast offers qualified low-income families low-cost broadband service with download speeds of up to five (5) megabits per second for \$9.95 per month, an option to purchase an Internet ready computer for less than \$150.00, and training opportunities. Comcast represents that there are “no price increases, no activation fees and no equipment rental fees” related to this service.<sup>42</sup>

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<sup>40</sup> Form 394 at 5, Section V, Part II.

<sup>41</sup> See Hawaii Broadband Strategic Plan, issued on December 2012 at 1 (quoting from the Omnibus Broadband Initiative (OBI), FCC, Connecting America: The National Broadband Plan, GN Docket No. 09-51 at 3-5, 129 (2010) at xi).

<sup>42</sup> See Responses to Second Set of IRs at 16 (Response to IR-10).

To qualify for *Internet Essentials*, “households must (i) be located where Comcast offers Internet service; (ii) have at least one child eligible to participate in the National School Lunch Program; (iii) not have subscribed to Comcast Internet service within the last 90 days; and (iv) not have outstanding Comcast debt that is under one year old.”<sup>43</sup> According to Comcast, nearly 2.6 million families nationwide are eligible to participate in its *Internet Essentials* program.<sup>44</sup>

In this transfer proceeding, Comcast states that it intends to offer its *Internet Essentials* program in the State on a statewide basis. Comcast specifically represents that upon the final closing of the Proposed Transfer, it believes that it could extend the *Internet Essentials* program in the State as early as the 2015-2016 school year.<sup>45</sup>

DCCA finds Comcast’s commitment to extend the *Internet Essentials* program in the State to be a public benefit resulting from the Proposed Transfer. The program would benefit eligible children and families in a positive manner and is consistent with the State’s objectives of increasing broadband adoption and use of the Internet. While an expansion of Comcast’s criteria for eligibility would have been preferable, DCCA is cognizant that based on the latest figures, approximately fifty percent (50%) of school age students in Hawai‘i public schools qualify to participate in the National School Lunch Program. With enrollment figures estimated to be over 185,000 for the 2013 - 2014 school year, roughly 92,500 children and their families across the State could be eligible to participate in the *Internet Essentials* program; provided that all other criteria for participation are met. Moreover, DCCA is unaware of any other statewide program offering in Hawai‘i with the similar potential reach as the program Comcast is prepared to launch in the State.

During discussions, Comcast officials explained that there have been a few occasions when the program was provided “free” of charge for a limited period of time. DCCA strongly encourages Comcast to extend limited “free” service in the State during the August/September 2015 time period to benefit qualified students as they begin the new school year. In addition, DCCA encourages Comcast to engage in discussions with teachers, school officials, and community organizations and stakeholders to actively promote its *Internet Essentials* program and jointly develop program enhancements to the *Internet Essentials* program for the benefit of participants, schools, and the community. In its September 24, 2014 Letter, Comcast states that it has begun conducting outreach to promote this service in the State.<sup>46</sup>

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<sup>43</sup> Id. at 17.

<sup>44</sup> See id. at 16.

<sup>45</sup> However, this timetable is dependent on the timing of obtaining all approvals, and other factors including outreach and back office implementation. See June 20, 2014 Supplemental Information at 5.

<sup>46</sup> See September 24, 2014 Letter at 4.

Moreover, to the extent that Comcast provides its *Internet Essentials* program in an expanded manner in any other franchise area that it controls, directly or indirectly, pursuant to or in connection with the Proposed Transfer, the expanded program shall similarly be provided in Comcast/OTWC's franchise areas in the State, consistent with the requirement under Section IV.K.1. of this D&O.

E. Unserved Communities

Meeting the needs of the unserved communities in OTWC's franchise areas in the State, especially on the neighbor islands, has been a continuing concern for DCCA. In the transfer proceeding involving the cable franchises of O`ahu, Maui County (excluding Lahaina), Lahaina, West Hawai`i (Kona), and East Hawai`i (Hilo) in 2000 due to the merger between Time Warner, Inc. and American Online, Inc., DCCA stated the following:

There is a continuing public need for extending cable service within TWE's neighbor island franchise areas. Although TWE has made significant inroads with respect to extending cable services to outlying, rural or remote communities within Maui County and Hawaii County, the State remains concerned for those without cable service. As noted in Decision and Order No. 241, with advanced technology, informational programming such as educational distant learning and 24 hour news programs on cable systems become more than strictly entertainment, particularly in areas considered rural or remote.

