

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. 372**
)
For Amendments to Decision and Order No.)
291, Decision and Order No. 346, Decision)
and Order No. 366 and Decision and Order)
No. 368.)
_____)

DECISION AND ORDER NO. 372

I. INTRODUCTION

On December 17, 2015, the Department of Commerce and Consumer Affairs ("DCCA") issued Decision and Order ("D&O") No. 366 approving, with certain conditions, the transfer of control of all of Oceanic Time Warner Cable LLC's ("OTWC") Cable Franchises¹ in the State of Hawai'i ("State") from Time Warner Cable Inc. ("TWC"), the ultimate parent company of OTWC, to Charter Communications, Inc. ("Charter"). As part of the approval, OTWC would, *inter alia*, adhere to the requirements, obligations and terms of the existing Cable Franchise orders² and complete its all-digital network transition throughout all of its Cable Franchise areas in the State³ by November 19, 2018.

To facilitate the digital transition and maintain and support an important public service related to public, educational, and governmental ("PEG") access, pursuant to

¹ Hawaii Revised Statutes ("HRS") § 440G-3 defines "cable franchise" as "a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement, or otherwise, which authorizes the construction or operation of a cable system."

² See D&O No. 366 at 33-35.

³ OTWC currently holds five (5) separate Cable Franchises covering the entire State (Hawai'i Island, Maui County (excluding Lahaina), Lahaina, Kaua'i, O'ahu). Collectively, these Cable Franchises shall be referred to as the "Franchise D&Os."

HRS §§ 440G-4 and 440G-12, DCCA hereby amends D&O No. 291 issued on July 12, 2002; D&O No. 346 issued on January 14, 2010; D&O No. 366 issued on December 17, 2015; and D&O No. 368 issued on March 15, 2016, subject to the terms, conditions, and requirements set forth in this D&O.

II. BACKGROUND

Regarding channel placement, the O`ahu Cable Franchise, D&O No. 346, states:

Although DCCA acknowledges that TWE⁴ may determine Channel placement at its sole discretion, TWE agrees to assign each PEG Access Channel its own dedicated Channel number (i.e., the current numbering is 49, 52, 53, 54, 55 and 56) and shall not move the PEG Access Channels without at least thirty calendar days' prior written notification to the Director. TWE shall ensure that Subscribers can locate and view all PEG Access Channels in the same manner as other commercial Channels of video programming offered by TWE, unless otherwise agreed to by the Director.⁵

In a letter dated January 3, 2018, and received by DCCA on January 5, 2018, OTWC notified DCCA that beginning on February 6, 2018, in conjunction with the required digital transition, OTWC would change the channel placement of PEG Access Channels⁶ on O`ahu, managed by `Ōlelo Community Media ("`Ōlelo"), from channels 48, 49, 50, 52, 53, 54 and 55 to new locations at digital channels 181, 182, 183, 184, 185, 186 and 187.⁷

On January 22, 2018, DCCA sent a letter to OTWC requesting additional information regarding the PEG channel movement, to which OTWC responded on January 29, 2018. On February 1, 2018, DCCA issued a Letter Order informing OTWC that due to inaccurate information in its digital transition notice about DTA capabilities, OTWC's required thirty (30) days' notice to subscribers was defective and required

⁴ "TWE" means Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable.

⁵ D&O No. 346 at 21 (footnote and emphasis added). See also D&O No. 241 at 11-12, issued on May 10, 1999 (Maui County, excluding Lahaina), D&O No. 291 at 13, and D&O No. 368 at 32.

⁶ "PEG Access Channel" means any Channel on the Cable System made available by cable operator(s) for noncommercial public, educational or governmental programming.

⁷ As part of the digital transition, OTWC is required to provide, among other things, at least thirty (30) days' notice of the transition to affected areas and up to two (2) digital transport adapters ("DTAs") or "basic boxes" upon request for no charge up to (2) years depending on the level of service. See D&O No. 366 at 24.

corrective action. DCCA ordered that subscribers who received the defective notice cannot be transitioned until thirty (30) days have passed from the date they receive an accurate notice.

