CABLE TELEVISION DIVISION

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of HAWAIIAN TELCOM SERVICES COMPANY, INC. Franchise Fees Paid by the Cable Operator.	)	**DECISION AND ORDER NO. 363**

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I. INTRODUCTION

Pursuant to Decision and Order ("**D&O**") No. 352, Hawaiian Telcom Services Company, Inc. ("**HTSC**") is required to pay franchise fees from its annual gross revenues for its Oahu cable system in the State of Hawai`i ("**State**") to the following: (1) approximately three percent (3%) as annual Access Operating Fees ("**AOF**") to the public, educational, and governmental access organization ("**PEG Access Organization**") on Oahu; (2) one percent (1%) to the Hawai`i Public Television Foundation, dba PBS Hawai`i ("**HPTF**"); and (3) one percent (1%) of annual income received from subscribers for cable services[1] in Annual Fees to the Department of Commerce and Consumer Affairs ("**DCCA**") to administer Hawaii Revised Statutes ("**HRS**") chapter 440G.

On January 15, 2014, DCCA issued a Letter Order ("**January 15, 2014 Letter Order**") to HTSC that raised HTSC's annual franchise fee for its Oahu cable system to the maximum five percent (5%) of gross revenues allowed under federal law. This increase became effective for HTSC's April 2014 subscriber bills.

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[1] HTSC's Annual Fees to the DCCA are calculated using "income received from subscribers for cable services rendered during the preceding calendar year," which, as defined in HAR section 16-132-2(d), may be less than "Gross Revenues." Currently, the Annual Fee requested by the DCCA is less than 1% of HTSC's annual Gross Revenues.

Under Hawaii Administrative Rules ("**HAR**") section 16-132-2(d), "'income received from subscribers for cable services" means revenues derived from the supplying of regular subscriber service and includes installation fees, disconnect and reconnect fees and fees for regular cable benefits. The term does not include per-program or per-channel charges, leased channel revenues, advertising revenues and other income derived from the system.

II. DISCUSSION

Under federal law, a franchising authority (i.e., DCCA) is authorized to assess franchise fees from cable operator(s) up to a maximum of five percent (5%) of a cable system's annual gross revenues. See, 47 United States Code section 542(b).

However, during the past several years, the Annual Fee paid was insufficient to cover DCCA's rising staffing costs and other costs to administer HRS chapter 440G, which included additional responsibilities for broadband activities. Thus, DCCA determined that the franchise fees should be raised to the maximum amount allowed by federal law and that the Annual Fee be raised in accordance with HAR section 16-132-2.

III. ORDER

Accordingly, DCCA hereby confirms the provisions contained in its January 15, 2014 Letter Order and orders that:

A. HTSC shall pay the maximum five percent (5%) of its annual gross revenues for its cable system in the State allowed under federal law as franchise fees.[2]

B. Unless otherwise directed, HTSC shall make the following payments as specified below:

1. Provisions in D&O 352 to pay the Annual AOFs in the amount of three percent (3%) of its annual gross revenues to the Oahu PEG Access Organization, or to DCCA's designee(s), remain unchanged, subject to further order of the Director;

2. Provisions in D&O 352 to pay one percent (1%) of its annual gross revenues to HPTF remains unchanged; and

3. On or about January 31, 2015, HTSC shall pay the remaining balance that was collected in 2014 as the Annual Fee to DCCA as follows:

   a. For bills received by subscribers from January 2014 to March 2014, one percent (1%) of annual income received from subscribers for cable services; plus

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[2] Pursuant to HAR section 16-132-2(c), DCCA shall adjust the remaining percentage so that HTSC pays no more than five percent (5%) of its annual gross revenues.

b. For bills received by subscribers from April 2014 to December 2014, the percentage of annual income received from subscribers for cable services that is equivalent to one percent (1%) of the Gross Revenues during that period.

4. Unless otherwise directed, on or about January 31, 2016, and every January 31st thereafter of the franchise term, HTSC shall pay the following payments:

   a. An Annual Fee to DCCA, based on the percentage of annual income received from subscribers for cable services rendered during the preceding calendar year that is equivalent to one percent (1%) of the Gross Revenues during that period.

C. Except as otherwise provided in this D&O, the remaining provisions of D&O No. 352 shall continue to remain in full force and effect.

Dated: Honolulu, Hawai`i, December 11, 2014.

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