Extension of cable service to all communities within franchised areas remain a high priority of the State. TWE has identified several communities that remain unserved, primarily due to sparse population and distances away from existing cable distribution facilities. Those communities include Honokahau within Lahaina; Keanae, Wailua, Ulupalakua, Makena, and Kahakuloa within Maui; Hawaiian Homes-Kawaihae, Kohala by the Sea, Kohala Estates, Kohala Ranch, Kohala Makai, Anekona, and Makapala within West Hawaii; and Kamaee, Hakalau – Chen Chuck Road, Orchid Land Estates, Hawaiian Acres, Hawaiian Orchid Island Estates, Eden Roc Estates, Tiki Gardens, Ohia Estates, Royal Hawaiian Estates, Leilani Estates, Cymbidium Acres, Orchid Isle Estates, Aloha Estates, Hawaii Island Paradise Acres, Pacific Paradise Development, Vacation Land, Kapoho Beach, Kalapana Sea View Estates, Black Sands Beach, Waawaa, Green Sands, Hawaii Ocean View Ranchos, Hawaii Ocean View Estates, within East Hawaii.

D&O No. 261 at 10-11.

DCCA's concern about ensuring that unserved communities be provided service was reaffirmed in its D&O that renewed the O`ahu franchise in 2010. DCCA continued its requirement for annual reports documenting OTWC's progress toward the extension of cable service to such communities in the O`ahu D&O, which provided in relevant part as follows:

TWE currently has an extension policy of twenty-five homes per mile. As a condition of this Franchise Order, TWE shall either maintain through the duration of the renewal term its extension policy or, if technically feasible, improve its extension policy such that homes in less densely populated areas can be served. TWE shall work with the Director's staff and shall prepare an annual report regarding the feasibility of extending Cable Service to all communities that remain unserved. This report shall be submitted to the Director by December 31st of each year.

D&O No. 346 at 41.

Since 2000, it appears that OTWC has made some inroads in providing cable service to the unserved areas identified above. DCCA's records indicate that of the thirty-six (36) communities identified in 2000 as unserved, OTWC service may now be available, at least partially, in fifteen (15) of the communities including Honokahau, Ulupalakua, and Makena on Maui; and Kohala by the Sea, Kohala Estates, Tiki Gardens, and Ohia Estates on the island of Hawai`i.

However, there are various other communities in the neighbor island franchise areas that still remain without cable service. In an effort to address and highlight DCCA's concern regarding unserved communities, DCCA required TWE (now OTWC) in D&O Nos. 261 and 346 to work with the Director's staff and prepare an annual report (due to the Director by December 31<sup>st</sup> of each year) regarding the feasibility of extending service to all communities that remain unserved in light of the cable operator's twenty-five (25) homes per mile extension policy.<sup>47</sup> Since this is a franchise requirement, Comcast/OTWC is already obligated to comply with this requirement; however, because of the importance of this issue, DCCA reiterates that OTWC and/or Comcast/OTWC, as applicable, shall be required to continue to submit its annual reports to the Director regarding the unserved communities as provided in D&O Nos. 261 and 346.

In addition, DCCA strongly encourages Comcast/OTWC to reach out and work with DCCA, the affected communities, and various stakeholders, including the counties

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<sup>47</sup> See D&O No. 261 at 11, D&O No. 346 at 41.



in which the unserved areas are located, to address the unmet needs of the communities in those areas. Case-by-case solutions and innovative ideas to address this important issue is expected and welcomed. Moreover, as mentioned in D&O No. 261, DCCA reminds Comcast/OTWC that the Director may require the extension of service to any area in accordance with HRS section 440G-8.1(c). Specifically, HRS section 440G-8.1(c) states the following: “[t]he director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.”

F. Statewide Technical Upgrade Plan

DCCA recognizes that the pace of development and changes in the technology sector is increasing, and that the definition of “state of the art” is changing faster than ever before. DCCA believes that technological investments must be made with an eye towards ensuring compatibility with what has yet to be developed, and that franchise agreements cannot be the basis upon which services to subscribers do not keep up with new and developing technologies. To this end, OTWC, pursuant to the O`ahu franchise, is required to submit a technology upgrade plan for every five (5) year period during the twenty (20) year O`ahu franchise term.

