



## II. LAW

Section 440G-10, Hawaii Revised Statutes, sets forth the authority of the Director to approve the transfer of a CATV permit:

". . . No CATV permit may be assigned, sold, leased, encumbered, or otherwise transferred without the prior written consent of the director. Such consent shall be given only upon a written application therefor on forms to be prescribed by the director. The forms shall require from both the transferor and the proposed transferee substantially the same information as required by section 440G-6. The application shall also contain information concerning the consideration to be paid and such other matters as the director may deem appropriate or necessary, and shall be signed by both the transferor and the proposed transferee."

In determining guidelines for the examination of any transfer application, the Department has looked to the applicable criteria provided by Section 440G-8(b), Hawaii Revised Statutes, relating to the issuance of new CATV permits:

"The Director, after a public hearing as provided by this Chapter, shall issue a CATV permit to the applicant when he is convinced that it is in the public interest to do so. In determining whether a CATV permit shall be issued, the Director shall take into consideration, among other things, (1) the public need for the proposed service or acquisition, (2) the ability of the applicant to offer service at a reasonable cost to the subscribers, (3) the suitability of the applicant, (4) the financial responsibility of the applicant, (5) the ability of the applicant to perform efficiently the service for which authority is requested, and (6) any objections arising from the public hearing, the CATV Advisory Committee, or elsewhere."

## III. PUBLIC NEED FOR TRANSFER

### CONSTRUCTION ACTIVITIES

Cablevision was originally granted its permit to serve the Waianae, Oahu community on October 21, 1970, which was amended on August 12, 1971 to include Ewa, Oahu.

As of July, 1982, Cablevision constructed 159 miles of cable plant to serve 10,642 subscribers. Subscriber penetration is approximately 63% of all homes passed. Cablevision is legally obligated, under its permits, to build an additional 16 miles to serve 2,556 households. These unbuilt areas include: Nanakai Gardens, Palehua Hillside subdivisions, lower Makakilo, Barbers Point townhouses, Ewa and Puuloa. Estimated cost of constructing these unbuilt areas is approximately \$500,000.

Approximately 60 miles of Cablevision's existing plant requires upgrading and rebuilding. This rebuild, which is proposed for the first year of ownership, will upgrade

the existing twelve-channel plant to thirty-channel capacity with microwave interconnect with Honolulu Television and Communications Corporation's ("Oceanic's") main headend in downtown Honolulu. The microwave interconnect will utilize a thirty-channel AML link. The design and application of the new facilities will be similar to the AML system presently utilized in Oceanic's multi-hub system. Estimated cost of reconstructing these facilities is approximately \$500,000.

#### Construction Schedule

Waianae's construction schedule is designed to be an integral part of Oceanic's construction plan. A proposed schedule dated February 3, 1983 has been submitted to the Department, setting forth an integrated construction plan for completion of Oceanic's/Waianae's unbuilt franchise areas and for reconstruction of all existing twelve-channel to thirty-channel capacity cable facilities in Waianae.

Construction for Waianae is slated to begin in early 1983 with completion in mid-1986. Year one of the construction schedule will primarily focus on the reconstruction of twelve-channel to thirty-channel capacity plant, thus improving quality and increasing potential quantity of cable services. Construction of the unbuilt segments is in new residential areas or in residential areas with direct-buried utility facilities. Reconstruction will complete the replacement of all Hawaiian Telephone's constructed facilities which began with the purchase of those facilities in 1974 by Cablevision.

As Oceanic's/Waianae's construction schedule and program will be integrated, a review of Oceanic's construction was undertaken. The Department concludes that Oceanic is in substantial compliance with the construction schedule approved by the Department in Cable Order No. 79. In 1982, Oceanic completed construction of 62.47 of the estimated 62.97 miles of cable plant proposed in the aforementioned schedule. Certain projects in the schedule were not completed for one or more of the following reasons: 1) construction of housing units were deferred by developer; 2) lower number of units (e.g., 5 out of 554 homes in Hawaii Loa Ridge) were constructed than previously projected by developer; 3) inability of company to gain access to a residential development cable plant (see PacSat application for details); and 4) unanticipated direct-buried construction problems. Oceanic has rearranged its construction projects scheduled for 1983 and 1984 to accommodate these problem areas.

Oceanic's/Waianae's integrated construction program and schedule represents an orderly and reasonable program for the construction of new and expanded cable communication facilities for West Oahu.

#### PROGRAMMING AND NEW TECHNOLOGY

The past ten years has brought a tsunami in cable programming and technology. Cable communication companies which were accustomed to selling clear television reception now find themselves selling multiple-channel programming, direct satellite programming, subscription and pay television. Subscribers are no longer satisfied with the mere reception of off-air signals.

Together with expanded programming came the advanced technology necessary for the economic delivery of the expanded services. Addressable converters, satellite earth stations, two-way capability and thirty-channel capacities have become necessary and desirable.

