

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

In the Matter of	)	<b>DECISION AND ORDER NO. 374</b>
	)	
HAWAIIAN TELCOM SERVICES	)	
COMPANY, INC.	)	
	)	
Public, Educational, or Governmental	)	
Access Capital Fund Payment Schedule for	)	
the Years 2020 to 2024.	)	
_____	)	

DECISION AND ORDER NO. 374

By this Decision and Order, the Cable Television Division of the Department of Commerce and Consumer Affairs (the “**Department**” or “**DCCA**”) of the State of Hawai‘i approves the capital fund payment schedule for the years 2020 to 2024, as set forth in the agreement dated April 22, 2019, by and between `Ōlelo Community Media (“**Ōlelo**”), as the current Oahu public, educational, or governmental (“**PEG**”) access organization, and Hawaiian Telcom Services Company, Inc. (“**HTSC**”) and attached hereto as Exhibit “A”.

I. INTRODUCTION

On June 24, 2011, the Department issued Decision and Order No. 352 (“**D&O No. 352**”) granting a non-exclusive franchise to HTSC to provide digital cable service to all areas on the island of Oahu, subject to the terms, conditions, and requirements set forth in D&O No. 352.

Section IV.J.2 of D&O No. 352, required HTSC to meet with the Oahu PEG access organization(s) to develop a schedule for capital fund payments for the PEG access facilities and equipment for the years 2015 to 2019 and later for the years 2020 to 2024.<sup>1</sup>

On April 30, 2014, HTSC submitted to the Department its agreement with `Ōlelo, which memorializes HTSC’s and `Ōlelo’s (collectively, the “**Parties**”) agreed-upon capital fund payment schedule for the years 2015 to 2019, as required under Section IV.J.2 of D&O No. 352.

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<sup>1</sup>See D&O No. 352 at 36-37.

On May 15, 2014, the Department issued Decision and Order No. 361 which the Director of DCCA ("**Director**") approved the Parties agreed-upon capital fund payment schedule for the years 2015 to 2019.

On April 26, 2019, HTSC submitted its agreement with `Ōlelo dated April 22, 2019, which memorializes the Parties agreed-upon capital fund payment schedule for the years 2020 to 2024 ("**Agreement**") as required under Section IV.J.2 of D&O No. 352. The Agreement is attached as Exhibit "A", and is hereby incorporated into and made a part of this D&O.

## II. Discussion

Under the Agreement, HTSC agrees to pay `Ōlelo, the Director's PEG designee for Oahu, capital fund payments for PEG access facilities and equipment, as follows:

<u>Due Date</u>	<u>Amount</u>
January 31, 2020; January 31, 2021; January 31, 2022; January 31, 2023; and January 31, 2024	\$888,134.00 multiplied by the ratio of HTSC's basic service tier Subscribers on Oahu to the total number of basic service tier Subscribers on Oahu served by HTSC, Oceanic Time Warner Cable (" <b>OTWC</b> "), and any other franchised cable operator on Oahu combined as of December 31 of the previous year, multiplied by the percentage change of the United States Department of Labor seasonally adjusted Consumer Price Index for all Urban Consumers Honolulu for all items (1982-1984=100) from the then-most current period available and the comparable preceding year's CPI, but not less than \$888,134.00 total from HTSC, OTWC, and any other franchised cable operator on Oahu combined. For each subsequent year, the previous year base amount and the calculation noted herein shall be used to determine the amount payable. <sup>2</sup>

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<sup>2</sup>See Agreement at 1.

In addition, the Parties agree: (1) that the Director has the authority to adjust the capital funds payments agreed to by the Parties, as set forth in the Agreement, subject to HTSC's franchise order (i.e., D&O No. 352); and (2) on certain conditions when they may petition the Director to adjust the capital fund payment amounts. Specifically, the Parties agree to the following conditions:

