

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

In the Matter of the Application of)	
)	
RED FIBER PARENT LLC, CINCINNATI)	DECISION AND ORDER NO. 377
BELL INC. AND HAWAIIAN TELCOM)	
SERVICES, INC.)	
)	
For Approval of the Transfer of Control of)	
Hawaiian Telcom Services Company, Inc.'s)	
Cable Television Franchise for the Island of)	
O`ahu from Cincinnati Bell Inc. to Red Fiber)	
Parent LLC, and Related Matters.)	
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DECISION AND ORDER NO. 377

I. INTRODUCTION

On July 17, 2020, Red Fiber Parent LLC (“**RFP**”), Cincinnati Bell Inc. (“**Cincinnati Bell**”), and Hawaiian Telcom Services Company, Inc. (“**HTSC**”) filed a “State of Hawaii Application for Transfer of Cable Television Franchise,” as amended, (“**State Transfer Application**”) with the Department of Commerce and Consumer Affairs (“**DCCA**”) for approval of the transfer of control of HTSC’s Cable Franchise¹ on the island of O`ahu from Cincinnati Bell to RFP.² Pursuant to HRS § 440G-10.1 and Hawaii Administrative Rules (“**HAR**”) chapter 16-133, DCCA hereby approves Applicants’ requests subject to the terms, conditions, and requirements provided in this D&O.

II. BACKGROUND

On July 17, 2020, Applicants submitted their State Transfer Application with DCCA and concurrently provided their Federal Communications Commission (“**FCC**”)

¹ “**Cable Franchise**” means the authority or approval issued by DCCA through a Decision and Order (“**D&O**”) to operate a Cable System and provide Cable Service in a geographic region in the State of Hawaii (“**State**”). See also Hawaii Revised Statutes (“**HRS**”) § 440G-3.

² See letter filed on September 24, 2020, clarifying that the applicants in this proceeding are RFP, Cincinnati Bell and HTSC. RFP, Cincinnati Bell and HTSC shall be collectively referred to as the “**Applicants**.”

Form 394 – Application for Franchise Authority Consent to Assignment or Transfer Control of Cable Television Franchise, dated July 17, 2020 (“**FCC Form 394**”) and certain other information.³ The Application requested the Director of DCCA (“**Director**”) to approve the following: (1) the proposed indirect transfer of control⁴ of HTSC’s Cable Franchise on the island of O`ahu, at the parent company level, from Cincinnati Bell to RFP pursuant to and consistent with the March 13, 2020 Agreement and Plan of Merger (“**Merger Agreement**”)⁵ that was entered into by Cincinnati Bell, RFP and its wholly owned subsidiary RF Merger Sub Inc. (“**RF Merger Sub**”)⁶ under which Cincinnati Bell agreed to merge into and with RF Merger Sub, whereupon the separate existence of RF Merger Sub will cease to exist and Cincinnati Bell will be the surviving corporation in the merger; (2) for a *pro forma* transfer of control; and (3) for HTSC, as the franchisee, to participate in certain financing arrangements (the “**Proposed Transaction**”). The Application was submitted pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 (the “**Cable Act**”), 47 United States Code (“**U.S.C.**”) § 521 *et seq.*, 47 Code of Federal Regulations (“**C.F.R.**”) § 76.502, and applicable laws and rules of the State.

A. Description of the Proposed Transaction

In their submittals with DCCA, Applicants represent that RF Merger Sub, a wholly owned subsidiary of RFP, will merge into Cincinnati Bell. The separate corporate existence of RF Merger Sub shall thereupon cease, and Cincinnati Bell shall be the surviving corporation under the Proposed Transaction.⁷ The directors of RF Merger Sub will continue as the directors of Cincinnati Bell until their respective successors have been duly elected and qualified.⁸ Applicants represent that the board of directors of Cincinnati Bell shall continue to include individuals who are residents of Hawai`i.⁹

The Proposed Transaction is valued at approximately \$2.9 billion. At the completion of the Proposed Transaction, Cincinnati Bell will remain the indirect parent of HTSC with RFP owning all of the outstanding shares of Cincinnati Bell’s common stock.

³ Applicants’ State Transfer Application and FCC Form 394 shall collectively be referred to as the “**Application**.”

⁴ In the Application, Applicants characterize the transfer of control as being an “indirect” transfer of control. However, for purposes of D&Os, DCCA does not distinguish between “direct” and “indirect” transfers of control.

⁵ See FCC Form 394, Exhibit 1, Merger Agreement.

⁶ Merger Sub is an Ohio corporation and is a direct, wholly owned subsidiary of RFP.

⁷ See Merger Agreement at 1.

⁸ Id. at 2.

⁹ Id.

The shares of Cincinnati Bell held by the public will be converted into the right to receive \$15.50 in cash per share.¹⁰ The corporate structure of Cincinnati Bell will otherwise not change and the subsidiaries of Hawaiian Telcom Holdco, Inc. (“**Holdco**”), including HTSC, will become indirect subsidiaries of RFP.

The Proposed Transaction will occur entirely at the holding company level and Applicants state that it will not affect day-to-day operations, billing systems, or operational support systems of HTSC. Customers of HTSC will continue to remain and be served by HTSC pursuant to HTSC’s franchise agreement and will not result in service changes, disruptions, or termination of service. According to Applicants, under the Proposed Transaction, Cincinnati Bell and its subsidiaries, including HTSC, will retain their separate names and brand identities. Further, Applicants represent that with Cincinnati Bell retaining operational control under RFP ownership, HTSC and its Hawaii-based affiliates will continue to be locally managed in Hawai‘i and its existing union labor agreements will be honored. In addition, customers will continue to have local customer support and the ability to interact with local support personnel as well as obtain support over the telephone and the Internet. Hawai‘i will also continue to have representation at the Cincinnati Bell level, with at least two (2) Hawai‘i residents on its Board of Directors to ensure Hawai‘i has a voice when broader strategic decisions are made.¹¹

According to Applicants, the Proposed Transaction is in the public interest and that RFP is “managerially, technically, and financially well-qualified to complete the [Proposed] Transaction and assume indirect ownership and control of the Licensees that will continue to be subsidiaries of Cincinnati Bell under the ownership of Red Fiber Parent.”¹² Applicants further assert that the Proposed Transaction “will be seamless to customers, as they will not experience any immediate changes in services, or rates, terms and conditions of service.”¹³ In addition, Applicants state that they have “no current plans to request any changes to the current cable franchise order.”¹⁴

Among other things, Applicants assert that the Proposed Transaction will better position HTSC and its Hawai‘i-based affiliates “to deliver a broader suite of communications and cable-related services to customers and businesses in Hawai‘i,

¹⁰ Id. at 3 and Application at 3.

¹¹ See Application at 8-9. DCCA issued a set of information requests (“**IRs**”) on August 19, 2020, and Applicants filed their responses on September 4, 2020 (“**Responses to IRs**”). See also Responses to IRs at 17.

¹² Applicants’ Response to Information Requests Issued on August 19, 2020, Exhibit B, Public Interest Statement at 2, filed on September 4, 2020 (“**Public Interest Statement**”), filed in response to IR-12.

¹³ See Public Interest Statement at 3.

