

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

In the Matter of)
)
SPECTRUM OCEANIC, LLC) **DECISION AND ORDER NO. 382**
)
Franchise Fees Paid by the Cable Operator.)
_____)

DECISION AND ORDER NO. 382

I. INTRODUCTION

Pursuant to Decision and Order (“**D&O**”) Nos. 174, 241, 291, 346, 366, and 368, and other applicable orders and directives, Spectrum Oceanic, LLC (“**Spectrum**”)¹ was required to pay franchise fees in an amount equal to five percent (5%) of Spectrum’s annual gross revenues for its Cable Systems throughout the State of Hawai‘i (“**State**”) to the following: (1) three percent (3%) as annual Access Operating Fees (“**AOF**”) to the various public, educational, and governmental (“**PEG**”) access organizations in the State; (2) one percent (1%) to the Hawai‘i Public Television Foundation, dba PBS Hawai‘i (“**HPTF**”); and (3) one percent (1%) in Annual Fees² to the Department of Commerce and Consumer Affairs (“**DCCA**”) to administer Hawai‘i Revised Statutes (“**HRS**”) chapter 440G and for any other purposes determined by the Director of DCCA (“**Director**”).

II. DISCUSSION

Under federal law, a franchising authority (i.e., DCCA) is authorized to assess franchise fees from cable operator(s) up to a maximum of five percent (5%) of a Cable System’s annual gross revenues. See, 47 United States Code § 542(b).

On May 9, 2019, DCCA issued D&O No. 375 reducing the Annual Fee from one percent (1%) to zero percent (0%), beginning on July 1, 2019, until further order of the

¹ By letter dated June 21, 2019, the Department of Commerce and Consumer Affairs (“**DCCA**”) was notified that on June 6, 2019, Oceanic Time Warner Cable LLC was renamed as Spectrum Oceanic, LLC.

² Under Hawai‘i Administrative Rules (“**HAR**”) § 16-132-2(d), “income received from subscribers for cable services” means revenues derived from the supplying of regular subscriber service and includes installation fees, disconnect and reconnect fees, and fees for regular cable benefits.” The term does not include per-program or per-channel charges, leased channel revenues, advertising revenues and other income derived from the Cable System.

Director, effectively reducing the franchise fees from the maximum five percent (5%) to four percent (4%).

On December 29, 2022, DCCA issued D&O No. 380 reinstating the Annual Fee to commence on February 1, 2023, therefore, the Annual Fee for each cable operator paid to the Department shall be reinstated to one percent (1%) of the annual gross revenues of the cable operators' Cable Systems.

Consistent with the prior D&Os, letter orders, and directives, by this D&O, DCCA directs Spectrum to pay the currently collected five percent (5%)³ of the annual gross revenues of its Cable Systems as set forth below.

III. **ORDER**

Based on the foregoing, DCCA hereby orders that:

- A. Spectrum shall pay five percent (5%) of its annual gross revenues for each of its Cable Systems in the State as franchise fees.
- B. On or about January 31, 2024, Spectrum shall make the following franchise fee payments:
 1. One percent (1%) of its annual gross revenues to HPTF;
 2. Annual AOF from Oahu, Maui County, and Kauai in the amount of three percent (3%) of its annual gross revenues to the Oahu, Maui County, and Kauai PEG Access Organizations, respectively (with the exception that the Oahu PEG designee's AOF are subject to a cap plus an inflationary differential each year);
 3. Subject to further order of the Director, one and a half percent (1.5%) of Spectrum's annual gross revenues from its Hawaii island Cable System to the Hawaii island PEG access organization as AOF;
 4. The remaining one and a half percent (1.5%) of its annual gross revenues from its Hawaii island Cable System shall be set aside and maintained by Spectrum in an interest bearing account in a federally insured financial institution authorized in the State of Hawaii; provided that:

³ The five percent (5%) annual gross revenue total does not include the one (1) month period the one percent (1%) Annual Fee was not collected during January 2023.

- a. The funds in this account shall be distributed at a later date at the sole discretion and direction of the Director; and
 - b. Spectrum can recovery reasonable costs associated with opening and administering the bank account, including the tax impact of any interest earned from the account.
 5. The remaining balance that was collected in 2023 shall be paid as follows:
 - a. THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) shall be paid to the Makauila, Inc. (“**Makauila**”)⁴, and consistent with DCCA’s initial requirements that:
 1. Spectrum shall make the payment to Makauila pursuant to the Supplemental Contract No. 1 to Contract for Goods or Services, effective November 1, 2023; and
 2. Any future payments to the Makauila shall be based on subsequent D&Os or Letter Orders issued by DCCA.
 - b. The remaining amount shall be paid as an Annual Fee to DCCA (which includes the one percent (1%) of the income received from Subscribers for Cable Services rendered during the preceding calendar year as required under HAR § 16-132-2 and adjusted in HAR §16-132-2(c)); and
 6. Spectrum shall provide copies of the payment checks and any supporting documents related to the above-mentioned payments to DCCA.
- C. Unless otherwise directed, on or about January 31, 2025, and every January 31st thereafter, Spectrum shall pay the maximum amount of its annual gross revenues for each of its Cable Systems in the State allowed under federal law as franchise fees and make the following payments:

⁴ In 2022, Makauila was awarded a fixed-price contract for the development and statewide distribution of Hawaiian Language Video Content. Makauila is a nonprofit corporation with the purpose of developing and distributing Hawaiian language, culture, and educational media content. DCCA has determined that the funds described in this D&O shall help the State promote and cultivate interest in the Hawaiian language, as well as to provide educational opportunities for individuals learning Hawaiian.

1. Annual AOF in the amount of three percent (3%) of its annual gross revenues to the various PEG access organizations (with the exception that the Oahu PEG access organization's AOF are subject to a cap plus an inflationary differential each year) in the State or to DCCA's designee(s);
 2. One percent (1%) of its annual gross revenues to HPTF; and
 3. The remaining one percent (1%) of the funds shall be paid based on a D&O or Letter Order to be issued by DCCA at a future date.
- D. Except as otherwise provided in this D&O, the remaining provisions of D&O Nos. 174, 241, 291, 346, 366, and 368, and all other provisions of applicable D&Os, Letter Orders, and directives issued by DCCA shall continue to remain in full force and effect.

Dated: Honolulu, Hawai'i, January 12, 2024.



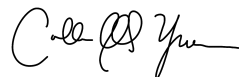
NADINE Y. ANDO
Director of Commerce and
Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECISION AND ORDER NO. 382** was served upon the following person at the address shown below by mail, postage prepaid, on this 12th day of January, 2024.

CLAIRE WONG BLACK, ESQ.
DENTONS US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813

Counsel for Spectrum Oceanic, LLC



Colleen M.S. Yuen
Secretary