

FRANCHISE AGREEMENT

This Franchise Agreement (“**Franchise**”) is between the State of Hawai‘i, Department of Commerce and Consumer Affairs (“**DCCA**”), hereinafter referred to as the “**Grantor**” and Spectrum Oceanic, LLC, f/k/a Oceanic Time Warner Cable, LLC, hereinafter referred to as the “**Grantee**.”

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of the Grantee is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

***NOW, THEREFORE**, the Grantor and Grantee agree as follows:*

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “**Cable Act**”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “**shall**” is mandatory and “**may**” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “**Access Channel**” or “**PEG Access Channel**” means any Channel on the Cable System made available for PEG use.
- B. “**Access Facilities and Equipment**” or “**PEG Access Facilities and Equipment**” means PEG Access facilities, including but not limited to any leasehold or fee interests in real property (including community media centers or satellite offices) purchased with PEG Access Operating Fees and/or Capital Fund Payments; and equipment related to PEG Access and/or purchased with PEG Access Operating Fees and/or Capital Fund Payments.
- C. “**Access Operating Fee**” or “**AOF**” means the annualized fee paid by Grantee to the Director or Director’s Designee for PEG Access or other purposes specified by the Director.

- D. “Access Organization” or “PEG Access Organization” means any nonprofit organization: (a) designated or selected by the Director to oversee the development, operation, supervision, management, production, or cablecasting/broadcasting of programs on any Access Channel(s); and (b) that acquires and maintains Access Facilities and Equipment.
- E. “Annual Fee” means the Annual Fee required to be paid by Grantee pursuant to HRS § 440G-15, HAR § 16-132-2, and applicable D&Os issued by DCCA, as may be amended from time to time.
- F. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- G. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.
- H. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- I. “Communications Act” means the federal Communications Act of 1934, as amended (e.g., by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996), codified at 47 USC § 521, et seq.
- J. “DCCA” means the State of Hawai`i Department of Commerce and Consumer Affairs.
- K. “EAS” means Emergency Alert System, as provided by section 624(g) of the Communications Act, as amended.
- L. “Educational Access” programming means any programming developed or acquired by educational authorities and agencies (e.g., the University of Hawai`i, State Department of Education, Hawai`i Association of Independent Schools, etc.) and accredited educational institutions in the State for distribution on a PEG Access Channel.
- M. “Educational Access Channel” means any Channel of the Cable System that is made available by Grantee for use by educational authorities and agencies and accredited educational institutions in the State.
- N. “Effective Date” means the date a Decision and Order approving this Cable Franchise has been approved by both Parties.
- O. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.

- P. "FCC" shall mean the Federal Communications Commission and any successor governmental entity thereto.
- Q. "Franchise" shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- R. "Franchise Area" shall mean the geographic boundaries of the island of Kaua`i.
- S. "Franchise Fee" shall have the meaning set forth in section 542 of the Communications Act, as amended. At the time of this Cable Franchise, this term includes, but is not limited to, the Access Operating Fee, HPTF Fee, and DCCA's Annual Fee specified in HAR chapter 16-132.
- T. "Franchise Order" means a D&O granting or renewing a Cable Franchise.
- U. "Government Access" programming means any programming developed or offered by governmental entities (i.e., city, county, State and federal governments; including departments or agencies thereof), for potential distribution on a PEG Access Channel.
- V. "Government Access Channel" means any Channel on the Cable System made available for government use.
- W. "Gross Revenues" includes, subject to applicable federal and State Law (as may be amended from time to time), for the purpose of calculating the Franchise Fee, Access Operating Fee and HPTF Fee, revenue from charges billed to and collected from Subscribers for Cable Service in the Service Area. Such charges shall include Subscriber billings and collections for entertainment and non-entertainment services, installation, connection, reconnection and reinstallation of equipment necessary for the utilization of the Cable System. "Gross Revenues" shall exclude revenue from charges and collections for non-subscription or non-Subscriber related sources such as advertising sales, home shopping commissions, revenue from non-cable service sources; Franchise Fees passed through to Subscribers; and uncollected debt, provided that such debt shall be included subsequently as part of Gross Revenues at such time as it is collected. In the case of a video service that is packaged, bundled, or functionally integrated with other services, capabilities, or applications, Grantee shall not allocate discounts in bundled packages for the purpose of evading the Franchise Fee, and Gross Revenues for the purpose of computing the Franchise Fee shall be determined based on a pro rata allocation of the package discount, that is, the total price of the individual classes of service at rack rates compared to the package price, among all classes of service comprising the package. For purposes of determining Gross Revenues, Grantee shall use the same method of determining revenues under generally accepted accounting principles as that which Grantee uses in determining revenues for the purpose of reporting to federal and state regulatory agencies. Further, Grantee shall provide

on a confidential basis to DCCA, upon the request of the Director, sufficient documentation to demonstrate that each of the above requirements is being met.