¹⁴ Application at 9.

thereby strengthening competition in terms of pricing, content, value, customer service and innovative products and offerings,”¹⁵ which will allow HTSC to compete for new customers with the incumbent and other multichannel video programming distributor and broadband providers.¹⁶ Applicants represent that they will do so by: (1) providing HTSC with the expanded liquidity and capital flexibility to continue growing its business; (2) continuing to deploy fiber deeper into HTSC and its Hawai'i-based affiliates footprint to improve service quality and bandwidth performance;¹⁷ and (3) leveraging “best-practices and knowledge sharing of RFP's affiliated entities in addition to Cincinnati Bell[.]”¹⁸

B. Applicants RFP and Cincinnati Bell

RFP is a Delaware limited liability company established as an acquisition vehicle for purposes of the Proposed Transaction. At closing, RFP will be majority owned indirectly through MIP V RF Partners L.P., a Delaware limited partnership by MIP V (FCC) AIV, L.P., a Delaware limited partnership (“**MIP V**”), a fund managed by a member of Macquarie Infrastructure and Real Assets (“**MIRA**”).¹⁹ MIRA is a global alternative asset manager with extensive experience in investing in the communications infrastructure industry with a substantial focus on the environment, sustainability, and governance in its management of all of its investments. MIRA has approximately \$137 billion in assets under management (based on proportionate enterprise value), with almost \$108 billion invested in infrastructure assets. MIRA's ultimate parent is Macquarie Group Limited (“**MGL**”), a publicly traded company incorporated in Australia.²⁰ MGL is a diversified financial group providing clients with asset

¹⁵ Application at 10.

¹⁶ See Responses to IRs at 2-3.

¹⁷ Application at 10.

¹⁸ Responses to IRs at 2-3.

¹⁹ RFP will also be indirectly minority owned by certain alternative investment vehicles managed by the Private Equity Group of Ares Management Corporation and Retail Employees Superannuation Trust (“**REST**”), an Australian superannuation fund managed by Retail Employees Superannuation Pty Limited, as trustee of the fund. See Application at 4. In addition, “passive investors will hold indirect equity interests through limited partnership interests in MIP V, MIP V Member, (or an affiliate entity), or the Ares AIVs, or membership interests in REST. These passive investors will each hold indirect interests of less than 10% in Red Fiber Parent.” Id. These passive investors will have no voting or control rights over RFP, Cincinnati Bell, or HTSC. Id.

²⁰ According to the Applicants, MIP V and the other parties involved in this Proposed Transaction does not include Macquarie Infrastructure Corporation (“**MIC**”), a publicly traded company listed on the New York Stock Exchange (NYSE: MIC), which is the parent company of The Gas Company, LLC, a Hawai'i limited liability company, dba Hawai'i Gas. Id. at 3.

management and finance, banking, advisory and risk and capital solutions across debt, equity and commodities.²¹

Cincinnati Bell, an Ohio corporation headquartered in Cincinnati, Ohio, is a provider of voice, broadband internet, video, and business services with networks and facilities located in Hawai`i, Indiana, Kentucky, and Ohio.²² Cincinnati Bell's cable franchises serve over 178,000 customers throughout its franchise areas and its video revenues for 2019 exceeded \$200 million. Cincinnati Bell's fiber network, through HTSC, covers "4,700 route miles in Hawai`i and its fiber-based services are available to approximately 45 percent of Hawai`i[.]"²³ Cincinnati Bell views the expansions of its fiber network as its key initiative and asserts that it is focused on transforming from a "legacy copper-based telecommunications company into a technology company with state-of-the-art fiber assets servicing customers with data, video, voice and IT solutions to meet their evolving needs."²⁴

C. HTSC and Its Cable Franchise

HTSC, a Delaware corporation authorized to do business in Hawai`i, is an indirect, wholly owned subsidiary of Holdco which is a subsidiary of Cincinnati Bell.²⁵ Holdco, a Delaware corporation, oversees the Hawaiian Telcom family of companies, which collectively offers telecommunications and information services to residential and business customers throughout Hawai`i.²⁶ HTSC and its affiliates have served the communication needs of the State for almost one hundred thirty five years.²⁷ HTSC was formed in 2004 in connection with the Carlyle Group's acquisition of Verizon Hawai`i Inc.'s businesses in order to provide non-regulated services such as high-speed Internet, directories, and wireless services.²⁸

In 2011, pursuant to D&O No. 352, DCCA granted HTSC a non-exclusive cable franchise for the island of O`ahu ("**Franchise D&O**") which is scheduled to expire on June 24, 2026. HTSC currently serves approximately 42,700 video customers throughout its franchise area on O`ahu and its video revenues for 2019 exceeded

²¹ Application at 3.

²² See id. at 14.

²³ Id.

²⁴ Id.

²⁵ See id. and Exhibit A.

²⁶ See D&O No. 352, issued June 24, 2011, at 7.

²⁷ See Application at 14.

²⁸ See id.

\$42 million.²⁹ HTSC's current system utilizes the copper and fiber network infrastructure of Hawaiian Telecom, Inc. ("HTI") to deliver digital Cable Service³⁰ on the island of O`ahu via Internet Protocol TV ("IPTV") technology.³¹ HTSC offers a full suite of services and equipment through its IPTV system design that brings advanced digital video quality and flexibility in the services and applications in interactive television.³² HTSC currently offers four (4) tiers of video service.³³

D. Public Hearing and Other Procedural Matters

Pursuant to HRS §§ 440G-10.1 and 440G-7, DCCA conducted a public hearing regarding the Proposed Transaction in an effort to obtain written or oral comments, views, and/or arguments from HTSC's customers, interested persons, and the general public. Consistent with State laws and rules, as amended by the Governor's Proclamations Related To The COVID-19 Emergency, and in light of the COVID-19 pandemic and to protect the health and safety of the community, the public hearing was held in HTSC's Cable Franchise area on O`ahu on September 10, 2020, using virtual video technology via the Zoom webinar platform.

Notices of the public hearing were published on August 18 and August 25, 2020, in the Honolulu Star-Advertiser. Copies of the Application, all supporting documents, and any submitted supplemental information were made available for review during normal business hours at HTSC's office in its Cable Franchise area and at DCCA's Cable Television Division ("CATV") office in downtown Honolulu, upon request. This information was also posted on CATV's website. DCCA established October 12, 2020, 4:30 p.m., as the deadline for the receipt of public comments concerning the Proposed Transaction. Comments received during the public hearing were generally positive. Participants generally expressed support for the proposed transfer. All written testimonies and comments filed by HTSC's customers, interested persons, institutional organizations, and community leaders regarding the Proposed Transaction can be viewed at the CATV website.

²⁹ See id.

³⁰ "Cable Service" shall have the meaning set forth in HRS § 440G-3 and applicable law, as amended, and includes the video programming service provided HTSC.

³¹ See Application at 13 and 28. HTI, the sister company of HTSC, is the incumbent local exchange carrier in Hawai`i and was formed in 1883 to provide telephone service throughout the State. Id. at 14.

³² See D&O No. 352 at 7-8.

³³ See Application at 31.

The Proposed Transaction was also placed on the agenda of the September 15, 2020, meeting of the Cable Advisory Committee (“**CAC**”).³⁴ At the meeting, CAC members expressed a few concerns and asked for clarification on various issues but were generally positive and supported the Proposed Transaction.

As part of DCCA’s review and for purposes of clarification, DCCA issued IRs to Applicants on August 19, 2020, and Applicants filed their responses to the IRs on September 4, 2020. In addition, DCCA had many discussions with Applicants regarding the Proposed Transaction. Applicants’ responses to the filed IRs can be viewed at the CATV website.

III. APPLICABLE LAW

A. Federal Law

Federal laws and regulations authorize local franchising authorities (“**LFAs**”), including the State, to act on an application to transfer control of a Cable System.³⁵ As such, the transfer of a Cable Franchise is made under the authority of State law, which is detailed in the section below, and is consistent with the federal Cable Act.