Government regulation encouraged and in some cases mandated that cable companies expand their delivery capability and optional services. The Department, through permit-wide construction requirements, minimum and expanded channel capacity requirements and other regulations, prompted many cable permit holders to serve all of their franchise areas with expanded basic and optional services.

Following the rebuilding of the cable system to a thirty-channel capacity and the use of existing AML microwave equipment (for interconnection with the Oceanic system), Waianae will increase the cable services provided to its subscribers to services that are equivalent to those provided to Oceanic subscribers. This single level, thirty-channel services will include the placement of converters in each subscriber's residence. The expanded entertainment services available to subscribers will include community programming as well as five additional pay services.

Anticipated costs of providing regular and addressable converters to subscribers in the existing Cablevision's permit area for fiscal years 1983-1986 will be approximately \$1,270,000.

The above construction and program activities will require approximately \$2,270,000. Funding this cost will tax the financing capabilities of what, in essence, is a single shareholder corporation. Assuming that Cablevision is able to gain this financing,

future challenges for improving the system's capabilities and services will become increasingly difficult. Acquisition or merger of smaller systems, such as Cablevision, by its counterparts with larger financing capabilities and subscriber bases can, with safeguards, promote expanded levels of service to all cable permit areas.

#### IV. FINANCIAL FITNESS

Waianae is a wholly-owned subsidiary of American Television Communications Corporation ("ATC"), a Time, Incorporated ("Time") subsidiary. ATC is a multi-systems operator which owns and operates over one hundred cable systems in thirty-three states.

Time is a publishing, communications and natural resource conglomerate with reported annual revenues in excess of three billion dollars and total assets in excess of two and one-half billion dollars.

As a part of Time, the financial fitness and integrity of Waianae can only be evaluated by viewing its parent--Time/ATC. Consequently, Time/ATC's willingness to provide the financial resources necessary for construction and as guarantor of the \$8,500,000 purchase price is of prime concern.

As of August 31, 1982, Waianae's financial records show cash assets of \$1,000 and stockholder's equity of \$1,000. Upon approval of this transfer application, Time/ATC will immediately provide Waianae with the \$1,000,000 initial installment of the purchase price for the assets of Cablevision, Incorporated and Waianae Home Theatre, Incorporated. The balance of \$7,500,000 will be paid to Cablevision in the form of promissory notes payable over a ten-year period at nine percent interest.

To ensure that Waianae's construction is adequately funded, it is necessary, therefore, that Waianae provide this Department with documents which:

1. Obligate Time/ATC to ensure that all financial resources necessary for the completion of all proposed construction and other capital expenditures as shown in Waianae's Exhibit F will be available to Waianae; and
2. Make Time/ATC a guarantor of the promissory note for the \$7,500,000 balance of the purchase price.

Approval of this transfer application does not constitute a finding that the price paid for the assets of Cablevision, Incorporated and Waianae Home Theatre,

Incorporated is fair or reasonable. Notice is hereby given that such price and methods of payments may or may not be included wholly or in part in future rate proceedings.

**V. SUITABILITY OF APPLICANT AND ABILITY OF APPLICANT  
TO PERFORM SERVICE FOR WHICH AUTHORITY IS REQUESTED**

On March 26, 1981, by Decision and Order No. 79, the Department approved the acquisition by American Television & Communications Corporation of the Oceanic group of companies. In this decision, the Department imposed, among other conditions, the following:

1. On or before December 31, 1983, Oceanic shall have constructed cable facilities which pass by all potential subscribers in areas which presently have residential units, which residential areas are indicated on pages 1, 2, and 3 of Hearing Exhibit No. 4. On or before December 31, 1984, Oceanic shall construct cable facilities which pass by all remaining residential units situated in its franchise areas. Oceanic shall submit to the Director acceptable construction schedules for providing service to residential areas built after December 31, 1984 and for unbuilt business areas.

2. On or before March 30, 1982, Oceanic shall construct a studio facility capable of local origination programming. The facility shall be fully equipped and staffed by personnel necessary for its operation.

3. Oceanic shall cablecast not less than seven hours per week of local origination programming. This programming may be materials acquired from the sources described above or be programming developed and produced by Oceanic.

4. Oceanic's services to its consumers shall be at no less than parity with the highest quality services actually provided by an operating company presently owned or to be owned in the future by ATC, which is the owner of the controlling shares of Oceanic; provided that Oceanic is entitled to a hearing to show cause why the quality of Oceanic's then-existing services need not be enhanced to the level of services provided by ATC's other operating divisions and subsidiaries.