- X. “HAR” means the Hawai`i Administrative Rules.
- Y. “Kaua`i” means the island of Kaua`i.
- Z. “HD” means high definition video programming.
- AA. “HPTF” means the Hawai`i Public Television Foundation.
- BB. “HPTF Fee” means the annualized fee paid by Grantee to HPTF at the direction of the Director for HPTF-related services as may be directed by the Director.
- CC. “HRS” means the Hawai`i Revised Statutes.
- DD. “INET” means the institutional network that is used by State and County government and educational authorities and agencies, and accredited educational institutions for broadband communications purposes.
- EE. “INET Connection” or “INET connection” means an INET connection to a specific site, or an INET related service (e.g., reconfiguration, upgrades, etc.).
- FF. “Local Origination Programming” means programming of local interest produced by Grantee employees or contractors, or by other locally-based program producers, professional or amateur, but does not include PEG Access programming.
- GG. “PEG Access” means any access service by the public, education or government to create non-commercial public, educational or governmental programming for distribution on a PEG Access Channel.
- HH. “PEG Access Channel” means any Channel on the Cable Systems made available by cable operator(s) for noncommercial public, educational or governmental programming.
- II. “PEG Access Organization” means any nonprofit organization: (a) designated or selected by the Director to oversee the development, operation, supervision, management, production, or cablecasting/broadcasting of programs on any PEG Access Channel(s); and (b) that acquires and maintains PEG Access Facilities and Equipment.
- JJ. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- KK. “Public Highways” shall have the meaning set forth in HRS § 264 1, as amended.
- LL. “Public Places” includes any property, building, structure, or water to which the public has a right of access and use.

- MM. “Service Area” shall mean the area described in Section 6.1 hereto.
- NN. “Standard Installation” shall mean installations to residences and buildings that are located up to 125 feet from the point of connection to Grantee’s existing distribution system.
- OO. “State” shall mean the State Hawai`i, including its political subdivisions.
- PP. “Street” shall include each of the following located within the Franchise Area: Public Highways, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.
- QQ. State” means the State of Hawai`i, including its political subdivisions.
- RR. “Subscriber” shall mean any Person who is billed for and authorized to receive Cable Service from the Grantee.
- SS. UH” means the University of Hawai`i.
- TT. “VOD” mean video-on-demand.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term *of ten (10) years*, commencing on the Effective Date of this Franchise. This Franchise will be automatically extended for an additional term of five (5) years, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least three (3) years before the expiration of this Franchise. There shall be two such automatic extensions. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.

2.3 Police Powers. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable D&O, law or regulation necessary to the safety, health, and welfare of the public, to the extent that the provisions thereof do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This

Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action that materially changes the mutual promises in this contract.

2.4 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Franchise Area or be allowed to operate without a Cable System Franchise.

SECTION 3
Franchise Renewal

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4
Indemnification and Insurance

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold Grantor, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Grantee arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, *including any PEG channels.*

4.2 Insurance.

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

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|------------------------------|--|
| Workers' Compensation | Statutory Limits |
| Commercial General Liability | \$1,000,000 per occurrence, \$2,000,000 General Aggregate |

Auto Liability including coverage on all owned, non-owned hired autos \$1,000,000 per occurrence Combined Single Limit

Umbrella Liability \$1,000,000 per occurrence

- B. The Grantor shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- C. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.

SECTION 5 **Service Obligations**

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6 **Service Availability**

6.1 Service Area. The Grantee shall make Cable Service distributed over the Cable System available to every residence within the Franchise Area where there is a minimum density of at least twenty-five (25) residences per linear strand mile of aerial cable (excluding any home subscribing to any satellite service) as measured from Grantee's closest technologically feasible tie-in point that is actively delivering Cable Service as of the date of such request for service (the "Service Area"). The Cable Service will be provided at Grantee's published rate for standard installations if such residence is a Standard Installation. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Franchise Area where another operator is providing Cable Service or into any annexed area which is not contiguous to the Service Area. Grantee shall not be obligated to provide service to any area where it is financially or technically infeasible to do so. Grantee at its discretion may make Cable Service available to businesses within the Service Area.

