

**BEFORE THE  
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS  
OF THE STATE OF HAWAII**

In the Matter of the Application of	)	Docket No. 29-88-01
OCEANIC CABLEVISION, INC.	)	DECISION AND ORDER
For Renewal of Cable Franchise	)	NO. 137; AND
	)	CERTIFICATE OF
	)	SERVICE

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**DECISION AND ORDER NO. 137**

On November 30, 1988, the Director issued Decision and Order ("Order") No. 135 which granted Oceanic Cablevision Inc. a cable franchise subject to certain terms and conditions.

In subsequent conversations with the Director, Oceanic has raised concerns including, but not limited to, the following which the Director believes can be addressed by an amendment to Order No. 135 that will preserve the essential components of the Order:

1. Oceanic believes that the second Development Fund of \$30,000,000 in the second half of the franchise must be recognized as a present liability for accounting purposes and that this must be factored into rates. It also believes that a major upgrade will be unnecessary.

However, the Director believes that the Development Fund is a reasonable reserve for unforeseen technological changes in the Twenty-first Century, especially when the effect of inflation is considered.

The Director believes that a 15 year franchise with a 5 year option will satisfy both party's concerns. Oceanic will have an absolute right to an additional 5 years if it puts \$30,000,000 into a Development Fund or if both parties can mutually agree to a system upgrade. Under this approach, Oceanic will not have to factor into its present rate structure the \$30,000,000 Development Fund and yet Oceanic will still obtain a 20 year franchise if it elects at the appropriate time in the future.

2. Oceanic has requested a "level playing field" with any other cable operators which may be granted franchises in Oceanic's service area. It believes that competitors should be subject to the same conditions as the State has required from Oceanic.

The Director believes that Oceanic's request for a "level playing field" is reasonable. However, the Director cannot state unequivocally that other operators will be subject to the same conditions as have been offered to Oceanic. This could prejudice others' applications and not take into account differing circumstances. While the Director is sympathetic to Oceanic's concern, the Director believes that he can only reaffirm his duty to apply the same standards and criteria as have been applied to Oceanic to any new cable operators.

3. Oceanic has requested a five percent cap on the total amount of the annual franchise fee imposed under Chapter 440G, Hawaii Revised Statutes, and the annual Access Operating Fee required under section five of Order No. 135. Since this request is already a requirement of the federal Cable Act, the Director has made this an express condition of the franchise as requested.

4. Oceanic has requested that in the event that federal law is changed to allow the Director to regulate rates, that its obligations under the order be taken into account. The Director believes that this is reasonable and has made this an express condition.

**NOW THEREFORE**, the Director pursuant to Chapter 440G, Hawaii Revised Statutes, hereby issues the following order:

I. Paragraph 1(a) on page 9 of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

"1. Oceanic may elect one of the following franchise terms:

(a) A fifteen year franchise term with an option for an additional five years subject to all of the attached terms and conditions which are incorporated by reference herein. Such franchise term shall commence

on January 1, 1989; provided that no later than 4:30 p.m. on Tuesday, January 3, 1989, Oceanic submits to the Director a written acceptance of the grant of this franchise, and pays the amounts due for facilities and equipment for 1989 under paragraph 5.4 of the terms and conditions and the first quarterly installment of the access operating fee for 1989 under paragraph 5.1 of the terms and conditions; or"

II. Paragraph 2.1 on page 4 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

"2.1 Grant of Franchise

(a) Pursuant to Hawaii Revised Statutes section 440G-4, the Director has granted to Oceanic a franchise in Order No. 135 subject to the applicable terms and conditions herein.

(b) It is the intent of the Director that in the event that any other franchises are granted in Oceanic's Service Area, the same standards and criteria as have been applied to Oceanic will be applied to any new cable operators."

III. Paragraph 2.3 on page 4 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

"2.3 Term of Franchise

(a) The term of the franchise shall either be five years or fifteen years as determined under Order No. 135, unless sooner terminated as provided herein or by applicable Law.

(b) The term of the fifteen year franchise shall be extended automatically for an additional five calendar years in the event that any of the following events occurs:

(i) The Director approves Oceanic's proposal for a further System upgrade pursuant to paragraph 4.5; or

(ii) Oceanic agrees to the Director's proposal for a further System upgrade pursuant to paragraph 4.6; or

(iii) Oceanic commits to contribute a total of Thirty Million Dollars (\$30,000,000) to the Development Fund pursuant to paragraph 4.7.

In the event that the fifteen year franchise is extended by five years, the termination date of the term of the franchise shall be December 31, 2008."

IV. Paragraph 2.5 on page 4 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

**"2.5 Consideration**

(a) In consideration of the award of the franchise granted herein which permits Oceanic to use and occupy Public Places and Public Highways to operate a Cable System, Oceanic shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as it may be amended from time to time, pay all monies specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other paragraph herein, the total amount of the Annual Fee for any calendar year plus the annual Access Operating Fee shall not exceed five percent (5%) of Oceanic's annual Gross Revenues."