Perhaps the best measure of suitability of an applicant for a cable permit is its past performance on conditions of its previously granted permit. The following sections constitute the Department's subjective evaluation of HTC/ATC's performance of the foregoing conditions:

### Construction

As indicated in previous sections, Oceanic is in substantial compliance with the construction schedule approved by the Director in Cable Order No. 79. As of January 1983, Oceanic has extended its facilities to 94 percent of potential subscribers in its permit areas.

### Studio Facility and Programming

Oceanic has made substantial progress in developing origination programming to serve the various subgroups in its permit areas. Programs such as "Hawaii Today" (Japanese), "Voice of Korea" (Korean), "Aga Faa Samoa" (Samoan), "Prime Time II" (Senior Citizens) and "Kayumangi" (Filipino) provide specialized focus on the needs and interest of a particular subgroup.

Notwithstanding, Oceanic's progress in obtaining qualified coordinating personnel and programming, the studio and access facilities provided by Oceanic are extremely inadequate for the needs of Oceanic's metropolitan Honolulu permit area, let alone the added needs of Waianae's permit areas. The present rented EMC facilities are adequate only for "talk" shows and do not provide sufficient space and equipment for action, demonstration and large group programming. Although the facilities may, in the Department's view, be adequate for a very small cable system (under five thousand subscribers), it is certainly not adequate for an eighty-five thousand subscriber system. The Department is certain that the EMC facilities are inferior to some of those found in the larger ATC systems. The Oceanic/Waianae cable operations must provide its local origination and access programming users with substantially larger and better equipped studio facilities. These facilities should also be in conveniently accessible and safe locations.

### Oceanic as Leader in Cable Industry

During the economic hearing on this application, Oceanic reported that:

1. Oceanic is the leader among ATC systems, in the use of computers for managerial and operational activities;
2. While the majority of ATC systems are twelve-channel capacity, Oceanic has twenty channels of programming and is the leader among ATC systems in channel utilization.

3. In providing pay-per-view services to hotel guests, Oceanic is ATC's pioneer.

4. Oceanic will soon be experimenting with Teletech (business applications) and Kayfax (journalistic applications) and other two-way cable services.

5. In pay-per-view cable services to residential subscribers, Oceanic has been the first among ATC systems.

6. More non-satellite pay packages are provided by Oceanic than any other ATC system.

7. Oceanic is one of the largest full-converter systems (every subscriber is provided with a converter) in the United States.

Another measure of the suitability of an applicant for a cable permit is the quality of management services that will be available to it. Waianae will have the same officers as Oceanic with a management contract for technical and support services. In its Decision and Order No. 79, the Department expressed confidence in the quality of Oceanic's management and commended the same management for its community sensitivity, innovative leadership, and its being on the cutting edge of cable technology and programming. The Department has had no reason for changing the opinion expressed in Cable Order No. 79.

#### **VI. FAIRNESS OF RATES AND CHARGES**

Upon reviewing Waianae's Exhibit E projections for revenues, expenses, capital expenditures, depreciation and supporting data for 1983 through 1986, the Department finds that it is in agreement with the projections for basic services.

The Department is unable to accept Waianae's projections for pay cable services because of differences in projected saturation rates for such services. The Department believes that Oceanic's mid-island and North Shore saturation statistics will be approximately the same as for Ewa/Ewa Beach and Waianae. Utilizing Oceanic's December, 1982 Systems Status Report, the Department's estimated saturation level is listed below in the left column with Waianae's projection shown on the right for comparison:



<u>Pay Services</u>	<u>Department's Estimated Saturation Level</u>	<u>Waianae's Estimated Saturation Level</u>
HBO	56.5%	56%
Showtime	11.5%	6%
Action	15.1%	8%
Critic's Choice	1.3%	3%
Family Fair	3.2%	3%
NGN	7.0%	4%

The Department's projections for revenues for pay television includes pay installation which is estimated to be \$1,269,339, whereas Waianae projects \$1,070,751.

After reviewing Waianae's Exhibit E projections for expenses, depreciation and capital expenditures, the Department finds three significant areas which are not in agreement with Waianae's projections.

Waianae's accounting projections of the Cablevision purchase price lists the initial payment as a "loan/advance" from Time/ATC with no interest expense included within the expense projections. The Department has determined that the "loan/advance" (\$1 million) should be considered as paid-in capital rather than debt.

Waianae's projections include an interest expense of \$675,000 (nine percent interest on a \$7,500,000 promissory note) covering the acquisition cost of Cablevision's assets by Time/ATC. The Department will allow, for regulatory purposes, only interest expense incurred from loans to finance the operation or expansion of the cable system and will disallow, for regulatory ratemaking purposes, interest expense on loans made to finance the purchase of the cable system. Consequently, the Department will allow for Waianae's ratemaking base only the approximately \$260,000 of interest associated with past, present and future construction expansion of Waianae's cable system facilities.

