

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

In the Matter of )  
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OCEANIC TIME WARNER CABLE LLC ) **DECISION AND ORDER NO. 373**  
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Franchise Fees Paid by the Cable Operator. )  
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**DECISION AND ORDER NO. 373**

**I. INTRODUCTION**

Pursuant to Decision and Order ("D&O") Nos. 261, 291, 346, 364, 366, 367, 369, and 371; and the January 21, 2014 Letter Order, Oceanic Time Warner Cable LLC ("OTWC") is required to pay franchise fees in an amount equal to five percent (5%) of OTWC's annual gross revenues for its Cable Systems throughout the State of Hawai'i ("State") to the following: (1) 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) one percent (1%) in Annual Fees<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>
- B. Unless otherwise directed, on or about January 31, 2019, OTWC shall make the following payments:
  1. Annual AOF 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 AOF 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 2018 shall be paid as follows:
    - a. **ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) shall be paid to the `Ulu`ulu: Henry Ku`ualoha Giugni Moving Image Archive of Hawai`i ("HKG Archive")<sup>3</sup> in 2019; 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;

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<sup>2</sup> 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.

<sup>3</sup> 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. THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) shall be paid to the Makauila, Inc. ("Makauila")<sup>4</sup>, and consistent with DCCA's initial requirements that:
1. OTWC shall make the payment to Makauila pursuant to the Contract for Goods or Services Based Upon Competitive Sealed Proposals, RFP-CATV-16-001-SW effective January 1, 2017; and
  2. Any future payments to the Makauila shall be based on subsequent D&Os or Letter Orders issued by DCCA.
- 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)).
4. OTWC shall provide copies of the payment checks and any supporting documents related to the above-mentioned payments to DCCA.
- C. Unless otherwise directed, on or about January 31, 2020, and every January 31<sup>st</sup> 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:

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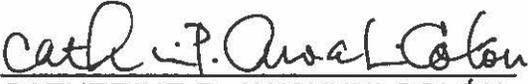
<sup>4</sup> In 2016, Makauila was awarded a fixed-price contract for the development and statewide distribution of Hawaiian Language Video Content.

Makauila is a nonprofit corporation with the purpose of developing and distributing Hawaiian language, culture, and educational media content.

DCCA has determined that the funds described in this D&O shall help the State promote and cultivate interest in the Hawaiian language, as well as to provide educational opportunities for individuals learning Hawaiian.

1. Annual AOF 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 AOF 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, 367, 369, and 371; and the January 21, 2014 Letter Order shall continue to remain in full force and effect.

Dated: Honolulu, Hawai'i, January 4, 2019.

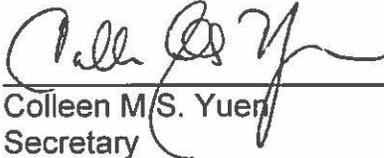
  
CATHERINE P. AWAKUNI COLÓN  
Director of Commerce and  
Consumer Affairs

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 373** was served upon the following person at the address shown below by mail, postage prepaid, on this 4th day of January, 2019.

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Colleen M. S. Yuen  
Secretary