- (1) Based upon the number of all basic service tier Subscribers in all Oahu franchises as of December 31, 2019, if the number of basic tier Subscribers on Oahu increases or decreases at least five percent (5%), either `Ōlelo or HTSC may petition the Director for an increase or decrease in the capital fund payments; provided that either party may submit such petition only once per calendar year.
- (2) The Director shall have the sole authority to grant or deny the petition, and before changing the amount of the capital fund payments, the Director shall require the petitioning party to provide substantial justification for its request.
- (3) If an increase or decrease is granted, the Oahu Subscriber number base shall be adjusted accordingly.
- (4) `Ōlelo may request in writing to DCCA that DCCA confirm whether the minimum increase or decrease in Subscriber numbers has been met; provided that DCCA shall not be required to disclose the confidential Subscriber information to `Ōlelo, and `Ōlelo may request this confirmation from DCCA only once per calendar year.<sup>3</sup>

Upon review, DCCA determines that the capital fund payment schedule agreed to by the Parties, as memorialized in the Agreement, is in the public interest. The other terms and conditions of the Agreement are reasonable and consistent with D&O No. 352. Based on the foregoing, DCCA concludes that the Agreement should be approved.

### III. ORDER

Now, therefore, the Director hereby orders that:

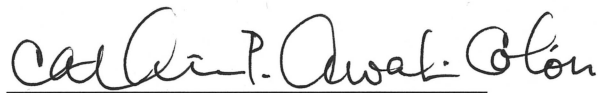
- A. In accordance with D&O No. 352, the Director approves the Agreement, described herein and attached hereto as Exhibit "A", between HTSC and `Ōlelo for HTSC's Oahu franchise area. Accordingly, HTSC shall pay `Ōlelo capital fund payments for the years 2020-2024 as set forth in the Agreement.

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<sup>3</sup>See id. at 2.

- B. Except as otherwise provided in this Decision and Order, the remaining provisions of D&O No. 352 (to the extent not otherwise amended), shall remain in full force and effect.

Dated: Honolulu, Hawai'i, May 9, 2019

A handwritten signature in black ink, reading "Catherine P. Awakuni Colón". The signature is fluid and cursive, with the first name "Catherine" and last name "Colón" being more prominent.

CATHERINE AWAKUNI COLÓN  
Director of Commerce and Consumer Affairs

**AGREEMENT**

This agreement executed as of April 22nd, 2019 ("Agreement"), by and between 'Ölelo Community Media ("Ölelo"), as the current O'ahu PEG Access Organization and Hawaiian Telcom Services Company, Inc. ("HTSC"), as an O'ahu cable franchisee (collectively, the "Parties"), memorializes the Parties' agreement concerning HTSC's annual Capital Fund Payments to the Director, Department of Commerce and Consumer Affairs ("DCCA") or 'Ölelo,<sup>1</sup> as the Director's designee, pursuant and subject to the terms of Decision and Order No. 352, State of Hawai'i, DCCA, Cable Television Division dated June 24, 2011, ("D&O 352"), which is incorporated herein by reference. This Agreement sets forth the amounts and terms of HTSC's annual Capital Fund Payments for its O'ahu cable franchise for the five year period, 2020-2024.

The Parties agree as follows:

- A. **Capital Fund Payment Amounts.** For the years 2020 to 2024, HTSC agrees to pay the following annual Capital Fund Payments for PEG Access Facilities and Equipment<sup>2</sup> for HTSC's O'ahu cable franchise to the Director of DCCA ("Director") or 'Ölelo as the Director's designee(s):

<u>Due Date</u>	<u>Amount</u>
January 31, 2020, January 31, 2021, January 31, 2022, January 31, 2023 and January 31, 2024	\$888,134.00 <sup>3</sup> multiplied by the ratio of HTSC's basic service tier Subscribers on O'ahu to the total number of basic service tier Subscribers on O'ahu served by HTSC, Oceanic Time Warner Cable ("OTWC") and any other franchised cable operator on O'ahu combined as of December 31 of the previous year, multiplied by the percentage change of the United States Department of Labor seasonally adjusted Consumer Price Index for all Urban Consumers Honolulu for all items (1982-1984=100) from the then-most current period available and the comparable preceding year's CPI, but not less than \$888,134.00 total from HTSC, OTWC, and any other franchised cable operator on O'ahu combined. For each subsequent year, the previous year base

<sup>1</sup> 'Ölelo is the current O'ahu Peg Access Organization and is under consideration to be designated as the O'ahu Peg Access Organization for the period 2019-2024.

<sup>2</sup> These Capital Fund Payments are for all PEG Access Facilities and Equipment on Oahu.