Specifically, in D&O No. 346, DCCA required the following:

For every five-year period during the franchise term, TWE shall submit a technology upgrade plan for its Oahu Cable System to the DCCA. The first technology upgrade plan is due on August 1, 2010, and thereafter, each successive five-year plan shall be submitted no later than April 30<sup>th</sup> of the preceding year (i.e., April 30, 2014; April 30, 2019; and April 30, 2024). The technology upgrade plan shall report on new developments in cable technology and present an anticipated timetable for the incorporation of new developments in the Oahu Cable System. In addition, the plan shall describe the effect and costs of new technological developments on community needs and interests and also on PEG access, and the effect and compatibility and costs of those technological changes on consumer electronic equipment. TWE, to the extent such information is reasonably available, shall also describe how other cable companies have incorporated, or are planning to incorporate, new technological developments into their Cable Systems and the estimated timetable for doing so. TWE shall also address in its plans, among other things, the following: impacts to PEG Access and schools and libraries, Franchise Required Channels, INET interconnection or

connection requirements, broadband internet speeds and other matters related to its Cable System and the cable franchise area. Nothing herein shall preclude TWE from filing confidential, proprietary and/or competitively sensitive information under seal with the DCCA.

In the event that TWE's technology upgrade plan fails to include any of the criteria established above, the Director may require TWE to amend and/or update its technology upgrade plan. If TWE fails or refuses to submit an amended and/or updated technology upgrade plan as requested by the Director, TWE shall provide a statement explaining how such non-compliance serves the public interest within fifteen calendar days after receipt of the Director's request.

The Director may also request that TWE improve its technology upgrade plan to incorporate new technologies in Oahu more rapidly. If TWE fails or refuses to submit and/or adhere to an improved technology upgrade plan as requested by the Director, TWE shall provide a statement explaining why its refusal or failure serves the public interest within fifteen calendar days after receipt of the Director's request.

The Director shall review all statements provided by TWE regarding how its refusal or failure serves the public interest and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting TWE's public interest statement. In the event that the Director rejects TWE's public interest statement, the Director may require TWE to submit a revised statement or technology upgrade plan. The Director shall have the option to reduce the duration of the cable franchise renewal term, terminate the cable franchise, or take any other appropriate action consistent with this Franchise Order and applicable Law, in the event TWE's fails to either submit a revised and/or improved technology upgrade plan consistent with the direction of the Director or a statement that is accepted by the Director explaining why its non-compliance serves the public interest.

Furthermore, in the event that TWE fails to submit a technology upgrade plan by the established deadline and/or the Director determines that TWE has failed to implement a previously submitted technology upgrade plan, TWE shall be provided a reasonable time to cure any deficiencies or

provide a statement of how such non-compliance serves the public interest.

Failure to remedy the deficiency or deficiencies within a reasonable time, or failure to provide a statement that is accepted by the Director explaining why TWE's non-compliance serves the public interest, shall subject TWE, at the option of the Director, to a reduction of the cable franchise renewal term, termination of the cable franchise, or any other appropriate action taken by the Director and consistent with this Franchise Order and applicable Law.

D&O No. 346 at 23-25.

The submittal of technology upgrade plans, as described above, is a requirement of the O'ahu franchise and, as such, Comcast/OTWC is required to adhere to and comply with this requirement. In addition, DCCA intends to include a similar requirement in each of the franchise agreements that are entered into for the other Hawai'i cable franchises in the future. Nevertheless, at this juncture, for consistency and to ensure that any technological upgrades to service in OTWC's six (6) franchise areas in the State are deployed reasonably and with a holistic understanding and view of the needs and requirements of all of the communities that it serves, DCCA finds it reasonable and appropriate to extend the application of this requirement to all of OTWC's franchise areas in the State.

Therefore, rather than providing a separate technology upgrade plan for each cable franchise, Comcast/OTWC shall submit a single statewide technology upgrade plan, whenever feasible. This requirement shall be phased in as the neighbor island franchises are renewed and technology upgrade plans for each franchise system are prepared, and then eventually incorporated into a statewide plan. However, when submitting a statewide technology upgrade plan, Comcast/OTWC shall clearly indicate which franchise areas the plan applies to and the applicable D&Os, note any exceptions, and fully comply with every other aspects of the technology upgrade plan requirements as provided in the O'ahu D&O, and to be provided in future D&Os for each of the other cable franchises in the State.