Among other things, § 624 of the Cable Act authorizes LFAs to impose certain requirements on cable-related facilities and equipment, including but not limited to channel capacity, system configuration, and institutional and Subscriber³⁶ networks. Section 611 of the Cable Act permits LFAs to require channel capacity be designated for Public, Educational, or Governmental (“**PEG**”) access use. In addition, § 622 of the Cable Act allows LFAs to assess franchise fees up to five percent (5%) of the cable operator’s annual gross revenues, any portion of which may be used for PEG access or any other purpose.³⁷

³⁴ The CAC advises “[t]he director, cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director, any cable operator, or access organization. . . .” HRS § 440G-13.

³⁵ See § 617 of the Cable Act. See also 47 U.S.C. § 537, and 47 C.F.R. § 76.502(a). Pursuant to HRS § 440G-4, the Director of DCCA is authorized to issue Cable Franchises, and administer and enforce HRS chapter 440G.

³⁶ “**Subscriber**” or “**Subscribers**” means any individual, association, firm, partnership, joint venture, corporation, or other legally recognized entity lawfully receiving any Cable Service.

³⁷ On August 27, 2019, the FCC published in the Federal Register a Third Report and Order on the Cable Act which went into effect on September 26, 2019. Implementation of Section 621(a)(1) of the Cable Communications Policy Act, Third Report and Order, MB Docket No. 05-311, FCC 19-80, 84 Fed. Reg. 44725 (August 27, 2019) (“**FCC Order**”). The FCC Order allows, *inter alia*, cable operators to deduct from franchise fees the fair market value of in-kind cable franchise requirements, with limited exceptions, including the construction, maintenance and service of institutional network (“**INET**”) connections. The FCC defines “in-kind cable-related contributions” as:

Federal regulations require LFAs to act within one hundred twenty (120) days of the submittal of the FCC's Form 394, various exhibits, and any additional information required by the terms of the franchise agreement and state laws; and if an LFA fails to act within that prescribed time, the transfer is deemed approved.³⁸ Because the Application was submitted on July 17, 2020, the one hundred twenty (120) day review period ends on November 16, 2020, unless otherwise extended by mutual agreement.

B. State Law

The regulatory powers of the Director regarding the transfer of a Cable Franchise are set forth in HRS §§ 440G-7, 440G-8, 440G-10.1, and 440G-12. In particular, HRS § 440G-10.1(a) states that:

No cable franchise, including the rights, privileges, and obligations thereof, may be assigned . . . or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including the transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. (Emphasis added).

HRS § 440G-10.1(b) further states that the provisions of HRS §§ 440G-7 and 440G-8 also apply to the transfer of Cable Franchises. HRS § 440G-8(b) establishes the criteria to be considered by the Director prior to issuing a Cable Franchise, and states in pertinent part:

The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do

any non-monetary contributions related to the provision of cable services provided by cable operators as a condition or requirement of a local franchise, including but not limited to free or discounted cable services to public buildings, costs in support of PEG access other than capital costs, and costs attributable to the construction of I-Nets.

FCC Order at 44730, ¶ 25.

The FCC Order was challenged by numerous LFAs, including the State, and is currently on appeal in the 6th Circuit. See City of Portland, et al., v. FCC and United States, 6th Cir., Appeals Nos. 19-4161, 19-4162, 19-4163, 19-4164, 19-4165, 19-4166 and 19-4183.

³⁸ See § 617 of the Cable Act. See also 47 U.S.C. § 537, and 47 C.F.R. § 76.502(a) and (c).

so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances. (Emphasis added).

Based on the above, Applicants are required to satisfactorily demonstrate to the Director that the transfer of control of HTSC's Cable Franchise to RFP is in the public interest.

C. The Privilege of a Franchise

The grant of a Cable Franchise gives the recipient a non-exclusive right to use and occupy certain limited and scarce public places, public highways, and rights-of-way for the construction, use, operation, and maintenance of a Cable System for a fixed period. Substantial economic benefits may flow to the recipient as a consequence of this privilege. However, the granting of a franchise confers no right, title, or interest in any public places, public highways, and rights-of-way beyond those expressly conferred herein and in the applicable Cable Franchise orders.

The privilege of a Cable Franchise also carries with it associated obligations. The franchisee (and Applicants) should recognize that there are certain responsibilities assumed when issued or transferred a Cable Franchise(s). These include operating a Cable System that is reliable, responsive, and responsible to the public that the franchisee serves. In addition, the franchisee is responsible for providing broad categories of video programming or other services to Subscribers at reasonable costs and enhancing communications capabilities to the communities it serves by supporting, among other matters, INET connections, public television, and PEG access programming.

IV. **DISCUSSION**

A. Introduction

DCCA has thoroughly reviewed and considered Applicants' representations in the filed State Transfer Application, FCC Form 394, various exhibits and documents, and subsequently submitted supporting materials, including their responses to the issued IRs. DCCA has also considered Applicants' representations at the public

hearing and the CAC meeting, and the comments received from the general public, government agencies, community organizations and leaders, and CAC members.

After reviewing the information provided, DCCA determines that RFP, in conjunction with the other Applicants, have demonstrated the requisite financial, operational, legal, and technical ability to operate and maintain HTSC's Cable System and to provide the services, facilities, and equipment as required in HTSC's Cable Franchise agreement.

RFP, a Delaware limited liability company, was established as an acquisition vehicle for purposes of the Proposed Transaction and is part of a fund managed by a member of MIRA. MIRA is a global alternative asset manager with extensive experience in investing in the communications infrastructure industry with approximately \$108 billion invested in infrastructure assets.³⁹

Cincinnati Bell, which shall continue to be a 100% intermediate indirect parent of HTSC, is a telecommunications company founded and incorporated in 1873 in Cincinnati, Ohio. Cincinnati Bell provides an array of integrated communications solutions-including voice, data, high-speed Internet, and video entertainment services. Cincinnati Bell's network covers more than 17,200 square miles and, through its cable franchises, serves over 178,000 residential and business customers in Ohio, Kentucky, Indiana and Hawai'i. Upon completion of the Proposed Transaction, HTSC will be an indirect subsidiary of RFP through three (3) intermediate holding companies: Cincinnati Bell, Holdco, and HTCI. HTSC will continue to be the franchisee and cable operator in its Cable Franchise area on O`ahu. Applicants state that "HTSC local management, with the benefit of Cincinnati Bell's managerial and operational experience combined with Red Fiber Parent's additional resources and support, will continue to manage the operations in Hawai'i and play an important role in decision making in the combined entity and in determining how best to meet the needs of Hawai'i's communities."⁴⁰

Based on the material representations made by Applicants,⁴¹ DCCA reasonably concludes that HTSC under RFP control would appear to be able to continue the operations and maintenance of HTSC's Cable System at the same levels of service to its Subscribers in HTSC's franchise area, and that the management, operations, systems, and financial obligations of HTSC, at least in the short-term, should remain materially unchanged. However, DCCA is cognizant of various concerns and issues

³⁹ See Application at 13-14 regarding MIRA's telecommunications infrastructure assets and ownership of fiber optic services.

⁴⁰ Id. at 10.

⁴¹ DCCA considers all representations made by Applicants regarding the Proposed Transaction and State Transfer Application to be material representations.

expressed during the course of this transfer proceeding.⁴² DCCA raised these concerns while in discussions with Applicants and attempted to obtain Applicants' commitments on certain significant issues.