6.2 Subscriber Charges for Extensions of the Cable System. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 6.1 above, the Grantee shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to share the capital costs of extending the Cable System. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall

also be responsible for any Standard/non-standard Installation charges to extend the Cable System from the tap to the residence.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the fifteen day period, the cost of new trenching is to be borne by Grantee.

SECTION 7 **Construction and Technical Standards**

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. All of the Grantee's Equipment shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices and performed by experienced maintenance and construction personnel.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time.

SECTION 8 **Conditions on Street Occupancy**

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property provided Grantee is able to access existing poles, conduits, or other facilities on reasonable terms and conditions.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric

utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets. Notwithstanding the above, the Grantee may set off any administrative permit fees or other fees required by the Grantor related to the Grantee's use of Grantor rights-of-way against the franchise fee payments required under Section 10.1 of this Franchise.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

8.6 Tree Trimming. Grantee or its designee shall have the authority to trim trees on or protruding over public property at its own expense as may be necessary to protect its wires and facilities.

8.7 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

SECTION 9
Service and Rates

9.1 Customer Service. Grantee shall comply with the customer service standards set forth in Section 76.309 of the Regulations of the Federal Communications Commission and such other customer services standards established by the laws and regulations of the State.

9.2 Reporting. Grantee shall continue to provide reports to the Director applicable to the Service Area as set forth in the Letter Order – Modifications to Monthly and Quarterly Reporting from the Director dated March 12, 2021, except that Grantee shall no longer be required to submit quarterly progress reports to the Director regarding its efforts to provide local help desk support for high speed Internet access services for Kauai County, as that requirement is no longer applicable.

9.3 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated to receive complaints and requests for repairs or adjustments at any time.

9.4 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. Grantee shall give the Grantor notice of any changes in rates, programming services or Channel positions in accordance with applicable law.

9.5 Rate Regulation. Grantor shall have the right to exercise rate regulation to the extent authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee’s ability to offer or provide bulk rate discounts or promotions.

9.6 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee’s rights under Section 15.2 of this Franchise.

9.7 Emergency Use. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”).

9.8 Service to Public Buildings. Upon request of Grantor, Grantee offers to provide, without charge and on a voluntary basis, one outlet of and equipment for Basic Cable Service to the locations listed in Exhibit A, provided that the locations are capable of being served with a Standard Installation. Grantee will provide at least ninety (90) days’ advance notice of any decision to modify or discontinue the service provided pursuant to this Section.

SECTION 10
Franchise Fee

10.1 Amount of Fee. Grantee shall pay franchise fees in an amount equal to five percent (___%) of the annual Gross Revenue, unless reduced by the Director by subsequent written order. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on an annual basis, within thirty (30) days of the close of each year. Unless otherwise specified by the Director in writing, payment of the fee shall be made as follows:

a. Access Operating Fee. ___ percent (___%) of the franchise fees owed by Grantor pursuant to this section shall be dedicated for support of PEG Access and paid by the Grantee to the Director or the Director's designee.

b. HPTF Fee. ___ percent (___%) of the franchise fees owed by Grantor pursuant to this section shall be dedicated to support HPTF and paid by the Grantee to the Director or the Director's designee.

c. DCCA Annual Fee. ___ percent (___%) of the franchise fees owed by Grantor pursuant to this section shall be dedicated provide funding for the DCCA and paid by the Grantee to the Director or the Director's designee.

The Director shall have sole discretion to change the allocation of the franchise fees set forth herein, and to change, suspend, reduce or terminate the AOF, HPTF Fee, and/or the DCCA Fee for any reason upon written notice to Grantee, so long as the total franchise fee does not exceed five percent (5%) of Grantee's annual Gross Revenues.

10.3 The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.12. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.4 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise.

10.5 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee was due.

SECTION 11
Transfer of Franchise

11.1 Franchise Transfer. Pursuant to HRS 440G-10.1 this Franchise and the rights, privileges, and obligations thereof, may not be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the Director. Within thirty (30) days of receiving a request for transfer, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 12
Records

12.1 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than one (1) year, provided that Grantee shall retain books and records relevant to the payment of the Franchise Fee and PEG Access support fees for a period of three (3) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books, records, or maps in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books, records, or maps marked confidential, as set forth above, to any Person.