#### G. Energy Efficient Set-Top Boxes

In general, Hawai'i residents pay the highest rates for electricity in the nation. Estimates have Hawai'i residents paying an average of \$0.34 per kilowatt hour ("kWh"), while residents in some states on the mainland United States pay average rates lower than \$0.07 per kWh.<sup>48</sup> This information is based on data from 2012, and recent reports from Hawaiian Electric Company, Inc., which serves the island of O'ahu and its

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<sup>48</sup> See <http://www.eia.gov/electricity/state/> which is a link to the U.S. Energy Information Administration (EIA), a division of the U.S. Department of Energy.

subsidiary, Hawaii Electric Light Company, Inc., which serves the island of Hawai'i, indicate that electricity prices have increased since then. For example, during the month of September 2014, residents on O'ahu were paying over \$0.36 per kWh<sup>49</sup> while those living on Hawai'i Island were paying over \$0.42 per kWh.<sup>50</sup>

Based on the above statistics, DCCA believes that electric devices in Hawai'i homes, including cable set-top boxes, should be as energy efficient as possible. Comcast has agreed to make available to subscribers energy efficient set-top boxes that satisfy the U.S. Environmental Protection Agency's Energy Star 3.0 efficiency levels over a reasonable time period, in its reasonable discretion.

Accordingly, as a condition of approval of the Application, Comcast/OTWC shall promote and make available energy efficient cable set-top boxes or energy star rated cable set-top boxes to its subscribers throughout the State.<sup>51</sup> Within three (3) years from the date the Proposed Transfer is completed, at least ninety percent (90%) of newly deployed set-top boxes shall meet the energy star rating requirement. In addition, DCCA encourages Comcast/OTWC to partner and work with community organizations and stakeholders in the energy field in the State (e.g., the Blue Planet Foundation and Hawai'i Energy) to educate and aggressively promote the use of energy efficient cable set-top boxes, and to develop an economically feasible program to change out older and less energy efficient boxes with newer efficient boxes with minimal (i.e., less than \$1.00) or no cost to subscribers, and no cost to the State. DCCA believes that if implemented, such a program would benefit Comcast/OTWC's subscribers and the wider communities that Comcast/OTWC serves.

#### H. Notice of Any Call Center Closures

The closure of a call center can negatively impact subscribers, employees, and the wider general community where the call center is located. At this juncture, OTWC has informed DCCA that it has a call center with approximately two hundred (200) employees located at OTWC's main office on O'ahu in Mililani, and smaller call centers at Ward Avenue in Honolulu, on O'ahu, and two (2) separate call centers in Hilo and Kona on the island of Hawai'i, each with less than fifty (50) employees.

Comcast, under the federal Worker Adjustment and Retraining Notification ("WARN") Act, is required to provide sixty (60) days' advance notice regarding the

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<sup>49</sup> See [http://www.hawaiianelectric.com/heco/hidden/Hidden/EnergyServices/Energy-Cost-Adjustment-\(ECAC\)-for-Hawaiian-Electric?cpsextcurrchannel=1](http://www.hawaiianelectric.com/heco/hidden/Hidden/EnergyServices/Energy-Cost-Adjustment-(ECAC)-for-Hawaiian-Electric?cpsextcurrchannel=1) and link to ECAC September 2014.

<sup>50</sup> See [http://www.hawaiianelectric.com/heco/hidden/Hidden/EnergyServices/Energy-Cost-Adjustment-\(ECAC\)-for-Hawaii-Electric-Light?cpsextcurrchannel=1](http://www.hawaiianelectric.com/heco/hidden/Hidden/EnergyServices/Energy-Cost-Adjustment-(ECAC)-for-Hawaii-Electric-Light?cpsextcurrchannel=1) and link to ECAC September 2014.

<sup>51</sup> During discussions, DCCA was informed that in December 2013, Comcast voluntarily joined a consortium of video programming distributors, equipment manufacturers, and energy advocacy groups with the goal of improving the energy efficiency of the set-top boxes used in the delivery of services by program distributors. Comcast stated that it would abide by the agreements that it voluntarily agreed to with the consortium concerning energy efficient set-top boxes in the State.

closure of any call center impacting fifty (50) or more employees. In general, the WARN Act offers protection to workers, their families, and communities by requiring employers to provide sixty (60) days' notice in advance of covered plant closings and covered mass layoffs. Under this law, notice must be provided to either the affected workers or their representatives (e.g., a labor union), to the State dislocated worker unit, and to the appropriate unit of local government.