On February 2, 2018, a Cable Advisory Committee (“CAC”) meeting was held at the King Kalakaua Building at 5:00 p.m. during which OTWC presented its plan for the channel movements. After the presentation, CAC members asked OTWC additional questions and the floor was opened to receive public comments. The written and oral comments received by DCCA from the public, legislators, and various government officials all strongly opposed the relocation of the PEG Access Channels.

By letter dated February 19, 2018, OTWC informed DCCA that the digital transition and PEG Access Channel relocation on O`ahu would begin on March 27, 2018. According to OTWC, the transition on O`ahu would be completed around the first week of June with the transition of the neighbor islands to follow shortly thereafter.

III. DISCUSSION

A. Introduction

PEG access has been and continues to be an important issue for the State. In establishing PEG access in Hawaii, the State viewed it as a means for cable subscribers to receive information and educational programming that in general reflect the communities in which they reside. It also provides a forum where people can voice concerns to the community and encourage community dialogue and offers nondiscriminatory access to electronic media.

In addition, PEG access programming promotes civic participation through government cablecasts, which allow viewers to remain informed of issues affecting our local communities throughout the State, especially when time and distance, which in Hawai`i is notable as our island communities are separated by large bodies of water, prevents them from attending public hearings and other government functions. PEG access programming also provides valuable information to viewers and serves as a vehicle to connect Hawai`i's unique communities through the discussion and coverage of cultural matters and events.

The current PEG access organizations throughout the State, `Ōlelo (on O`ahu), Nā Leo 'O Hawai`i (on the island of Hawai`i) (“Nā Leo”), Ho`ike: Kaua`i Community Television, Inc. (on Kaua`i) (“Ho`ike”) and Akakū Maui Community Media (in Maui County) (“Akakū”), have been providing PEG access for over twenty (20) years in their current channel locations and have a long-established place as an important voice in their communities. Through efforts by staff, volunteers, and producers, these PEG access organizations have created an identity closely linked with their place in the current cable channel lineup. Any sudden changes to these channel locations would likely result in appreciable costs and burdens on both the PEG access organizations

and content producers to rebrand and reach their intended viewers. As such, any relocation of PEG Access Channels should occur only for reasons of technical necessity or, after all factors and considerations are fully evaluated, it is found to be in the best interest of the public.

With the upcoming digital transition of OTWC's cable system and accompanying changes to its channel lineup, the Director has carefully weighed the impacts and consequences of the relocation of the PEG Access Channels. Consideration was given to numerous factors, including but not limited to, comments from the public and government officials; the issues and costs of rebranding; the costs of potential litigation⁸; the uncertainty and/or confusion of PEG Access Channel locations during a protracted litigation process; and the diversion of PEG access funds and resources to cover the cost of litigation by PEG access organizations from their primary purpose of providing PEG access services. In balancing the desire for the maintenance and continuity of public access resources as expressed by the community against other cable/broadband related public benefits, DCCA amends D&O Nos. 291, 346, 366, and 368 as set forth herein.

In conjunction with the amendments described below, and notwithstanding prior D&Os, Orders, and Letter Orders, OTWC agrees and accepts, subject to applicable state and federal laws, that:

Until the year 2036, unless required by state or federal law, the locations or designations of linear PEG Access Channels existing on the date of this D&O throughout the State for which PEG access organizations have programming responsibilities ("**PEG Programming Channels**")⁹ shall remain at their current channel placements. PEG Programming Channel locations/designations shall not be changed, relocated, or altered without the prior written approval of the Director. Upon a request to relocate a PEG Programming Channel, the Director may take into consideration various factors including, the reasoning by the cable operator, input from the affected PEG access organization(s) and comments from the public. Approval by the Director shall not be unreasonably withheld.