In addition, Applicants made various representations with respect to investments in infrastructure and deployment of innovative and advanced technologies and services; however, Applicants initially provided few details and were unable to give any specific commitments regarding some of these purported public benefits. Later, Applicants provided additional information and commitments, a few of which are described below.

Accordingly, DCCA has determined that the following terms, conditions, and requirements shall be imposed on Applicants, as applicable, to ensure that the Proposed Transaction is in the public interest.

B. Financial Ability of Applicants

The establishment of HTSC's Cable System and services was funded using cash on hand, cash flow from operations, and the revolving credit facility (up to \$30 million) of HTSC's parent company, HTCI.⁴³ The revolving credit facility was used to provide funding for both HTSC and its affiliate HTI.⁴⁴ The revolving credit facility was guaranteed jointly and severally by HTSC and HTI, as well as by HTCI's parent company, Holdco.⁴⁵ In addition, the revolving credit facility was collateralized by, among other things, the assets and stock of HTSC and HTI, on which the revolving credit facility has a first priority lien.⁴⁶

On December 8, 2017, D&O No. 370 was issued approving the request to transfer control of HTSC's O'ahu Cable Franchise at the parent company level from Holdco to Cincinnati Bell and certain financing arrangements ("**2017 Transfer Proceeding**"). The financing arrangements included Cincinnati Bell completing new debt financing in which the proceeds were to be used to, among other things: (1) finance the Holdco merger transaction; (2) permanently retire Holdco's existing debt; and (3) fund working capital and other general corporate purposes.⁴⁷

⁴² See <http://cca.hawaii.gov/catv/red-fiber-cincinnati-bell-hawaiian-telcom-merger/> which is the link to the written comments submitted on the Application.

⁴³ See D&O No. 352, issued on June 24, 2011, at 10.

⁴⁴ Id.

⁴⁵ Id. at 10-11.

⁴⁶ Id. at 11. In 2010, Holdco, HTCI, HTI, HTSC and other entities were restructured and emerged from Chapter 11 Bankruptcy with a \$300 million senior secured loan.

⁴⁷ See D&O No. 370 at 11.

For this Proposed Transaction, RFP entered into a debt commitment letter, as amended and restated, with Goldman Sachs Bank USA, Regions Bank, Regions Capital Markets, a division of Regions Bank, Société Générale and Fifth Third Bank, National Association, dated as of May 7, 2020, for the commitment of debt funds (the “**Debt Financing**”). The proceeds from the Debt Financing will be used, together with the proceeds of one or more equity contributions, to: (1) finance, in part, the Proposed Transaction, (2) refinance indebtedness of Cincinnati Bell under its existing U.S. working capital credit facility, its existing receivables financing facility and, if applicable, certain of its other existing indebtedness (collectively, the “**Refinancing**”), (3) pay the fees, costs, and expenses related to the Proposed Transaction and the Refinancing, and (4) fund working capital and other general corporate purposes.⁴⁸

At the close of the Proposed Transaction, Cincinnati Bell will be provided, on an aggregate principal basis, with an amount of up to \$625 million in senior secured credit facilities (the “**Opco Credit Facilities**”), consisting of (1) a senior secured revolving credit facility in an amount of up to \$250 million with an initial maturity of five (5) years; and (2) a senior secured term loan credit facility in an amount of up to \$375 million with an initial maturity of seven (7) years. Applicants state that “[t]he Opco Credit Facilities are subject to terms and conditions generally consistent with acquisition or similar debt financing facilities entered into by comparable telecommunications and technology companies for transactions of this type”⁴⁹ and consistent with HTSC’s existing financing arrangements.⁵⁰

The Opco Credit Facilities will be guaranteed by RFP and each direct or indirect wholly-owned material U.S. subsidiary of Cincinnati Bell, including HTSC (collectively, the “**Opco Guarantors**”). It will be secured by a pledge of all the capital stock of Cincinnati Bell owned by RFP, pledges of all capital stock of each direct, wholly-owned material restricted subsidiary owned by Cincinnati Bell and each Opco Guarantor, and pledges of all of the assets of Cincinnati Bell⁵¹ and the Opco Guarantors (other than

⁴⁸ See Application at 26.

⁴⁹ Id.

⁵⁰ See id. at 27.

⁵¹ “[A]s part of the financing transaction, the collateral granted by Cincinnati Bell (but not its subsidiaries) to secure the Opco Credit Facilities will also secure its outstanding (i) 7.25% Senior Notes due 2023, (ii) 7.000% Senior Notes due 2024 and (iii) 8.000% Senior Notes due 2025, in each case on an equal and ratable basis with the collateral that secures the Opco Credit Facilities. The collateral granted by Cincinnati Bell’s subsidiary Cincinnati Bell Telephone Company LLC (“**CBT**”) to secure the Opco Credit Facilities will also secure CBT’s 6.30% Senior Notes due 2028 on an equal and ratable basis with the collateral that secures the Opco Credit Facilities.” Id. at 26-27.

RFP), and in each case, subject to limitations and exclusions usual and customary for facilities of this type.⁵²

According to Applicants, this financing structure, in which a parent company incurs debt with credit support from subsidiaries, provides for stability and predictability in raising capital, and by leveraging the larger scale, multiple revenue streams, product diversity, and wider geographical reach of multiple subsidiaries, the parent company is able to access the capital markets on terms more favorable than could be obtained by any individual subsidiary such as HTSC.⁵³

C. Franchise Obligations

In addition to State statutory and administrative requirements, upon completion of the Proposed Transaction, Applicants shall continue to fully adhere to and comply with the franchise obligations set forth in the Franchise D&O.

Consistent with the provisions of the Franchise D&O, federal and State law, Applicants agree to assume and be bound by all the terms, conditions, and requirements of the various D&Os, Orders, Letter Orders, and any other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations.

Applicants also agree to assume and be bound by all the terms, conditions, and requirements of all agreements of any type entered into between HTSC and the State (including but not limited to educational and/or governmental agencies of the State), in connection with and arising out of HTSC's franchise obligations for its Cable Franchise area. Applicants voluntarily agree to assume and be bound by all terms, conditions, and requirements in this D&O, recognizing that such commitments benefit Applicants by assisting them to satisfy the public interest requirement for the Proposed Transaction, fostering goodwill, and enhancing benefits to the public.

Franchise obligations related to system upgrades, INET connections, franchise fee contributions, PEG access, Hawai'i Public Television Foundation, and other franchise related matters are set forth in the Franchise D&O, and these obligations remain and shall continue to be binding on Applicants, to the extent permitted by law.

In addition, HTSC (and, later all other Applicants), consistent with the provisions of the Franchise D&O, federal and State law, shall fully adhere to and comply with all the D&Os, Orders, Letter Orders, and any other directives that have been issued by DCCA regarding HTSC's Cable Franchise on O`ahu during the interim period between the issuance of this D&O and the completion of the Proposed Transaction.

⁵² See Application at 26. The collateral for the Opco Credit Facilities will not include any real estate. Id.

⁵³ See id. at 27.