While DCCA recognizes that the notification requirements of the WARN Act would apply to OTWC's Mililani call center on O`ahu, the law would not apply to OTWC's smaller call centers, such as those located in Hilo and Kona on the island of Hawai`i. The communities of Hilo and Kona are smaller and less economically diverse than O`ahu, and closure of Comcast/OTWC's call centers in those communities would not only directly impact Comcast/OTWC's employees of those call centers but would have a significant economic and customer service impact to their communities.

Consequently, OTWC and/or Comcast/OTWC shall be required in the upcoming cable franchise renewals (including the renewal of the East Hawai`i and West Hawai`i franchises) to apply the notification requirements under the WARN Act to all call center closures and relocations in the State regardless of the size of the call center or the number of employees affected.

#### I. Customer Service and Performance Bond

Customer service and OTWC's and/or Comcast/OTWC's response to and ability to address customer service needs, complaints, and requirements are of a special concern for DCCA. Thus, in the event that Comcast/OTWC's performance in any franchise area over any three (3) consecutive calendar months, is more than ten percent (10%) below an objective metric of the Federal Customer Service Standards, for which OTWC currently, and later Comcast/OTWC, is required to satisfy pursuant to the Hawai`i cable franchise agreements,<sup>52</sup> Comcast /OTWC, within thirty (30) days after the end of the period, shall submit a written statement to DCCA that explains the reasons for any such shortfalls and provides detailed plans (including timeframes and specific actions) to remedy its failure to meet the performance metric.

In addition, in the upcoming cable franchise renewals (including the renewal of the East Hawai`i and West Hawai`i franchises), and/or through letter order for the O`ahu franchise, OTWC and/or Comcast/OTWC shall be required to purchase (or enter into, as applicable) a TWO MILLION AND NO/100 DOLLAR (\$2,000,000.00) performance bond, with a minimum two (2) year term ("**Performance Bond**"). The Performance Bond shall cover and secure the performance of Comcast/OTWC's obligations under any agreements and orders concerning the Hawai`i franchises consistent with any provisions for fines and other remedies for failure to perform in those franchises. The Performance Bond, in a form acceptable to DCCA, shall be payable to DCCA for the benefit of the State upon the determination of the Director that Comcast/OTWC has failed to pay any fines or implement any remedy required by DCCA that includes

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<sup>52</sup> See e.g. D&O No. 346 at 36 (Section IV.R.2.).

financial penalties for failure to satisfy any obligation specified in any agreements and orders concerning the Hawai'i franchises up to the amount required by the franchise or other order, and must be obtained within nine (9) months of the completion of the Proposed Transfer.

If the Performance Bond is not utilized within two (2) years from the date of its issuance, Comcast and/or Comcast/OTWC shall have the right to terminate the Performance Bond unless, at least sixty (60) days prior to end of the two (2) year period, the Director provides written notice to Comcast and/or Comcast/OTWC that Comcast and/or Comcast/OTWC is required to renew or extend the Performance Bond for up to no more than two (2) additional years.

#### J. Outstanding Franchise Issues

During the course of our review, DCCA became aware that there are outstanding franchise issues that would not be completed prior to the issuance of this D&O due to federal time limits placed on LFAs regarding the review and approval of the transfer of cable systems. In general, the review period did not afford sufficient time for resolution of all of the outstanding franchise issues. Although DCCA prefers to have these matters resolved prior to issuance of this D&O, based on the nature of the issues, work already in progress, and the representations made by Comcast in this transfer proceeding, DCCA is confident that these issues will be satisfied shortly after the issuance of this D&O.

The franchise-related issues that are currently outstanding include:

1. Finalization of the Five-Year Technology Plan for 2015 – 2019 required under D&O No. 346; and
2. Customer service concerns related to service in Hana, Maui.

As noted above, DCCA and OTWC are currently in discussions to resolve these outstanding issues in a reasonable, fair, and appropriate manner. Applicants have agreed that OTWC shall continue to be responsible for any and all past outstanding franchise issues, acts, and omissions. DCCA may require OTWC and/or Comcast/OTWC to provide written reports each month, or more frequently as requested by DCCA, and to meet with DCCA staff as requested, to discuss OTWC's and/or Comcast/OTWC's work on these issues until they are resolved to the satisfaction of the Director.