⁸ On March 12, 2018, 'Ōlelo filed a complaint in the First Circuit Court of the State of Hawai'i against Charter/OTWC regarding OTWC's plan to relocate the PEG Access Channels. See 'Ōlelo Community Television v. Charter Communications, Inc., Civ. No. 1CC181000395.

⁹ The PEG Programming Channels are channels 49, 53, 54, and 55 in the O'ahu franchise (for which 'Ōlelo currently has programming responsibilities); channels 53, 54, and 55 in the Maui County (excluding Lahaina) and Lahaina franchises (for which Akakū currently has programming responsibilities); channels 53, 54, and 55 in island of Hawai'i franchise (for which Nā Leo currently has programming responsibilities); and channels 53 and 54 in the Kaua'i franchise (for which Ho'ike currently has programming responsibilities).

OTWC also agrees and acknowledges that upon reasonable request and supported by sufficient justification that additional channel capacity is needed to deliver PEG programming content, any PEG Access Channels OTWC is allowed to reclaim under the terms of this D&O may be reinstated upon mutual consent of the Director and OTWC. Such request for reinstatement of the channels OTWC is allowed to reclaim under the terms of this D&O shall not be made within four (4) years of the date of this D&O. All parties shall act reasonably and in good faith with respect to such review.

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, 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), D&O No. 366, and franchise-related agreements and stipulations shall continue to be in full force and effect. If there is conflict between these amendments and the Franchise D&Os, D&Os, Orders, Letter Orders, or other directives, the terms of these amendments shall prevail.

B. Kaua`i Cable Franchise

For the island of Kaua`i, the controlling terms of its Cable Franchise are set forth in D&O No. 291, as amended, which approved the transfer of control of the Kaua`i Cable Franchise from G Force, LLC dba Garden Isle Telecommunications to TWC ("Kaua`i D&O").¹⁰ Under the terms of the Kaua`i D&O, which was issued on July 12, 2002, the franchisee is obligated to provide the PEG access organization on Kaua`i (Ho`ike) three (3) PEG Access Channels.¹¹ To date, only two (2) out of the three (3) allocated access channels have been utilized by Ho`ike which are currently cable casted on channels 53 and 54.

The Kaua`i D&O shall be amended to allow OTWC to reclaim the unused channel allocated to the Kaua`i PEG access organization, subject to reinstatement upon mutual consent pursuant to Section III.A of this D&O. Accordingly, the Kaua`i D&O is amended as follows:

Section 4.3, Subparagraph (a), on page 9 of the Kaua`i D&O, Terms and Conditions, is deleted in its entirety and a new Subparagraph (a) is inserted as follows:

¹⁰ On December 16, 2016, OTWC filed its Application to renew its Kaua`i Cable Franchise. As discussions between OTWC and DCCA are still in progress regarding the renewal terms, the franchise period under the Kaua`i D&O which was initially scheduled to expire on December 31, 2016, has been extended to June 29, 2018, pending final disposition of the renewal application.

¹¹ This PEG Channel requirement was carried over from D&O No. 152 issued on January 7, 1992. See D&O No. 152, Terms and Conditions of Decision and Order No. 152, at 17.

- (a) TWE shall designate and make available to the Director or the Director's designee a total of two (2) full-time activated Access Channels for public, educational, and governmental access over the System.