SECTION 13
Public Education and Government (PEG) Access

13.1 PEG Access Channels. Grantee currently carries the following PEG Access Channels on its cable system in the Service Area: Ho'ike Government Access, Ho'ike Public Access, UHTV Educational, Hawai'i Government Public Network On Demand, Public Ōlelo On Demand, UH Distant Learning On Demand. Subject to the terms of this agreement and applicable law, Grantee shall continue to carry these PEG Access Channel on its Cable System in the Service Area without charge for the term of the Franchise.

13.2 Reclaimed Channels/Unused Time.

- A. Reclaimed Channels. With the approval of the Director, which approval shall not unreasonably be withheld, Grantee may reclaim any of these channels if it is unused. Any such reclaimed Channel or an equivalent Channel capacity, however, shall be restored for PEG Access programming at the direction of the Director upon a finding that such restoration is justified by the demonstrated cable-related needs of the Kaua'i community.

- B. Unused Time. Pursuant to section 531(d) of the Communications Act, Grantee shall be permitted to use time on one (1) or more of the PEG Access Channels whenever there are no Channels otherwise available on its Cable System (whether or not activated) and whenever such PEG Access Channel(s) are not scheduled for use at least seventy-two (72) hours in advance of such time or times desired by Grantee; provided that any use of such PEG Access Channel(s) by Grantee shall at all times be subordinate to the use designated by the Director, and shall terminate or be preempted by PEG Access programming scheduled at least seventy-two (72) hours in advance.

All non-PEG Access programming on PEG Access Channels shall be identified as such by an appropriate announcement made at least twenty-four (24) hours in advance and following each non-PEG Access use.

Notwithstanding any other provision to the contrary, if any PEG Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of access cablecast days (whichever is less) during any ninety (90)-day period, the use of such PEG Access Channel by Grantee shall be suspended for such time as the above-specified minimum access use of the PEG Access Channel is maintained; provided that the provisions of this paragraph may be waived by the Director for good cause.

13.3 Director's Designee. The Director shall have the sole discretion to designate, or to select, one or more entities ("**Director's designee**") to manage and operate the PEG Access Facilities and Equipment and the PEG Access Channel and receive the Access Operating Fee and Capital Fund Payments.

13.4 PEG Channel Placement. All PEG Access Channels, once made available, shall be used for PEG Access and shall be transmitted to all Subscribers unless otherwise permitted by this Cable Franchise or directed by the Director. Although DCCA acknowledges that Grantee may determine Channel placement at its sole discretion, Grantee agrees to assign each PEG Access Channel its own dedicated Channel number (i.e., the current Channel numbering is 53, and 54) and shall not move the PEG Access Channels without at least thirty (30) calendar days' prior written notification to DCCA and the Kaua'i PEG Access Organization. For so long as it is in effect, Grantee shall continue to comply with D&O 372, which requires Grantee to obtain the Director's consent prior to changing the location or designation of any PEG Access Channel.

Grantee shall ensure that Subscribers can locate and view all PEG Access Channels in the same manner as the local broadcast television stations which are Affiliates of major national broadcast networks, unless otherwise agreed to by the Director.

13.5 PEG Capital Fund

TBD

13.6 PEG in HD. Upon written request by the Director, the Director and Grantee shall meet to discuss converting any or all of the existing PEG Access Channels into high-definition format ("HD"). If all of the following conditions are satisfied, Grantee will provide the PEG Channel in HD format:

- A. The Director agrees that Grantee may provide PEG Channel programming to Subscribers utilizing switched digital video.
- B. The Director or its Designee demonstrates the ability to produce all of its PEG Channel programming in HD.
- C. Grantor or its Designee enters into a separate commercial contract for services with Grantee's commercial services group that will govern the terms, conditions and costs for the construction (where necessary), transmission, maintenance, and monitoring of the HD signal from Grantor's origination point to Grantee's headend or hub site. To the extent the Grantor or its Designee is not in a separate commercial contract with Grantee's commercial services group for HD PEG Channel transport, Grantee's obligation to carry the HD PEG Channel shall cease until a new commercial contract with Grantee's commercial services group for HD PEG Channel transport is in place.

13.7 PEG Competitive Neutrality. If any new or renewed franchise agreement contains obligations that are lesser in amount than the obligations imposed in this Section 13, Franchisee's aggregate obligations under Section 13 shall be reduced to an equivalent amount. To the extent such a reduction is not sufficient to make the total obligations of this Franchise equivalent to the new or renewed franchise, Franchisee may deduct from future franchise fee payments an amount sufficient to make the obligations of this Franchise equivalent to the new or renewed franchise.