D. Material Representations and Commitments Made by Applicants

During this transfer proceeding, Applicants made certain representations and commitments in their Application and other filings regarding the Cable Franchise obligations and the operation and management of HTSC's Cable System and the public benefits related to the Proposed Transaction including, among other things, that:

1. HTSC will continue to operate pursuant to its existing franchise agreement and "has no current plans to request any changes to the current cable franchise order."⁵⁴
2. Customers of HTSC will remain with HTSC and will continue to be served under its existing authorization.⁵⁵
3. The change in indirect ownership will "not [] result in service changes, disruptions, or termination of services for any existing HTSC customers . . . [and] no system cutovers or other operational changes are required[.]"⁵⁶
4. The transfer of indirect control of HTSC to RFP "is expected to be seamless and transparent to customers"⁵⁷ of HTSC and not affect the day-to-day operations, billing systems, or operational support systems of HTSC.⁵⁸
5. The Proposed Transaction will not adversely impact the ability of HTSC and Cincinnati Bell to fulfill the commitments made to the DCCA in connection with DCCA's approval of the 2017 Transfer Proceeding.⁵⁹
6. Applicants commit that the Proposed Transaction will not affect PEG obligations under HTSC's current Franchise D&O and that Applicants have no plans to make any changes to its support of PEG services in its O`ahu cable franchise area.⁶⁰

⁵⁴ Application at 9.

⁵⁵ See id.

⁵⁶ Id. at 8-9.

⁵⁷ Id. at 8.

⁵⁸ See Responses to IRs at 7. See also Application at 8.

⁵⁹ See Application at 25.

⁶⁰ See id. at 35. See also Responses to IRs at 13.

7. HTSC's "customers will continue to have local customer support and customers will have the ability to interact with local support personnel as well as obtain support over the telephone and the Internet."⁶¹
8. "HTSC and its Hawai'i-based affiliates will continue to be locally managed from Hawai'i and its union labor agreements will be honored[.]"⁶²
9. Under RFP ownership, "Cincinnati Bell will continue to push fiber deeper into HTSC and its Hawai'i-based affiliates footprint using its experiences with fiber builds, in order to improve service quality and bandwidth performance to the benefit of customers in Hawai'i, . . . [and that] [t]hese growth opportunities are not expected to negatively impact HTSC's costs of operations."⁶³

Since DCCA considers all representations and commitments made by Applicants in their Application and other filings for this Proposed Transaction, including but not limited to those enumerated above, to be material representations, it is appropriate, reasonable, and in the public interest to hold Applicants, as applicable, to all of the representations and commitments made in this proceeding.

E. Infrastructure Commitments and Expansion of Existing Service

Federal law and DCCA support an environment of healthy competition in the areas of communication and Cable Services in the State.⁶⁴ Competition in these areas benefit Hawai'i consumers by providing greater customer choice for different services; diversity in programming content; pricing options; and encouraging the development and deployment of innovative technology, products, and services. According to Applicants, approval of the Proposed Transaction would:

provide HTSC with the expanded liquidity and capital flexibility it needs to continue growing its business and serving its customer base throughout its service territory. Through an improved financial position and additional financial resources and knowledge that will be gained with Red Fiber Parent under the subject Transaction, the combined operation will place HTSC in a position to provide a more expansive range of products and innovative services and to further expand communications infrastructure across

⁶¹ Application at 8. See also id. at 35.

⁶² Id. at 8.

⁶³ Id. at 10.

⁶⁴ See 47 U.S.C. § 521(6) and D&O No. 352 at 17-18.

the Hawaiian islands to better address demands for high-speed broadband, competitive video offerings and other next generation, integrated communications services over an enhanced and expanded fiber network.⁶⁵

Applicants have expressed their commitment to enhancing services and reach, and thereby their competitive presence, by pledging significant investments into expanding and improving its network throughout the State. Specifically, within six (6) years after the close of the Proposed Transaction, Applicants shall invest at least TWENTY MILLION AND NO/100 DOLLARS (\$20,000,000.00) throughout the State, including areas outside of HTSC's current franchise area, to improve and build out its network and infrastructure. None of the funds applied to this infrastructure commitment shall include federal Connect America Fund moneys allocated to HTSC through the federal program or any other public funds, federal or state. This commitment is in addition to the buildout commitment agreed to in the 2017 Transfer Proceeding, as documented in D&O No. 370.⁶⁶

In addition, and related to the financial commitment discussed above, Applicants expressly commit to and shall provide, within six (6) years of the close of the Proposed Transaction, at minimum, an additional 15,000 new or upgraded connections or extensions of its current network to homes and small businesses. In meeting this commitment, HTSC may choose to extend its existing infrastructure in its franchise area or other areas of the State; provided that none of the new connections or buildout to homes or small businesses related to this commitment shall include connections or buildouts related to Applicants' obligations under the federal Connect America Fund program. DCCA finds that these financial investment and buildout requirements constitute significant, real, and tangible public benefits for the State and its residents resulting from this Proposed Transaction. These requirements also result in actual investment in the State's local economy, and represent Applicants' commitment to the State and HTSC's Subscribers. This commitment is in addition to the connections and extensions commitment agreed to in the 2017 Transfer Proceeding, as documented in D&O No. 370.⁶⁷

Moreover, within six (6) months of the close of the Proposed Transaction, Applicants shall submit a written report to DCCA on the progress of its infrastructure plans, consistent with the financial and connections/buildout commitments set forth in this D&O. The report shall be in a form that may be prescribed by DCCA. Thereafter, the report will be updated annually and submitted on March 31st of each year. This new reporting requirement will replace the reporting requirement in D&O No. 370, after the submittal of the first report (the report pursuant to D&O No. 370 will continue to be

⁶⁵ Application at 10.

⁶⁶ See D&O No. 370 at 15-16.

⁶⁷ See id.

filed on March 31st of 2021; thereafter the report pursuant to this D&O shall replace that report—with only one report submitted on March 31st in 2022 and each March 31st thereafter). The report, at the request of the Director, may be presented to the CAC and be subject to further requirements and refinements in the future.

F. Internet Service Practices

Applicants commit to adhering to the principles of the 2015 FCC’s *Open Internet Order* (of no blocking, throttling (slowing down) or paid prioritization of Internet service) in the State for at least three (3) years after the closing of the Proposed Transaction; provided, however, that Applicants shall have the right to seek relief from this commitment by submitting evidence to DCCA that, due to a change in the law, continued adherence to the principles of the 2015 *Open Internet Order* would result in a competitive disadvantage or harm to Applicants.

In addition, Applicants intend to extend HTSC’s current policies of: (1) no early termination fees for services other than international and premium packages; and (2) no plan switching fees, and have no current plans to change these policies.

The commitments contained in this Paragraph F. shall supersede and replace the corresponding commitments set forth in D&O No. 370.

G. Low-Cost Internet Service for Consumers

Access to the Internet and broadband service continues to be increasingly important in the lives of Americans and has been viewed by many as an essential service. Many people rely on and use the Internet for work, education, communication, family, and entertainment. The State has long since recognized the importance of broadband service. In December 2012, the State issued the “Hawaii Broadband Strategic Plan” which sets forth goals and specific objectives, and work plans to increase broadband adoption and use of the Internet with the ultimate purpose of ensuring that all Hawai`i citizens have access to high-speed broadband service at affordable rates.⁶⁸ The need for, and the importance of, reliable and affordable Internet service and connectivity has been highlighted due to the COVID-19 pandemic and the impacts this virus has had upon our community.

As part of the Proposed Transaction, Applicants state that HTSC intends to continue to offer its low-cost Internet service to new and existing customers, in all areas where HTSC infrastructure is enabled after the Proposed Transaction is completed/closed. Specifically, HTSC’s low-cost Internet Kokua Program (“**Kokua Program**”) shall continue to be offered to all qualifying Hawai`i consumers having a total household income at or below 135% of the Federal Poverty Guidelines for Hawai`i

⁶⁸ This report was recently updated by the State of Hawaii Department of Business, Economic Development, and Tourism in October 2020.

throughout all areas where HTSC infrastructure is enabled.⁶⁹ The discounted rates provided under the Kokua Program shall not exceed FIFTEEN AND 00/100 DOLLARS (\$15.00) per month, as may be amended and increased from time to time, provided that the \$15.00 benchmark for the Kokua Program, or any equivalent low-cost internet program implemented by HTSC, will not be increased by more than ten percent (10%) annually. The terms and conditions contained herein shall supersede and replace the low-cost Internet service requirements set forth in D&O No. 370, Section IV.F.

