

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. 364**
)
Franchise Fees Paid by the Cable)
Operator.)
_____)

DECISION AND ORDER NO. 364

I. INTRODUCTION

Pursuant to Decision and Order (“**D&O**”) Nos. 261, 291, and 346, Oceanic Time Warner Cable LLC (“**OTWC**”) is required to pay franchise fees in an amount equal to approximately four and 64/100 percent (4.64%) of OTWC’s annual gross revenues for its cable systems throughout the State of Hawai`i (“**State**”) to the following: (1) approximately three percent (3%) as annual Access Operating Fees (“**AOF**”) to the various public, educational, and governmental access organizations (“**PEG Access Organizations**”) in the State; (2) one percent (1%) to the Hawai`i Public Television Foundation, dba PBS Hawai`i (“**HPTF**”); and (3) approximately 64/100 percent (0.64%)¹ in Annual Fees to the Department of Commerce and Consumer Affairs (“**DCCA**”) to administer Hawaii Revised Statutes (“**HRS**”) chapter 440G.

On January 21, 2014, DCCA issued a Letter Order (“**January 21, 2014 Letter Order**”)² to OTWC that raised OTWC’s annual franchise fee from four and 64/100 percent (4.64%) of its annual gross revenues for each of OTWC’s cable systems to the maximum five percent (5%) allowed under federal law. This increase became effective for OTWC’s April 2014 subscriber bills.

¹ Currently, 0.64% of OTWC’s gross revenues equals approximately one percent (1%) of the income received from subscribers for cable services rendered during the preceding year.

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.

² The January 21, 2014 Letter Order amended a December 18, 2013 Letter Order from DCCA.

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 permitted by federal law and 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 21, 2014 Letter Order and orders that:

- A. OTWC shall pay the maximum five percent (5%) of its annual gross revenues for each of its cable systems in the State allowed under federal law as franchise fees.³
- B. Unless otherwise directed, on or about January 31, 2015, OTWC shall make the following payments:
 1. Annual AOFs in the amount of three percent (3%) of its annual gross revenues to the various PEG Access Organizations (with the exception that the Oahu PEG designee's AOFs are subject to a cap plus an inflationary differential each year) in the State or to DCCA's designee(s), subject to further order of the Director;
 2. One percent (1%) of its annual gross revenues to HPTF; and
 3. The remaining balance that was collected in 2014 shall be paid as follows:
 - a. **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) to the `Ulu`ulu: Henry Ku`ualoha Giugni Moving Image Archive of Hawai`i ("**HKG Archive**")⁴ in 2015.**

³ Pursuant to HAR section 16-132-2(c), DCCA shall adjust the remaining percentage so that OTWC pays no more than five percent (5%) of its annual gross revenues.

⁴ In 2012, the HKG Archive was designated as the official State archive for moving images. See, Act 90, Session Laws of Hawai`i 2012 and HRS section 304A-1864.

The HKG Archive, located at the University of Hawai`i, West Oahu, is a unique digital and material archive intended to perpetuate and share the special history and culture of Native Hawaiians and the people of Hawai`i. It is dedicated to the care of film, videotape, and audiovisual materials, as well as

1. DCCA has determined that these funds will help to preserve and maintain the State archive for moving images, and thereby, support the State's interest in educating current and future generations about the history and culture of Hawai'i.
 2. DCCA intends that this is a one time payment to the HKG Archive.
 3. OTWC shall make the payment to the University of Hawai'i for the HKG Archive Special Fund established by HRS section 304A-2180.
 4. The payment shall be apportioned among each of OTWC's cable systems in the State in proportion to the total Gross Revenue of all of OTWC's cable systems statewide; and
- b. The remaining amount shall be paid as an Annual Fee to DCCA (which includes the one percent (1%) of the income received from subscribers for cable services rendered during the preceding calendar year as required under HAR section 16-132-2 and adjusted in HAR section 16-132-2(c)).
- C. Unless otherwise directed, on or about January 31, 2016, and every January 31st thereafter, OTWC shall pay the maximum five percent (5%) of its annual gross revenues for each of its cable systems in the State allowed under federal law as franchise fees and make the following payments:
1. Annual AOFs in the amount of three percent (3%) of its annual gross revenues to the various PEG Access Organizations (with the exception that the Oahu PEG designee's AOFs are subject to a cap plus an inflationary differential each year) in the State or to DCCA's designee(s);
 2. One percent (1%) of its annual gross revenues to HPTF; and
 3. The remaining amount shall be paid as an Annual Fee to DCCA (which includes the one percent (1%) of the income received from subscribers for cable services rendered during the preceding

the preservation of Hawai'i's moving images. The HKG Archive converts videotapes and film footage to digital files kept on servers that are accessible to the public through a website portal.

calendar year as required under HAR section 16-132-2 and adjusted in HAR section 16-132-2(c)).

- D. Except as otherwise provided in this D&O, the remaining provisions of D&O Nos. 261, 291, and 346 shall continue to remain in full force and effect.

Dated: Honolulu, Hawai'i, January 5, 2015.



CATHERINE P. AWAKUNI COLÓN
Interim Director of Commerce and
Consumer Affairs