Although Comcast/OTWC, as the cable provider, is bound by the Franchise D&Os and must also comply with all applicable State laws and rules regarding the provision of cable service, DCCA also reminds Comcast of its certification to the State

that it would comply with all Franchise D&Os and all applicable State laws and rules, and that it shall use its best efforts to cure any outstanding franchise issues.<sup>53</sup>

DCCA notes that approval of the Proposed Transfer does not and shall not constitute a waiver or release of any of DCCA's rights under any of the Franchise D&Os or applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&Os and State law. DCCA does not waive any and reserves all of its rights with respect to OTWC's and Comcast's compliance with the terms, conditions, and requirements in the Franchise D&Os, and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&Os and State law.

The Director's approval of the Proposed Transfer shall not in any way be deemed to be a representation by DCCA that OTWC and Comcast are in compliance with all of its obligations and responsibilities under the Franchise D&Os and all applicable laws and rules, D&O's, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&Os and State law.

After the date of the Proposed Transfer is completed, OTWC and Comcast shall continue to be responsible for any and all past franchise issues, acts, and omissions, known and unknown, of OTWC under the Franchise D&Os and all applicable laws, regulations, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&Os and State law.

#### K. Other Areas of Discussion

Applicants made numerous representations in this transfer proceeding regarding the proposed public benefits of the Proposed Transfer, including Comcast's investment in infrastructure, increased programming choices and broadband options, and accelerated deployment of innovative and advanced technologies and services, many of which are enumerated above in Section IV.C. of this D&O. During the course of this proceeding, DCCA made numerous attempts to solicit additional information and clarifications regarding the purported public benefits, especially for the neighbor island franchises. For instance, DCCA requested that Comcast elaborate on its intentions and plans with respect to PEG programming, INET connections, rates and services impacting subscribers, transition to all-digital, and deployment of broadband services and advance technologies, among other issues.

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<sup>53</sup> Specifically, Comcast has certified that it would "use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing." Form 394 at 5, Section V, Part II.

In general, Comcast initially did not provide concrete details and specific commitments and often cited to anti-trust concerns “restricting” its ability to provide comprehensive information regarding how it intended to operate and run the cable systems, aside from its general assurances that all franchise requirements would be satisfied and adhered to, and that there were no current plans to change any rates and services.<sup>54</sup>

During negotiations, DCCA further attempted to obtain Comcast’s commitments regarding the issues mentioned above. However, DCCA was reminded by Comcast that: (1) the FCC prohibits LFAs from regulating rates and conditioning cable system transfers on them<sup>55</sup>; and (2) broadband and broadband-related issues (including, but not limited to, broadband deployment, how broadband is provided including upload and download speeds, broadband prices, and Net Neutrality), are beyond DCCA’s statutory jurisdiction, given that broadband is not a regulated service, unless agreed to by the cable operator.

Subsequently, however, in its September 24, 2014 Letter, Comcast provided additional information and certain other assurances to DCCA. In addition, DCCA intends to address many of the outstanding franchise-related matters in future franchise renewal proceedings.

Nevertheless, at this juncture, DCCA finds that the conditions and requirements listed below are necessary, reasonable, and appropriate under the circumstances to ensure that the Proposed Transfer is in the public interest:

1. “Favored Nation Clause”

To the extent that Comcast, or any local cable television service provider controlled directly or indirectly by Comcast, expands the eligibility and availability of the *Internet Essentials* program, or other similar product (e.g., a state specific *Internet Essentials* program) in another franchise area in the United States, pursuant to or in connection with the Proposed Transfer, beyond what is currently being proposed to be offered or is offered in the State, Comcast/OTWC shall make a substantially comparable offering available to all customers served by Comcast/OTWC in its Hawai‘i franchises within ninety (90) days of first being offered in that other franchise area.

Comcast commits to being actively engaged in working with DCCA and other stakeholders, including those living in unserved and underserved areas, on important

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<sup>54</sup> See Generally, State Transfer Application, Responses to First Set of IRs, and Responses to Second Set of IRs.