DCCA finds Applicants' commitment to continue offering a low-cost Internet service program in the State to be a public benefit. The service will benefit low-income individuals and families, senior citizens, and any eligible persons looking for a low-cost Internet option. DCCA views Applicants' commitment and the resulting benefits in a positive manner and finds this commitment to be consistent with the State's objectives of increasing broadband adoption and use of the Internet.

H. Public WiFi Service

Internet access through public WiFi can provide free, untethered Internet service in today's world of mobile connectivity. Public hotspots can benefit individuals in multiple ways by, among other things, providing seamless access to Internet services that does not impact the monthly data quotas for their mobile devices and providing access to the Internet where they otherwise may not have access to their mobile provider's service. Public WiFi service is especially important to provide Internet connectivity and the socioeconomic benefits that flow from that access to residents who may lack access in their homes because they live in an unserved area or because of economic or other barriers. For these individuals who often live in rural areas, public WiFi may provide essential Internet connectivity allowing them to access public services as well as educational, health, and other online services. Public WiFi is also important to businesses in Hawai'i by allowing them to market their business products and services, and to support the State's primary economic driver of tourism by providing the connectivity to which visitors may be accustomed and is generally available in most of the desirable travel destinations around the world. Thus, DCCA recognizes that increasing the availability of public WiFi will provide a public benefit for the State as a whole.

In the 2017 Transfer Proceeding, Cincinnati Bell and HTSC committed to deploy a mobile application ("**app**") that facilitates out-of-home "public" WiFi throughout the State through partnerships between HTSC and local businesses.⁷⁰ After further

⁶⁹ HTSC's Kokua Program currently provides speeds up to seven (7) Mbps downstream and up to one (1) Mbps upstream over copper facilities, or up to twenty (20) Mbps downstream and up to three (3) Mbps upstream over fiber facilities. The seven (7) Mbps service is priced at \$9.95 per month, and the twenty (20) Mbps service is available for \$12.95 per month. Application at 6. See also Responses to IRs at 12.

⁷⁰ D&O No. 370, ¶ L.

evaluation and discussion between HTSC and DCCA, the public WiFi plan was modified to better meet the needs of the community. Instead of launching a mobile app, which would require downloading by users, HTSC offered free public WiFi access at fifty (50) locations throughout the State prior to July 2020, “by leveraging existing WiFi service and access points where business customers currently obtain HTSC WiFi service. Locations for free public WiFi access will be limited to locations where business customers have subscribed and continue to subscribe to HTSC’s WiFi service.”⁷¹

As DCCA and Applicants acknowledge and support the continued need for and expansion of WiFi access, Applicants commit to providing, within two (2) years of the close of the Proposed Transaction, open and free WiFi service for the general public (not necessarily existing customers or current subscribers) at 150 locations throughout the State, at speeds consistent with the FCC’s definition of broadband service. This commitment includes the public WiFi commitments from the 2017 Transfer Proceeding, as documented in D&O No. 370, as modified. In addition, Applicants shall make available and clear to the general public where the HTSC open and free WiFi connections are located, and at minimum, the open and free WiFi location information will be made available on CATV’s broadband website.

HTSC shall continue to provide DCCA updates in its annual report due on March 31st of each year regarding its “public” WiFi program and HTSC’s progress in deploying the public and free WiFi locations throughout the State.

I. Customer Privacy Requirements

Given the vast amount of consumer information collected by technology and communications companies, DCCA understands the importance of privacy and safeguarding sensitive consumer information. Consistent with federal law, the State currently requires that telecommunication carriers protect the confidentiality of proprietary information, which includes information regarding location and use of telecommunication services and information contained in bills. Recognizing these requirements, Applicants commit and shall adhere to the customer privacy requirements and standards set forth in 47 U.S.C. § 222 and HAR § 6-80-115, as amended, with respect to all of its services throughout the State, including its customers for cable and broadband services. This commitment regarding customer privacy is identical to the commitments made in the 2017 Transfer Proceeding. However, for implementation and clarity purposes, the terms and conditions contained in this section will supersede and replace the commitments set forth in D&O No. 370, Section IV.G.

J. Sales and Customer Service Centers

Local sales and customer service centers continue to play a key role in addressing customer concerns and technical issues. The closure of any of HTSC’s local sales and customer service centers would not only directly impact HTSC’s

⁷¹ Application at 8. See also Responses to IRs at 4.

employees, but would also have an indirect economic and customer service impact on their local communities.

Under the federal Worker Adjustment and Retraining Notification (“**WARN**”) Act, Applicants are required to provide sixty (60) calendar days’ advance notice regarding the closure of any call center impacting fifty (50) or more employees. In general, the WARN Act offers protection to workers, their families, and communities by requiring employers to provide sixty (60) calendar days’ notice in advance of covered plant closings and covered mass layoffs. Under this law, notice must be provided to either the affected workers or their representatives (e.g., a labor union), to the State dislocated worker unit, and to the appropriate unit of local government.

Applicants have expressed that it does not have any plans to close local sales or customer service centers in Hawai`i. However, upon the closing of the Proposed Transaction, Applicants shall be required to apply the notification requirements under the WARN Act to all sales and customer services centers, including call centers, regarding closures and/or relocations in the State regardless of the size of the center or the number of employees affected. This commitment regarding all sales and customer service centers is identical to the commitments made in the 2017 Transfer Proceeding. However, for implementation and clarity purposes, the terms and conditions contained in this section will supersede and replace the commitments set forth in D&O No. 370, Section IV.H.

K. Customer Service Assurances

The Proposed Transaction involves the indirect transfer of control of HTSC’s Cable System. Thus, it is reasonable for DCCA to have some concerns about how the transition may impact customer service. Applicants assured DCCA that the Proposed Transaction will not adversely impact customers and the services provided to them. In addition, to alleviate DCCA’s concerns, Applicants commit that HTSC’s Customer Satisfaction Survey, conducted annually, shall produce results consistent with results obtained in prior survey years. In the event, however, that there is a ten percent (10%) or more decline in a specific measurement of the survey, after the close of the Proposed Transaction, HTSC shall submit a written explanation to DCCA as to the reasons for the decline within thirty (30) calendar days of the submittal of the survey. HTSC shall also provide a detailed plan (including timeframes and specific actions) to remedy and correct any decline in the customer service measurement. This commitment regarding customer service assurances is identical to the commitments made in the 2017 Transfer Proceeding. However, for implementation and clarity purposes, the terms and conditions contained in this section will supersede and replace the commitments set forth in D&O No. 370, Section IV.I.

L. Rate Transparency and Customer Notification

In an effort to reduce billing issues for cable television Subscribers, DCCA promotes full disclosure and rate transparency regarding billing statements.

Accordingly, upon closing of the Proposed Transaction, Applicants shall, to the extent required by law, provide full disclosure and rate transparency through itemization and explanation of all charges to customers so that customers are not surprised by the inclusion of any add-on charges and fees, including but not limited to taxes, broadcast fees, franchise fees, PEG access fees, and capital funding amounts. HTSC shall also comply with all federal and State requirements regarding pricing and billing practices.