C. O`ahu Cable Franchise

The terms of the O`ahu Cable Franchise are set forth under D&O No. 346, issued by DCCA on January 14, 2010, as amended, is scheduled to expire on January 13, 2030 ("O`ahu D&O"). The O`ahu D&O requires that during each year of the franchise term, OTWC shall pay an Access Operating Fee to be used for PEG access purposes and/or any other public purpose(s) as determined by the Director.¹² The Access Operating Fee is limited to a cap amount plus adjustments based on the Consumer Price Index for all Urban Consumers Honolulu and shall be no greater than three percent (3%) of OTWC's Gross Revenue for the applicable preceding calendar year. The difference between the Access Operating Fee paid and three percent (3%) of OTWC's Gross Revenue is deposited by OTWC into an interest-bearing reserve account and disbursed as directed by the Director for INET/broadband connections or interconnects and equipment.¹³

The O`ahu D&O shall be amended as follows:

Section IV.I., Paragraph 4, on page 26 of the O`ahu D&O is deleted in its entirety and a new Paragraph 4 is inserted as follows:

4. Reserve Account

The difference between the Access Operating Fee calculated and paid pursuant to section IV.I.1. above and an amount equal to three percent of TWE/OTWC's Gross Revenues for the applicable preceding calendar year, if any, shall be held and managed by TWE/OTWC. Beginning in the year 2019, the funds shall be used to extend OTWC's infrastructure to provide cable/broadband service to unserved/underserved areas in the State or other cable or broadband related infrastructure investment purposes.

Commencing on January 31, 2020, and on January 31st of each year thereafter, TWE/OTWC shall submit to the Director a detailed accounting of the reserve account for the previous year ending on December 31st. The accounting shall include the amounts collected, the amounts disbursed, and the use of the funds in accordance with this Section.

¹² O`ahu D&O at 25.

¹³ See O`ahu D&O at 25-26.

If the funds in the reserve account are not utilized by OTWC within five (5) years (i.e., by December 31, 2024), OTWC shall submit a plan to DCCA no later than January 31, 2025, detailing how the remaining funds will be used in accordance with this Section within the following two (2) years.

D. Hawai'i Island Cable Franchise

The terms of the Hawai'i Island Cable Franchise are set forth in D&O No. 368, as amended, issued by DCCA on March 15, 2016, and set to expire on March 14, 2036 ("**Hawai'i Island D&O**").¹⁴ Along with five (5) government and PEG access channels, OTWC is required to provide one (1) State Government VOD Channel, one (1) County Government VOD Channel,¹⁵ one (1) linear statewide PEG Access digital channel ("**PEG Linear Digital Channel**"),¹⁶ and one (1) digital educational access channel for use upon request by the University of Hawai'i at Hilo ("**UH Hilo**").¹⁷

The Hawai'i Island D&O also provides for on-island and statewide institutional network ("**INET**") connections.¹⁸ These INET connections are categorized in an overall statewide monetized amount of up to ONE MILLION DOLLARS (\$1,000,000) in credits with a discounted rate of three percent (3%) per a year as well as up to three (3) on-island connections per a year at no charge throughout the term of the cable franchise, under certain conditions.¹⁹

The Hawai'i Island D&O shall be amended to allow OTWC to reclaim the unused PEG Linear Digital Channel and the educational channel allocated to UH Hilo, subject to reinstatement upon mutual consent pursuant to Section III.A of this D&O.²⁰ As the County Government VOD Channel also remains unused, any future VOD content by any of the counties throughout the State shall be merged and made available on the

¹⁴ See also D&O No. 366.

¹⁵ See Hawai'i Island D&O at 25. See also Stipulation to Settle All Claims of the Parties dated March 4, 2014 ("**Stipulation**") at 4.

¹⁶ See Hawai'i Island D&O at 16 and 23-24. See also Stipulation at 7-8.

¹⁷ See Hawai'i Island D&O at 27-28.

¹⁸ INET is used by State and County government and educational authorities and agencies, and accredited educational institutions for broadband communications purposes. "**INET connection**" means an INET connection to a specific site, or an INET related service (e.g., reconfiguration, upgrades, etc.).

¹⁹ See Hawai'i Island D&O at 42-46.

²⁰ See Section III.A. on page 5 of this D&O.