<sup>55</sup> See Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Report and Order, 8 FCC Rcd 6828 ¶ 39, n. 38 (1993) (In exercising their transfer jurisdiction, franchising authorities may not seek to circumvent federal regulatory authority, including federal rate regulations in particular.).



issues regarding further deployment to unserved and underserved areas in the State. In keeping with this, in the event that the line extension policy of any local cable television service provider controlled directly or indirectly by Comcast is amended pursuant to or in connection with the Proposed Transfer, Comcast shall provide a written report on all such amendments and the conditions and requirements associated with such amendments to DCCA, and discuss with DCCA whether and how such amendments could be implemented in the State.

## 2. Post-Transfer Progress Report and Briefing

Under State law, the Director has the power and jurisdiction to supervise and regulate every cable operator in the State and is empowered to do all things which are necessary or convenient in the exercise of the Director's power and jurisdiction.<sup>56</sup> Accordingly, within three (3) months of the date of the completion of the Proposed Transfer, Comcast/OTWC shall provide a written report to DCCA and orally brief the Director on the impacts of the completed transaction. At a minimum, the written report and briefing shall address the following:

- a. How the transfer of control of the cable systems from TWC to Comcast is progressing;
- b. How the transaction has impacted the operations and organization of the cable systems in the State;
- c. Any future plans regarding services and operation of the cable systems in the State; and
- d. Comcast/OTWC's progress towards fulfilling and satisfying all the purported public benefits related to the Proposed Transfer as represented by Comcast in this transfer proceeding, including those enumerated in Section IV.C. of this D&O.

During the briefing, Comcast/OTWC shall be prepared to respond to any questions posed by the Director and DCCA staff, and provide any follow-up discussions and documentation after the briefing, as warranted and appropriate.

## 3. Post-Transfer Reporting

Under State law, each cable provider is required to report to the Director on various matters of its organization including its operational condition and ownership in a form and time prescribed by the Director. Specifically, HRS section 440G-14 states as follows:

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See HRS section 440G-12 (a).

Each cable operator shall file with the director reports of its financial, technical, and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the director and shall be kept on file open to the public.

Similarly, various State rules and D&Os require the cable operator to submit reports on its ownership, financial condition, construction, complaints, and various other matters.<sup>57</sup>

In addition to the required reports and in keeping with the provisions above, within one (1) year of the date of the completion of the Proposed Transfer Comcast/OTWC shall submit a written report to DCCA detailing its efforts to fulfill and satisfy the purported public benefits related to the Proposed Transfer as represented by Comcast in this transfer proceeding. The written report shall specifically address each public benefits enumerated in Section IV.C. of this D&O.

In addition, the report shall describe Comcast/OTWC's implementation of the *Internet Essentials* program in the State, providing specific details on program implementation in the schools and, at minimum, providing information regarding Comcast/OTWC's promotional efforts, the number of program participants, and Comcast/OTWC's efforts with teachers, school officials, and community organizations and stakeholders to develop program enhancements, if any. Moreover, the written report shall also provide specific information regarding Comcast's commitment to accelerate transition towards all-digital signal service and provide DCCA with any future plans regarding this matter.

## **V. CONCLUSION**

Based on the foregoing, the Director finds that Comcast is legally, financially, and technically qualified to acquire control of OTWC and to provide the services required for each of OTWC's Hawai'i cable franchises and that the Proposed Transfer is in the public interest with the terms, conditions, and requirements described above, and should be approved. Accordingly, DCCA hereby approves the Proposed Transfer based on the information provided in the Application, and supporting and supplemental filings. Specifically, DCCA approves the transfer from TWC to Comcast of control of OTWC's cable television franchises for the island of O`ahu, island of Kaua`i, East Hawai`i (Hilo), West Hawai`i (Kona), County of Maui (excluding Lahaina), and Lahaina, subject to the terms, conditions, and requirements specified in this D&O.

## **VI. ORDER**

NOW, THEREFORE, the request to transfer control of OTWC's six (6) Hawai'i cable franchises from TWC to Comcast is hereby APPROVED, subject to the following:

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See e.g. HAR sections 16-131-43 through 16-131-50.

- A. Comcast shall adhere and comply, or shall cause OTWC and/or Comcast/OTWC to comply, with all terms, requirements, conditions and obligations set forth in the Franchise D&Os, and any other D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&Os and State law.