Applicants commit to providing full disclosure and rate transparency through itemization and explanation of all charges before customers sign up for service so that customers are not surprised by the inclusion of any add-on charges and fees (i.e., taxes, broadcast fees, capital funding amounts, franchise fees, etc.) and will know the total bill before committing to service. In addition, all cost information upon the expiration of any promotional offerings shall be provided prior to customers initially signing up for service or changing service plans. Further, Applicants commit to and agree that HTSC shall provide, at minimum, thirty (30) days advance written notice to Subscribers of the expiration of any promotional rates. This commitment regarding rate transparency and notifications is identical to the commitments made in the 2017 Transfer Proceeding. However, for implementation and clarity purposes, the terms and conditions contained in this section will supersede and replace the commitments set forth in D&O No. 370, Section IV.J.

M. Discount for Hawai'i's Senior Citizens

During this COVID-19 pandemic, protecting the health of our community while keeping it informed has become more vital than ever. This is even more so for Hawai'i's senior citizens for whom social distancing is imperative for their health and safety. Senior citizens have and continue to hold a special place in Hawai'i. However, with age comes certain issues, challenges, and concerns that can weigh heavily on the lives of this important group. As Hawai'i's aging population continues to increase, the effects of these issues and concerns are touching more lives than ever before. DCCA is aware that for many of Hawai'i's senior citizens cable television plays a vital role in their everyday lives. Cable television not only provides entertainment, but it delivers senior citizens important news and information that they might not be able to otherwise access. Cable television can also provide an important means of contact with the world to those whose mobility may be limited.

In line with supporting Hawai'i's senior citizens in need, within two (2) years of the closing of the Proposed Transaction, Applicants shall develop and implement a program that provides a five dollar (\$5) per a month senior citizen discount for cable service (e.g., phone and basic TV bundle) for seniors who are at least sixty-five (65) years old with a total household income at or below 135% of the Federal Poverty Guidelines for Hawai'i throughout HTSC's cable franchise and commits to offering such discounts throughout the State, as applicable.⁷² Applicants also state that they have no

⁷² Under 47 U.S.C § 543(e)(1), Cable System operators may offer discounts for Cable Service to senior citizens.

current plan to disrupt the offerings HTSC provides to many multi-dwelling units and senior citizen communities under its bulk pricing and preferred pricing programs and will strive to make its bulk offerings more competitive with the incumbent cable service provider.⁷³

Applicants shall include information regarding the development, implementation, progress made, and any additional metrics as requested by the Director, on its senior discount program in HTSC's annual report due on March 31st of each year.

N. Additional INET Connections

Currently, the State operates and utilizes an INET for broadband telecommunications purposes by government and educational authorities, agencies, and institutions. INET contribution and support requirements are standard and important components of all Cable Franchises approved by DCCA. The Director recognizes that the maintenance and continued expansion of the State's INET is a significant component of the State's strategy for its communications infrastructure and an important benefit to the public.

Provided that the FCC Order currently on appeal (or applicable portions thereof) is reversed by the courts or by a subsequent order of the FCC, or by a change in federal law, in addition to the INET obligations contained in D&O No. 352, upon the request of the Director, HTSC shall provide two (2) additional INET fiber connections throughout the State (i.e., applicable on a statewide basis) for the remainder of HTSC's franchise term. These connections shall have, at minimum, speeds of one (1) Gigabit per second and shall be provided to the State, or requesting agency or department, on an at cost basis for material and labor. In other words, the cost to the State shall include only HTSC's or its Affiliate's⁷⁴ costs (depending on which is performing the work) for labor and materials required to construct new infrastructure for the connections.

The State shall not incur any reoccurring costs for such connections. The labor and material costs shall be calculated using the costs incurred by HTSC or its Affiliate that constructs or contracts for the construction of the connection. Although HTI may record an accounting charge to HTSC based on the tariff rates for such links, the actual and recorded cost to the State shall be based on the overall cost in labor and materials to HTI/HTCI (not to HTSC), and HTSC's Affiliate. No currently existing connections shall be converted or considered to satisfy the INET commitments made herein pursuant to this D&O.

⁷³ Application at 7.

⁷⁴ "**Affiliate**" means any person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with HTSC, including HTSC's parent, sister, and subsidiary corporations/entities.

O. Public Service Announcements

In addition to any public service announcements ("**PSAs**") that HTSC may be required to provide pursuant to any State, federal, or county law, agreement, or D&O⁷⁵, HTSC shall cablecast on its channels, without charge to the State, the Director, or the Director's designee(s), two thousand (2,000) PSAs per calendar year, commencing within six (6) months after the closing of the Proposed Transaction, and each PSA will be at least thirty (30) seconds in length. The allocation of these PSAs shall be determined by the Director.

Upon the determination of the Director, the beneficiaries of the PSAs shall work collaboratively with HTSC to maximize the use of the allocated PSAs. The airing of the PSAs shall be on any channel that HTSC has ad insertion capabilities and is permitted to insert commercial or promotional segments and otherwise in a manner consistent with HTSC's public service announcement policy. HTSC shall have the sole discretion to determine on which channel(s) to air the PSAs and determine what time(s) the PSAs are aired; provided that HTSC shall exercise its discretion in a manner that provides all its Subscribers with reasonable opportunities to see these advertisements.

With respect to these PSAs, HTSC shall be provided with the cablecast-ready PSAs for airing by the applicable organizations in a format mutually acceptable to the parties.

P. Franchise and Related Matters

HTSC, as the cable operator, is bound by the Franchise D&O and must also comply with all applicable State laws and rules regarding the provision of Cable Service. DCCA also reminds Applicants of their certification to the State that it would comply with the Franchise D&O and all applicable State laws and rules, and that it shall work in good faith to cure any outstanding Cable Franchise issues.⁷⁶

DCCA notes that approval of the Proposed Transaction does not and shall not constitute a waiver or release of any of DCCA's rights under the Franchise D&O or applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law. DCCA and Applicants do not waive any and reserve all of their rights with respect to HTSC's compliance with the terms, conditions, and requirements in the Franchise D&O, and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that

⁷⁵ See D&O No. 352 at 31-32.

⁷⁶ Specifically, RFP has certified "that it will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the systems, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing." Application at 9. See Form 394, Section V, Part II (c).

have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

The Director's approval of the Proposed Transaction shall not in any way be deemed to be a representation by DCCA that HTSC is in compliance with all of its obligations and responsibilities under the Franchise D&O and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

After the close of the Proposed Transaction, HTSC shall continue to be responsible for any and all past Cable Franchise issues, acts, and omissions, known and unknown, of HTSC under the Franchise D&O and all applicable laws and rules, D&Os, Orders, Letter Orders, and other directives that have been issued by the Director to address specific needs and requirements by amending certain obligations consistent with the provisions of the Franchise D&O and State law.

Furthermore, except as otherwise specifically provided in this D&O, the terms, conditions, requirements, and obligations of HTSC's Cable Franchise on O`ahu (i.e., the Franchise D&O, D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and State law), D&O No. 370, and franchise-related agreements and stipulations shall continue to be in full force and effect. If there is conflict between the terms herein and the Franchise D&O, D&Os, Orders, Letter Orders, or other directives, the terms set forth herein shall prevail.

Q. Other Areas of Discussion

Applicants made representations in this transfer proceeding regarding the anticipated public benefits of the Proposed Transaction, including Applicants' investment in infrastructure, broadband options, and deployment of innovative and advanced technologies and services, many of which are enumerated above in Section IV. of this D&O. During the course of this proceeding, DCCA sought additional information and clarifications from Applicants regarding the purported public benefits including expansion of its fiber infrastructure in other areas of the State, rates and services impacting Subscribers, and deployment of broadband and advance services.