State Government VOD Channel.²¹ This will allow the remaining unused County Government VOD Channel capacity to be reclaimed by OTWC. Furthermore, certain provisions relating to INET credits and connections shall also be modified. Accordingly, the Hawai'i Island D&O is amended as follows:²²

Section IV.E., paragraph 3.b., on page 24 of the Hawai'i Island D&O is deleted in its entirety and any and all references in the Hawai'i Island D&O, and any related D&Os, Orders, Letter Orders, or other directives, as applicable, to the term "PEG Linear Digital Channel" are deleted.

Section IV.E., Paragraph 4.a., on pages 24-25 of the Hawai'i Island D&O is deleted in its entirety and a new Paragraph 4.a. is inserted as follows:

- a. One (1) VOD Channel shall be dedicated collectively to government agencies and offices (i.e., Legislature, Office of the Governor, Executive Branch agencies, Judiciary, City and County of Honolulu, County of Maui, County of Hawai'i, County of Kaua'i, etc.) that shall be referred to as the "**Government VOD Channel.**"

OTWC shall make the Government VOD Channel available no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.

Any and all references in the Hawai'i Island D&O, and any related D&Os, Orders, Letter Orders, or other directives, as applicable, to the term "State Government VOD Channel" are deleted and shall be replaced with the term "Government VOD Channel."²³

Section IV.E., paragraph 4.b., on page 25 of the Hawai'i Island D&O is deleted in its entirety and all of OTWC's requirements and obligations regarding the "County Government VOD Channel" are merged with the terms and requirements under the newly referenced "Government VOD Channel." Section IV.E., paragraph 4.c., on page 25 shall be renumbered as paragraph 4.b.

²¹ The State Government VOD Channel was launched in January 2016 with access to legislative hearings and other functions and activities of the Hawai'i State Legislature.

²² To reflect the terms of this D&O, the Stipulation shall also require amendment by a separate document. All the parties to the Stipulation, DCCA, OTWC, 'Ōlelo and the City & County of Honolulu, have verbally agreed to the applicable changes to be made in the Stipulation and it is expected that an amendment document will be executed shortly after the issuance of this D&O.

²³ On October 3, 2014, the Director sent OTWC a letter directing it to make available the State Government VOD Channel no later than one hundred twenty (120) calendar days after the date of the letter. Pursuant to this paragraph, the October 3, 2014 letter shall be deemed to refer to the Government VOD Channel.

The following wording is deleted from Section IV.E., Paragraph 6, on page 27, Educational Access Channels, of the Hawai'i Island D&O:

Upon request by the University of Hawai'i at Hilo ("UH Hilo"), OTWC shall make available an additional digital Channel or alternate content delivery service dedicated to deliver content and live video with audio, provided by the UH Hilo, utilizing technology already deployed on OTWC's cable television distribution system, at the same technical quality as local broadcasters that are affiliates of major national broadcast networks to Hawai'i Island Subscribers. OTWC shall make available this Channel no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.

In conjunction with this implementation of this digital Channel or alternate delivery service, OTWC shall provide and maintain a video transport connection from UH Hilo to OTWC's headend facility on Hawai'i Island.

OTWC shall provide and maintain all equipment to activate the video transport connection for this digital Channel or alternate content delivery service to the selected sites at no cost to the State, UH, Hawai'i Island PEG Access Organization, Director, or Director's designee(s).

The remaining portions of Section IV.E., Paragraph 6, as amended, shall remain in full force and effect.

Section IV.L.1., Paragraphs a. and b., on pages 43-44 of the Hawai'i Island D&O are deleted in their entirety and new Paragraphs a. and b. are inserted as follows:

- a. New INET Connections at No Cost. During the Cable Franchise term and pursuant to the terms of this subsection, OTWC, at no cost or charge to the State or Subscribers, shall install and maintain fiber optic lines, materials, and electronics for two (2)-way broadband video, voice and data capabilities to interconnect existing INET sites with sites selected by the Director within OTWC's Cable Franchise areas statewide. The total installation cost (labor and materials) for the INET connections requested by the Director and provided by OTWC pursuant to this subsection shall not exceed the present value of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), based upon a discount rate of THREE PERCENT (3%) during the Cable Franchise term ("**Franchise INET Connection Fund**"), as discussed below.