V. Paragraph 2.7 on page 4 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

**"2.7 Rate Regulation**

(a) The Director reserves the right to regulate rates for cable service charged by Oceanic to the fullest extent permitted by Law.

(b) In the event of rate regulation, the Director shall regulate rates to ensure that they are fair both to the public and Oceanic taking into account the company's obligations under Order No. 135."

VI. Paragraph 4.5 on page 7 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

**"4.5 Oceanic's Proposed Upgrade**

(a) No later than January 1, 2001, Oceanic may submit a proposal to the Director for his approval for a further System upgrade to be constructed after 1998. This proposal shall contain a financial plan with detailed cost estimates, a detailed engineering plan, a schedule for construction, and such other information as the Director may require.

(b) If in his sole discretion the Director approves this proposal by June 30, 2001, then the term of the fifteen year franchise shall be extended by an additional five years.

(c) The time limits set by this paragraph may be waived or extended by mutual written agreement between the Director and Oceanic."

VII. Paragraph 4.6 on page 8 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

**"4.6 Director's Proposed Upgrade**

The Director may propose at any time a plan for a System upgrade to be constructed after 1998. If Oceanic agrees to this proposal, then the term of the fifteen year franchise shall be extended by an additional five years."

VIII. Paragraph 4.7 on page 8 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

**"4.7 Development Fund II**

(a) No later than January 1, 2002 Oceanic may notify the Director in writing that it has elected to contribute Thirty Million Dollars (\$30,000,000) to the Development Fund as specified in paragraph 4.7(b).

(b) For each calendar year commencing with 2002, Oceanic shall set aside the greater of Ten Million Dollars (\$10,000,000) or ten percent of its Gross Revenues for a further System upgrade. The total amount set aside under this paragraph shall not exceed Thirty Million Dollars (\$30,000,000) and contributions to this fund shall not commence prior to 2002.

(c) Amounts set aside pursuant to paragraph 4.7(b) and all accrued interest shall be held in a bank or money market account or other investment vehicle approved by the Director which is designated as the "Development Fund." Deposits in the Development Fund shall be made no later than March 31st of each year for which a deposit is required.

(d) Amounts in the Development Fund including interest thereon shall not be commingled with other funds of Oceanic or any other entity. Oceanic shall have sole authority to draw on the Development Fund for the sole purpose of financing a further system upgrade. Oceanic shall not make any withdrawals from the Development Fund without the prior approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing an upgrade, except upon written application to and prior written approval by the Director.

(e) Notwithstanding paragraph 4.7(d), Oceanic may make loans to ATC from the Development Fund with prior notice to the Director. The unpaid principal amount of each such loan shall bear interest for each day from the date such loan is made until the entire principal is repaid to Oceanic. The interest rate shall be no less than the rate charged by the Bank of Hawaii to its best customers on the date when the loan is made. Interest paid by ATC on such loans shall be deposited in the Development Fund.

(f) Loans from the Development Fund to ATC shall be evidenced by a promissory note. Copies of all loan documentation shall be provided to the Director within twenty days of the date of the loan. Oceanic shall submit to the Director a

loan report on January 30th of each year during the term of any such loan. The loan report shall describe the status of the loan including the amount outstanding and any amounts repaid by ATC."

IX. Paragraph 4.8 on page 8 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

"4.8 Uses of Development Fund

If the Director and Oceanic agree, any balance in the Development Fund provided for in paragraphs 4.3 or 4.7 will be spent on constructing, operating, and /or maintaining any alternative system architecture or upgrade proposed under this section."

X. Paragraph 9.1 on page 18 of the Terms and Conditions of Order No. 135 is deleted in its entirety and in lieu thereof the following is substituted:

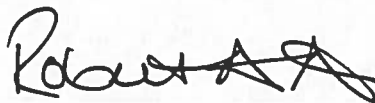
"9.1 Petition for Modification

(a) No provision of Order No. 135 shall preclude Oceanic from petitioning the Director for a modification of any provision of Order No. 135 for any reason including but not limited to the following: (1) a change in federal law which would permit the Director to regulate rates under any circumstances; (2) the emergence of increased competition to the cable television services offered by Oceanic; or (3) underutilization of access facilities and equipment. The Director may in his sole discretion issue an appropriate modification of Order No. 135.

(b) In determining any modification of Order No. 135, the Director shall take into account the geographic, topographic, and economic characteristics of the Service Area, the economics of providing cable service to subscribers and any other matters necessary to ensure that the terms and conditions upon which cable service is provided are fair both to the public and Oceanic."

XI. All other provisions, conditions and terms of Order No. 135 which are not expressly amended herein shall remain in full force and effect.

DATED: December 30, 1988, Honolulu, Hawaii.



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Robert A. Alm  
Director of Commerce and  
Consumer Affairs

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 137 in Docket No. 29-88-01 was served upon the following parties at the addresses shown below by hand delivery or by mailing the same, postage prepaid, on this 30th day of December, 1988.

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