In general, while Applicants provided some details and a number of commitments, it often asserted that the requested information was not within DCCA's scope of review related to the Application or that the information sought was beyond Applicants' forecasting. Nonetheless, Applicants made assurances (and DCCA relies on these representations in issuing this D&O) that it would cause HTSC to satisfy and adhere to all Cable Franchise requirements, and that there were no current plans to change any rates and services as a result of the Proposed Transaction.⁷⁷

⁷⁷ See Generally, Application, Responses to IRs, and other supplemental filings.

During discussions, DCCA attempted to obtain Applicants' commitments regarding the issues mentioned above. However, DCCA was hindered during the discussions given that: (1) the FCC prohibits LFAs from regulating cable service rates and conditioning Cable System transfers on them⁷⁸; and (2) broadband and broadband-related issues (including, but not limited to, broadband deployment, how broadband is provided including upload and download speeds, broadband prices, and Net Neutrality), are beyond DCCA's statutory jurisdiction, given that broadband service is not subject to regulation, unless agreed to by the cable operator.

R. Post-Transaction Progress Report and Briefing

Under State law, the Director has the power and jurisdiction to supervise and regulate every cable operator in the State and is empowered to do all things which are necessary or convenient in the exercise of the Director's power and jurisdiction.⁷⁹ Accordingly, unless otherwise agreed to by DCCA and HTSC, within six (6) months after the date of the close of the Proposed Transaction, HTSC shall provide a written report to DCCA and orally brief the Director on the impacts of the completed transaction. At a minimum, the written report and briefing shall address the following:

1. How the indirect transfer of control of HTSC's Cable System to RFP is progressing;
2. How the transaction has impacted the operations and organization of HTSC's Cable System on O`ahu;
3. Any future plans regarding services and operation of HTSC's Cable System on O`ahu or in the State; and
4. Applicants' progress towards fulfilling and satisfying all the purported public benefits related to the Proposed Transaction as represented by Applicants in this transfer proceeding, including those enumerated in Section IV. of this D&O, and its progress in complying with the other terms, conditions, and requirements of this D&O.

⁷⁸ See Implementation of Sections 11 and 13 of the Cable Television and Competition Act of 1992, Report and Order, 8 FCC Rcd 6828 ¶ 39, n. 38 (1993) (In exercising their transfer jurisdiction, franchising authorities may not seek to circumvent federal regulatory authority, including federal rate regulations in particular.).

⁷⁹ See HRS § 440G-12(a).

During the briefing, Applicants shall be prepared to respond to any questions posed by the Director and DCCA staff, participate in any follow-up discussions, and provide documentation after the briefing, as requested.⁸⁰

V. CONCLUSION

Based on the foregoing, the Director finds that RFP is legally, operationally, financially, and technically qualified to acquire control of HTSC and to provide the services required for HTSC's O`ahu Cable Franchise, and that the Proposed Transaction is in the public interest with the terms, conditions, and requirements described above, and should therefore be approved. Accordingly, DCCA hereby approves the Proposed Transaction based on the information provided in the Application, and the supporting and supplemental filings and commitments provided by Applicants.

VI. ORDER

NOW, THEREFORE, the request to transfer control of HTSC's O`ahu Cable Franchise to RFP, the proposed *pro forma* transfer of control, and certain financing arrangements as described in the Application, is hereby APPROVED, subject to the following:

- A. Following the close of the Proposed Transaction, Applicants shall adhere and comply, or shall cause HTSC to comply, with all terms, requirements, conditions and obligations set forth in the Franchise D&O, and any other D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O, and federal and State laws.

Moreover, in connection with its Cable Franchise obligations, HTSC entered into various agreements with the State and other educational and governmental agencies related to and impacting its services in the Cable Franchise area. HTSC shall fully comply with the various agreements HTSC had entered into related to its franchise obligations that are in effect as of the date the Proposed Transaction is completed.

⁸⁰ HRS § 440G-14 requires that:

Each cable operator shall file with the director reports of its financial, technical, and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the director and shall be kept on file open to the public.

See also HAR §§16-131-43 through 16-131-50.

- B. The approval of the Proposed Transaction by the Director does not and shall not amend nor alter the Franchise D&O, or any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and federal and State laws in any way, except as expressly provided otherwise in this D&O. The Franchise D&O, and any D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and State law shall continue to remain in full force and effect, and enforceable in accordance with their terms and conditions and applicable law.
- C. HTSC shall fully adhere to and comply with all of the D&Os, Orders, Letter Orders, and any other directives as provided by HTSC's O`ahu Cable Franchise issued by DCCA during the interim period between the issuance of this D&O and the close of the Proposed Transaction.
- D. Applicants shall adhere to and comply with all of the terms, conditions, and requirements provided in this D&O, including but not limited to Section IV. of this D&O.
- E. The closing of the Merger Agreement shall be completed without any adverse material changes to the Merger Agreement that was provided to DCCA and last reviewed by DCCA in connection with the Proposed Transaction. Applicants and/or HTSC shall promptly notify the Director in writing of the closing of the Merger Agreement and also upon the completion of the Proposed Transaction, provide the exact dates when the Merger Agreement closed and the Proposed Transaction is completed (as applicable) and whether any material changes to the Merger Agreement were made prior to or shortly after the close of the Proposed Transaction.
1. Notification shall be provided to DCCA within seven (7) calendar days after the closing of the Merger Agreement and within seven (7) calendar days after completion of the Proposed Transaction.
 2. In the event there are any adverse material changes to the Merger Agreement or to the structure or operation of HTSC's Cable System in the State as a result thereof, the Director reserves the right to review such changes and take any and all necessary and appropriate actions to protect the public interest, including but not limited to modifying or rescinding this D&O.
- F. The approval of the Merger Agreement (and/or Proposed Transaction, as applicable) by the FCC, the United States Department of Justice ("**DOJ**"), and other applicable federal agencies shall be required, and Applicants shall comply with any conditions, obligations, and requirements imposed

by the FCC, DOJ, or any other federal agency in connection with the Merger Agreement or Proposed Transaction, as applicable. In addition, the Merger Agreement and Proposed Transaction shall be in compliance with all State laws, rules, and requirements, including any and all State antitrust statutes and requirements.

- G. Except as otherwise specifically provided in this D&O, the terms, conditions, requirements, and obligations of HTSC's Cable Franchise in the State (i.e., the Franchise D&O, and D&Os, Orders, Letter Orders, and other directives that have been issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and State law) and franchise-related agreements shall continue to be in full force and effect.

- H. Notwithstanding any provision to the contrary in this D&O, if the Merger Agreement fails to close or is not completed, for whatever reason, within twelve (12) months from the date of this D&O, unless otherwise ordered by the Director, this D&O shall be automatically rescinded and shall be deemed null and void, and all prior D&Os, Orders, Letter Orders, and other directive issued periodically to address specific needs and requirements consistent with the provisions of the Franchise D&O and State law and franchise-related agreements shall continue to remain in full force and effect. In such an event, HTSC shall immediately provide written notification to the Director, and the Director shall have the right to act in accordance with applicable federal and State laws and rules.

Dated: Honolulu, Hawai'i, November 13, 2020



CATHERINE AWAKUNI COLÓN
Director of Commerce and Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 377** was served upon the following parties at the address shown below by mail, postage prepaid, on this 13th day of November, 2020.

KENT D. MORIHARA, ESQ.
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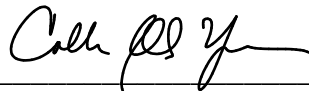
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