Commencing in year three (3) of the Cable Franchise term, the present value of each INET connection installed pursuant to this section shall be calculated using the formula:

$$FV / (1+r)^n = PV,$$

where "FV" (or "future value") is the value of the INET connection at the time the connection is provided; "r" is the interest rate expressed as a decimal; "n" is the number of years from the effective date of the Cable Franchise term; and "PV" is the calculated present value.

The first INET connection shall be subtracted from the total Franchise INET Connection Fund of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), regardless of which year in the Cable Franchise term such first connection is made. By way of example and not limitation, if the first INET connection pursuant to this section is installed six (6) years from the effective date of the Cable Franchise at a cost of \$50,000.00, then the calculated present value of the connection would be \$45,757.00 (i.e., $\$50,000.00 / (1.03)^6 = \$45,757.00$). The remaining available balance of the Franchise INET Connection Fund at that point would then be \$454,243.00 (i.e., $\$500,000.00 - \$45,757.00 = \$454,243.00$).

- b. Connections to Fire Stations, Police Stations, Schools, Institutions of Higher Learning and Libraries. OTWC also shall provide and maintain at no charge or cost to the State, County, or Subscribers, connections for two (2)-way broadband video, voice and data capabilities, and interconnecting network sites between the INET system and Hawai'i Island fire stations, police stations, schools, institutions of higher learning and libraries as provided in this paragraph. From the start of this franchise term until the year 2020, within six (6) months of a request by the Director, OTWC shall install up to three (3) such connections per year of the franchise term at a cost not to exceed EIGHTEEN THOUSAND AND NO/DOLLARS (\$18,000.00) per connection. Any costs exceeding \$18,000 per connection in value shall be borne by the requestor.

For the period beginning 2020 to 2024, within six (6) months of a request by the Director, OTWC shall install up to two (2) such connections per year of the franchise term at a cost not to exceed EIGHTEEN THOUSAND AND NO/DOLLARS (\$18,000.00) per connection. Any costs exceeding \$18,000 per

connection in value shall be borne by the requestor.

For the period 2024 until the expiration of this Cable Franchise, within six (6) months of a request by the Director, OTWC shall install up to one (1) such connections per year of the franchise term at a cost not to exceed EIGHTEEN THOUSAND AND NO/DOLLARS (\$18,000.00) per connection. Any costs exceeding \$18,000 per connection in value shall be borne by the requestor.

Any unused connections that are not requested for specific sites within each year of the franchise term shall expire on the anniversary of the Effective Date and may not be used in subsequent years of the franchise term.

E. D&O No. 366

D&O No. 366 requires Charter/OTWC to maintain a performance bond for a minimum of four (4) years after the close of the merger between Charter and TWE to ensure compliance with certain conditions set forth in the D&O. Due to the financial stability of Charter/OTWC as well as the satisfaction of certain obligations and requirements required under D&O No. 366, DCCA finds it reasonable to alleviate Charter/OTWC of its commitment to maintain a performance bond. Therefore, Section IV., Paragraph N., on pages 28-29 of D&O No. 366 is deleted in its entirety and a new Paragraph N. is inserted as follows:

N. Bankruptcy/Financial Insolvency

To protect Hawai'i customers, in the event that Charter transfers control of its Hawai'i Cable Systems as a result of a bankruptcy protection filing or other form of financial insolvency, Charter and or Charter/OTWC, as applicable, shall take all commercially reasonable efforts to avoid any service interruptions and to ensure that the transition is seamless to its Subscribers. Related to this, Charter/OTWC shall also provide DCCA, upon request, with information regarding Charter's debt service and events of default of the various loan agreements entered into pursuant to the Proposed Transaction on an annual basis, for a period of four (4) years. The first report shall be submitted on December 31st of the year that the Proposed Transaction closed, and each subsequent report shall be submitted to DCCA upon the request of the Director.

