

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

In the Matter of)	
)	
HAWAII CABLE OPERATORS)	DECISION AND ORDER NO. 375
)	
Decrease in Annual Fee Paid by Cable)	
Operators to the Department of Commerce)	
and Consumer Affairs.)	
_____)	

DECISION AND ORDER NO. 375

I. INTRODUCTION

Oceanic Time Warner Cable LLC (“OTWC”) ¹ and Hawaiian Telcom Services Company, Inc. (“HTSC”) ² (collectively, “Cable Operators”) hold cable television franchises in the State of Hawai‘i (“State”) issued by the Department of Commerce and Consumer Affairs (“DCCA” or “Department”). HTSC was issued a cable franchise for the island of Oahu and OTWC was issued cable franchises for Oahu, Hawai‘i Island, Kauai, Maui County (excluding Lahaina), and Lahaina. The Cable Operators are currently required to pay franchise fees in an amount equal to five percent (5%) of their annual gross revenues for their respective Cable Systems throughout the State to the following: (1) three percent (3%) as annual Access Operating Fees to the various public, educational, and governmental access organizations in the State; (2) one percent (1%) to the Hawai‘i Public Television Foundation, dba PBS Hawai‘i; and (3) one percent (1%) in annual fees to DCCA to administer Hawai‘i Revised Statutes (“HRS”) chapter 440G and for any other purposes determined by the Director of DCCA (“Director”).

II. DISCUSSION

DCCA, as the cable franchising authority in the State, is authorized to assess franchise fees from cable operator(s) up to a maximum of five percent (5%) of a Cable

¹ See Decision and Order (“D&O”) No. 346 issued on January 14, 2010; D&O No. 368 issued on March 15, 2016; D&O No. 291 issued on July 12, 2002; D&O No. 241 issued on May 10, 1999; D&O No. 174 issued on October 2, 1995.

² See D&O No. 352 issued on June 24, 2011.

System's annual gross revenues.³ Subject to the five percent (5%) ceiling, under HRS § 440G-15, each Cable Operator is required to pay an annual fee to the Department in an amount that is determined by the Director. The Director has the authority to adjust the annual fee pursuant to the rules adopted in accordance with HRS chapter 91.

Hawai'i Administrative Rules ("HAR") § 16-132-2 provides that the annual fee for each cable operator shall be one percent (1%) of the income received from subscribers for cable services rendered during the preceding calendar year.⁴ The annual fee assessed to the Cable Operators is passed along to their cable television subscribers and is included in the franchise fee amount listed on the monthly bills for cable television subscribers. HAR § 16-132-2(c) allows the Director to increase or decrease the amount of the annual fee if the Director determines that the existing annual fee is insufficient or exceeds the amount necessary to cover the costs of administering HRS chapter 440G.

As the one percent (1%) annual fee collected over time from the Cable Operators has resulted in DCCA accumulating more funds than it currently requires to cover the costs of administering HRS chapter 440G, the Director has determined that the annual fee from the Cable Operators shall be reduced from the current one percent (1%) to zero percent (0%) until further ordered by the Director. As required under federal law, the Cable Operators shall pass the amount of the decrease in franchise fees through to their respective subscribers.⁵ In so doing, monthly cable television bills will be lowered which serves the best interest of Hawai'i cable television subscribers.

III. ORDER

Based on the foregoing, DCCA hereby orders that:

- A. Commencing July 1, 2019, the annual fee for each cable operator paid to the Department shall be reduced to zero percent (0%), subject to further order by the Director.
- B. Concurrently, OTWC and HTSC shall pass through to their cable television subscribers, the decrease in the amount of franchise fees paid to the Department. The Cable Operators shall adjust the amount collected

³ See 47 U.S.C. § 542(b).

⁴ Under 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.

⁵ See 47 U.S.C. § 542(e).

from their cable television subscribers for franchise fees to reflect the reduced annual fee.

- C. All annual fees collected from cable television subscribers for the period January 1, 2019 through June 30, 2019 shall be held by the Cable Operators until further ordered by the Director.
- D. Notwithstanding any decision and order to the contrary, the Director may, in the Director's sole discretion, reconsider and increase the amount of the annual fee payment at any time and shall instruct the Cable Operators as to when the annual fee payment shall be re-initiated.
- E. Except as otherwise provided herein, all other provisions of the respective D&Os, Letter Orders, and directives issued by DCCA shall continue to remain in full force and effect.

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



CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

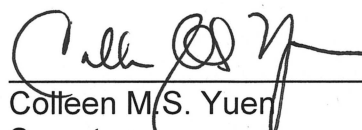
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 375** was served upon the following person at the address shown below by mail, postage prepaid, on this 9th day of May, 2019.

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