<sup>3</sup> Previous year (2019) base amount. Base amount equals total combined HTC and OTWC capital amount from previous year.

amount and the calculation noted herein shall be used to determine the amount payable.

B. Adjustments to Capital Fund Payment Amounts. The Parties agree the Director reserves the authority to adjust the above Capital Fund Payments as provided herein subject to HTSC's franchise order.

1. 'Ōlelo or HTSC shall have the ability to petition the Director to increase or decrease the above Capital Fund Payments based upon the requirements below.

2. Based upon the number of all basic service tier Subscribers in all O'ahu franchises as of December 31, 2019, if the number of basic tier Subscribers on O'ahu increases or decreases at least five percent (5%), either 'Ōlelo or HTSC may petition the Director for an increase or decrease in the Capital Fund Payments; provided that either party may submit such petition only once per calendar year.

3. The Parties agree the Director shall have the sole authority to grant or deny the petition, and before changing the amount of the above Capital Fund Payments, the Director shall require the petitioning party to provide substantial justification for its request.

4. If an increase or decrease is granted, the O'ahu Subscriber number base shall be adjusted accordingly.

5. 'Ōlelo may request in writing to DCCA that DCCA confirm whether the minimum increase or decrease in Subscriber numbers has been met; provided that DCCA shall not be required to disclose the confidential Subscriber information to 'Ōlelo, and 'Ōlelo may request this confirmation from DCCA only once per calendar year.

C. Additional Terms

1. The terms of this Agreement shall remain in effect from January 1, 2020 through December 31, 2024, unless terminated sooner: (a) upon mutual written agreement of the Parties; (b) upon loss by HTSC of the O'ahu cable franchise, (c) should 'Ōlelo cease to serve as the PEG Access Organization for O'ahu; or (d) in the event Oceanic's current obligations for capital fund payments to 'Ōlelo for the years 2020-2024 terminate (in which case termination of this Agreement shall be automatic).

2. This Agreement may not be altered, amended or changed in any way except by a written instrument executed by the Parties or pursuant to adjustments referenced in Sections B.1 through B.5 above, which shall be memorialized in writing and made an addendum hereto.

3. This Agreement may be executed in counterparts, including through electronically exchanged signature pages (e.g., emailed PDFs), each of which will be deemed an original, and

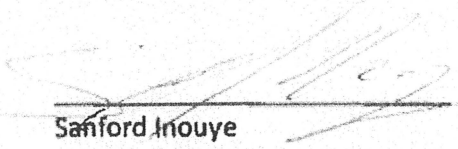


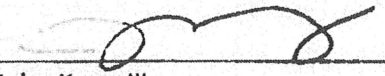
all of which together will constitute one and the same instrument; provided that neither party will be bound to this Agreement unless and until both parties have executed a counterpart. Electronically exchanged signature pages are fully binding on the parties and effective for all purposes; they will be treated the same as physically exchanged signatures.

THE PARTIES HAVE VOLUNTARILY ENTERED INTO THIS AGREEMENT ON THE DATE THAT FIRST APPEARS ABOVE.

'Ōlelo Community Media

Hawaiian Telcom Services Company, Inc.

  
Sanford Inouye  
President & Chief Executive Officer

  
John Komeiji  
President and General Manager



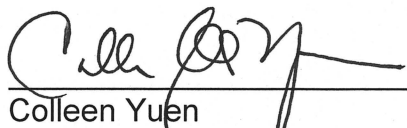
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order No. 374 was served upon the following at the address shown below by mail the same, postage prepaid, on this \_\_\_\_9<sup>th</sup>\_\_\_\_ day of \_\_\_\_May\_\_\_\_, 2019.

JOHN T. KOMEIJI, ESQ.  
PRESIDENT AND GENERAL MANAGER  
Hawaiian Telcom Services Company, Inc.  
1177 Bishop Street  
Honolulu, Hawai'i 96813

STEVEN P. GOLDEN  
VP-EXTERNAL AFFAIRS  
Hawaiian Telcom Services Company, Inc.  
1177 Bishop Street  
Honolulu, Hawai'i 96813

  
\_\_\_\_\_  
Colleen Yuen  
CATV, DCOA Secretary