F. Related Matters

DCCA recognizes and finds that, in order for Charter/OTWC to complete its all-digital network transition throughout all of its Cable Franchise areas in the State by November 19, 2018, thirty-day notice of changes in program offerings cannot be given to subscribers who have already received notice of Charter/OTWC's all-digital transition and lineup changes scheduled to occur beginning March 27, 2018. Subscribers of OTWC that received notice of the digital transition/channel relocations shall be given an updated notice reflecting the channel lineup as a result of this D&O as soon as reasonably practicable. To the extent applicable, DCCA waives any and all requirements to provide notice thirty (30) days prior to revising the channel lineup consistent with this D&O, however, this waiver does not extend to subscribers that have not yet received notice of the digital transition.

DCCA notes that this D&O does not and shall not constitute a waiver or release of any of DCCA's rights under any of the Franchise D&Os, D&O No. 366, 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, except as otherwise specifically provided in this D&O. DCCA, Charter, and OTWC do not waive any and reserve all of their rights with respect to OTWC's and Charter's compliance with the terms, conditions, and requirements in the Franchise D&Os, D&O No. 366, 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.

IV. ORDER

NOW, THEREFORE, based on the foregoing, the amendments of the Kaua'i D&O, O'ahu D&O, Hawai'i Island D&O, and D&O No. 366 are amended as set forth in Section III of this D&O, subject to the following:

- A. Until the year 2036, unless required by state or federal law, the locations or designations of PEG Programming Channels existing on the date of this D&O throughout the State shall remain at their current channel placements. PEG Programming Channel locations/designations operated by the PEG access organizations shall not be changed, relocated, or altered without the prior written approval of the Director. Upon a request to relocate a PEG Programming Channel, the Director may take into consideration various factors including, the reasoning by the cable operator, input from the affected PEG access organization(s), and comments from the public. Approval by the Director shall not be unreasonably withheld.

- B. Upon reasonable request and supported by sufficient justification that additional channel capacity is needed to deliver PEG programming content, any PEG Access Channels OTWC is allowed to reclaim under the terms of this D&O may be reinstated upon mutual consent of the Director and OTWC. Such request for reinstatement of the channels OTWC is allowed to reclaim under the terms of this D&O shall not be made within four (4) years of the date of this D&O. All parties shall act reasonably and in good faith with respect to such review.
- C. Subscribers of OTWC that received notice of the digital transition/channel relocations shall be given a written updated notice by mail reflecting the channel lineup as a result of this D&O as soon as reasonably practicable. Additional notice may also be given electronically or with on-screen messaging or in any other reasonable means, in OTWC's discretion, to minimize customer impacts. To the extent applicable, DCCA waives any and all requirements to provide notice thirty (30) days prior to revising the channel lineup consistent with this D&O, however, this waiver does not extend to subscribers that have not yet received notice of the digital transition.
- D. TWC, Charter, OTWC, and Charter/OTWC, as applicable, shall adhere to and comply with all of the terms, conditions, and requirements provided in this D&O, including but not limited to Section III. of this D&O.
- E. 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, 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. If there is conflict between these amendments and the Franchise D&Os, D&Os, Orders, Letter Orders, or other directives, the terms of these amendments shall prevail.

Dated: Honolulu, Hawai'i, March 23, 2018

Catherine P. Awakuni Colón

CATHERINE AWAKUNI COLÓN
Director of Commerce and Consumer Affairs

Acknowledged and agreed to by:

Oceanic Time Warner Cable LLC

Gregg Fujimoto

Name: Gregg Fujimoto

Title: Senior Vice President

Date: Mar 23, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 372** was served upon the following parties at the address shown below by mail, postage prepaid, on this 23rd day of March, 2018.

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