Moreover, in connection with its franchise obligations, OTWC (and its predecessor-in-interest, TWE) entered into various stipulations and agreements with the State and other educational and governmental agencies related to and impacting its services in the franchise areas. Comcast/OTWC shall fully comply with the various stipulations and agreements OTWC (or TWE, as applicable) had entered into related to its franchise obligations that are in effect as of the date of the completion of the Proposed Transfer.

- B. The approval of the Proposed Transfer by the Director does not and shall not amend nor alter the Franchise D&Os, or any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&Os and State law in any way, except as expressly provided in this D&O. The Franchise D&Os, and any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&Os and State law shall continue to remain in full force and effect, and enforceable in accordance with their terms and applicable law.
- C. OTWC (and, later Comcast/OTWC) shall fully adhere to and comply with all of the D&Os, orders, letter orders, and any other directives related to and concerning OTWC's Hawai'i cable franchises issued by DCCA during the interim period between the issuance of this D&O and the completion of the Proposed Transfer.
- D. TWC, Comcast, and OTWC (or Comcast/OTWC), as applicable, shall adhere to and comply with the terms, conditions, and requirements provided in Section IV. of this D&O.
- E. The closing of the Merger Agreement is completed without any material changes to the Merger Agreement that was last reviewed by DCCA. Applicants and/or OTWC shall immediately notify the Director in writing of the closing of the Merger Agreement and also upon the completion of the Proposed Transfer, provide the exact dates when the Merger Agreement closed and the Proposed Transfer are completed, as applicable, and whether any material changes to the Merger Agreement were made thereto prior to or shortly after the close of the transaction.

1. Notification shall be provided to DCCA within seven (7) calendar days after the closing of the Merger Agreement and seven (7) calendar days after completion of the Proposed Transfer.
  2. In the event there are any material changes to the Merger Agreement or to the structure or operation of OTWC's cable systems in the State as a result thereof, the Director reserves the right to review such changes and take any and all necessary and appropriate actions to protect the public interest, including but not limited to modifying or rescinding this D&O.
- F. The approval of the Merger Agreement by the FCC, the United States Department of Justice ("**DOJ**"), and other applicable federal agencies shall be required, and Comcast, TWC, and OTWC (and/or Comcast/OTWC) shall comply with any conditions, obligations, and requirements imposed by the FCC, DOJ, or any other federal agency in connection with the Merger Agreement or Proposed Transfer, as applicable. In addition, the Merger Agreement and Proposed Transfer shall be in compliance with all State law, rules, and requirements, including any and all State anti-trust statutes and requirements.

Except as otherwise specifically provided in this D&O, the terms, conditions, requirements, and obligations of OTWC's cable franchises in the State (i.e., the Franchise D&Os, and D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&Os and State law) and franchise-related agreements and stipulations shall continue to be in full force and effect.

Notwithstanding any provision to the contrary, in the event that the Merger Agreement fails to close, or the Proposed Transfer is not completed, for whatever reason, within twelve (12) months from the date of this D&O, this D&O shall be automatically rescinded, and shall be deemed null and void, and all prior D&Os issued to OTWC and its predecessor-in-interest, TWE, shall continue to remain in full force and effect. In such an event, OTWC shall immediately provide prompt written notification to the Director, and the Director shall have the right to take any and all actions and to issue such Orders as the Director deems necessary or appropriate to serve and protect the public interest within the subject franchise areas in accordance with applicable federal and State laws and rules.

Dated: Honolulu, Hawai'i, October 8, 2014

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

**CERTIFICATE OF SERVICE**

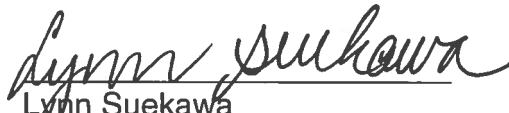
I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 362** was served upon the following parties at the address shown below by mail, postage prepaid, on this 8th day of October, 2014.

CARLITO P. CALIBOSO, ESQ.  
JODI S. YAMAMOTO, ESQ.  
YAMAMOTO CALIBOSO  
1099 Alakea Street, Suite 2100  
Honolulu, Hawai'i 96813

Counsel for COMCAST CORPORATION

BRIAN A. KANG, ESQ.  
WATANABE ING LLP  
First Hawaiian Center, 23<sup>rd</sup> Floor  
999 Bishop Street  
Honolulu, Hawai'i 96813

Counsel for TIME WARNER CABLE INC.

  
Lynn Suekawa  
Secretary