SECTION 14 **INSTITUTIONAL NETWORK**

14.1 TBD

SECTION 16
Enforcement or Revocation

16.1 Notice of Violation. If the Director believes that the Grantee has not complied with the terms of the Franchise, the Director shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Director shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the “Violation Notice”).

16.2 Grantee’s Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Director, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Director of the steps being taken and the projected date that they will be completed.

16.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Director, or if the default is not remedied within the cure period set forth above, the Director shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.8 hereof. At the hearing, the Director shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Director shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Director *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

16.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

16.5 Revocation. Pursuant to HRS § 440G-9, and subject to applicable Law, the Director shall have the authority, in the Director’s reasonable discretion, to revoke, alter, or suspend this Cable Franchise on any of the following grounds: (1) making material false or misleading statements in, or material omissions from, any application or proposal or other filing made with the Department; (2) failure to maintain signal quality under the standards prescribed by

the Director; (3) any sale, lease, assignment, or other transfer of its cable franchise without consent of the Director; (4) except when commercially impracticable, unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area; (5) violation of the terms of this Cable Franchise; (6) failure to comply with HRS Chapter 440G or any rules or orders prescribed by the Director pursuant to applicable Law; (7) violation of any filed schedule of terms and conditions of service; and (8) engaging in any unfair or deceptive act or practice as prohibited by HRS § 480-2. Alteration may include a reduction in the term of this Cable Franchise, provided that, Grantee shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47 USC § 546(a), as may be amended.

Prior to taking action to revoke, alter, or suspend this Cable Franchise: (1) the Director shall immediately notify Grantee in writing of the alleged grounds for revocation, alteration, or suspension and its intent to revoke, alter, or suspend this Cable Franchise; and (2) Grantee shall have sixty (60) calendar days from receipt of the notification to object in writing, stating its reasons for such objection and providing any explanation, to cure the alleged noncompliance, or to provide a reasonable plan to cure the alleged noncompliance to the reasonable satisfaction of the Director. During the sixty (60) calendar day period, Grantee shall continue to comply with the requirements of this Cable Franchise.

If Grantee fails to object in writing, stating its reasons for such objection and providing any explanation, to cure the alleged noncompliance, or to provide a reasonable plan to cure the alleged noncompliance to the reasonable satisfaction of the Director, within the sixty (60) calendar day period, the Director may seek to revoke, alter, or suspend this Cable Franchise after a contested case hearing, in accordance with HRS Chapter 91, as required by HRS § 440G-9, provided that Grantee shall be given at least thirty (30) days prior written notice of such contested case hearing, specifying the time and place of such hearing and stating the Director's intent to revoke the Cable Franchise. Upon revocation of this Cable Franchise, Grantee may remove the Cable System, or abandon the Cable System in place. Notwithstanding the above provisions, Grantee reserves all of its rights under federal law or regulation.

The provisions of this subsection may be suspended for such period of time as Grantee may elect to voluntarily perform its obligations under this Cable Franchise; provided that Grantee provides prior written notice to the Director of such voluntary performance.

SECTION 17 **Miscellaneous Provisions**

17.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor D&Os, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

17.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

17.3 Minor Violations. The parties hereby agree that it is not the Grantor's intention to subject the Grantee to forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties or hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers.

17.4 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

17.5 Equal Protection. If any other provider of cable services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the Grantor or by any other State or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall within thirty (30) days of a written request from Grantee, modify this Franchise to ensure that the obligations applicable to Grantee are no more burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee's Franchise shall be deemed so modified thirty (30) days after the Grantee's initial written notice. As an alternative to the Franchise modification request, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

17.6 Change in Law. Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the system under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

17.7 Notices. Unless otherwise provided by federal, State or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: NAME
 TITLE
 CONTACT ADDRESS

Email:

Grantee: Rebecca Lieberman
 Director, State Government Affairs
 200 Akamainui
 Mililani, HI 96789

Email: Rebecca.Lieberman@charter.com

Copy to: Charter Communications
 Attn: Vice President, Government Affairs
 12405 Powerscourt Drive
 St. Louis, MO 63131

17.8 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

17.9 Additional Franchise. Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.7 above.

17.10 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

17.11 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous

agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

17.12 Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

17.13 Effective Date. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. If any fee or grant that is passed through to Subscribers is required by this Franchise, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

17.14 No Third Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this ____ day of _____, 20____.

[Grantor]

Signature: _____

Name/Title: _____

Accepted this ____ day of _____, 20____, subject to applicable federal and State law.

See Signature Block Template

Signature: _____

Name/Title: _____