

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. 369
)	
Franchise Fees Paid by the Cable)	
Operator.)	
_____)	

DECISION AND ORDER NO. 369

I. INTRODUCTION

Pursuant to Decision and Order (“D&O”) Nos. 261, 291, 346, 364, 366, and 367; and the January 21, 2014 Letter Order, Oceanic Time Warner Cable LLC (“OTWC”) is required to pay franchise fees in an amount equal to approximately five percent (5%) 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 one percent (1%) in Annual Fees¹ to the Department of Commerce and Consumer Affairs (“DCCA”) to administer Hawaii Revised Statutes (“HRS”) chapter 440G and for any other purposes determined by the Director of DCCA (“Director”).

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 § 542(b).

Consistent with the prior D&Os and directives, by this D&O, DCCA directs OTWC to pay the required five percent (5%) of the gross revenues of its cable systems as set forth below.

¹ Under Hawaii Administrative Rules (“HAR”) § 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 Cable System.

III. ORDER

Based on the foregoing, DCCA hereby 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.²
- B. Unless otherwise directed, on or about January 31, 2017, 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 2016 shall be paid as follows:
 - a. **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** shall be paid to the 'Ulu'ulu: Henry Ku`ualoha Giugni Moving Image Archive of Hawai'i ("**HKG Archive**")³ in 2017; provided that:
 1. OTWC shall make the payment to the University of Hawai'i for the HKG Archive Special Fund established by HRS § 304A-2180;

² Pursuant to HAR § 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.

³ 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 § 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 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.

DCCA has determined that the funds described in this D&O shall 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. 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
 3. Any future payments to the HKG Archive shall be based on subsequent D&Os or Letter Orders issued by DCCA.
- b. FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) shall be set aside and maintained by OTWC in the same interest bearing account as ordered by DCCA in Sec. III. B. 3. b. of D&O No. 367, issued on January 8, 2016, and consistent with DCCA's initial requirements that:
1. The funds in this account shall be dispersed solely at the discretion and direction of the Director;
 2. If requested by the Director, OTWC shall disperse the funds to any entity designated by the Director; and
 3. OTWC may recover the reasonable costs associated with opening and administering the bank account, including the tax impact of any interest earned from the interest on the account.
- c. 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 § 16-132-2 and adjusted in HAR §16-132-2(c)).
- C. Unless otherwise directed, on or about January 31, 2018, 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 one percent (1%) of the funds shall be paid based on a D&O or Letter Order to be issued by DCCA at a future date.
- D. Except as otherwise provided in this D&O, the remaining provisions of D&O Nos. 261, 291, 346, 364, 366, and 367; and the January 21, 2014 Letter Order shall continue to remain in full force and effect.

Dated: Honolulu, Hawai'i, January 3, 2017.

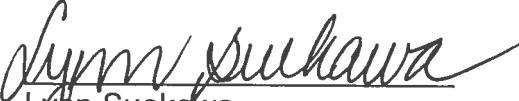

CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 369** was served upon the following person at the address shown below by mail, postage prepaid, on this 3rd day of January, 2017.

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Lynn Suekawa
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