Waianae, in its depreciation calculations and projections, has used different service lives for cable facilities and equipment than those utilized by the Department in past rate and transfer hearings. Waianae's projected depreciation is calculated by utilizing a purchase plant value, while the Department utilizes a calculation consisting of original cost less accumulated depreciation. This difference results, for example, in Waianae's projecting a depreciation expense of \$564,083 for 1983 (Waianae values plant at \$9,825,000), while the Department would allow for the same depreciated plant (\$2,592,000 valuation) an expense of \$218,140.

In past rate hearings, the Director has stated: (see Order No. 92)

"In order to properly allocate costs, the evolution of the causes of the costs must be understood. Without a fair method of separating these costs presently available to the regulator, the rate of return for only the regulated portion of the service cannot be accurately computed. This is especially true when non-regulated revenues are significant: in the instant case, non-regulated revenues are over 40% of the total revenues."

In administration, operations and accounting, Waianae will fully integrate both regulated and unregulated services, with benefits and liabilities resulting from such services accruing to the one cable company. Consequently, with projections indicating profitability for both regulated and non-regulated services, it is not necessary that we now undertake an allocation of cost between the two types of services.

In past proceedings, the Department has held that when, upon analysis, it is demonstrated that the return on investment is not unreasonable for an integrated operation consisting of both regulated and non-regulated (pay-television) services, then the totality of rates established for such services shall be presumed to be fair to both the public and the regulated company. In the present proceeding, the Department estimates a return of 16 per cent based on a rate base of \$2,732,875 (Exhibit A).

#### VII. PUBLIC OBJECTIONS

No oral or written objections have been filed with this Department against the pending application.

#### VIII. CONDITIONS:

To ensure that the public interest is preserved, the following conditions for transfer of Cablevision's permit to Waianae are hereby imposed:

1. Waianae's services to its consumers shall be at no less than parity with the highest quality services actually provided by any operating company presently owned or to be owned in the future by ATC, which is the owner of the controlling shares of Waianae; provided that Waianae is entitled to a hearing to show cause why the quality of Waianae's then-existing services need not be enhanced to the level of services provided by ATC's other operating divisions and subsidiaries.
2. On or before March 31, 1984, Waianae shall complete the system rebuild.

3. On or before July 31, 1986, Waianae shall construct cable facilities which pass by all remaining residential units situated in its franchise areas. Waianae shall submit to the Director acceptable construction schedules for providing service to residential areas built after July 31, 1986 and for unbuilt business areas.

4. Upon equalization of services to Waianae's subscribers, all approved rates and charges shall be identical to those of Oceanic.

5. The majority of the members of the board of directors of Waianae shall be residents of the state of Hawaii.

6. On or before December 31, 1983, Oceanic/Waianae shall construct a studio facility equal to or better than that possessed by any other ATC-operated cable system.

All conditions in Orders 5, 10, 11, 12, 23, 27, 32, 35, 43, 56, and 73 which are not superseded or amended by this Order, shall remain in effect subsequent to the date of this Order.

Any exercise by Waianae of the rights and privileges of a permittee as described by Orders 5, 10, 11, 12, 23, 27, 32, 35, 43, 56, and 73 is tacit agreement to all the above conditions.

Dated at Honolulu, Hawaii, this 8th day of March, 1983.

STATE OF HAWAII



MARY G. F. BITTERMAN

Director of Commerce & Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Recommended Decision in Docket No. 12-82-01 was served upon the following by mailing the same, postage prepaid to the following on the 8th day of March, 1983:

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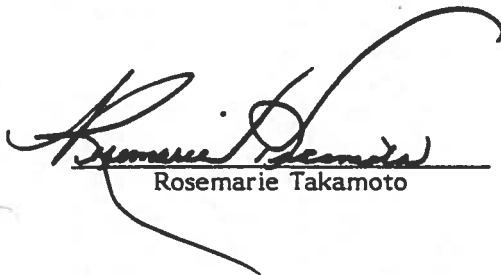
  
Rosemarie Takamoto

Exhibit A

## STATEMENT OF INCOME

	<u>State</u>	<u>Waianae</u>
Revenues		
Basic	\$1,200,240	\$1,200,239
Pay	1,239,415	1,030,832
Installation Basic	55,575	55,575
Installation Pay	<u>35,385</u>	<u>29,925</u>
	\$2,530,615	\$2,326,571
Operating Expenses	<u>\$1,693,850</u>	<u>\$1,462,675</u>
Operating Profit	\$ 836,765	\$ 863,896
Depreciation & Amortization	\$ 218,140	\$ 564,083
Interest Expense	260,000	675,000
Pretax Income (-LOSS)	<u>\$ 358,625</u>	<u>\$ -375,187</u>
Tax 50%	179,313	
	<u>\$ 179,312</u>	
Interest Expense	260,000	
	<u>\$ 439,312</u>	
Rate Base \$2,732,875		
Rate of Return = 16%		