

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

In the Matter of the Application of)	
)	
OCEANIC TIME WARNER CABLE LLC)	DECISION AND ORDER NO. 368;
)	Exhibit A
For Renewal of East and West Hawai'i)	
Cable Franchises, County of Hawai'i)	
)	
)	
)	

DECISION AND ORDER NO. 368

I. INTRODUCTION

Pursuant to Hawai'i Revised Statutes ("**HRS**") § 440G-10, the Department of Commerce and Consumer Affairs ("**DCCA**") hereby renews the cable franchises of Oceanic Time Warner Cable LLC ("**OTWC**"), for East and West Hawai'i, County of Hawai'i, State of Hawai'i, subject to the following terms, conditions, and requirements of this Decision and Order ("**D&O**"). In addition, among other matters, DCCA approves OTWC's request to consolidate the East and West Hawai'i cable franchises for the County of Hawai'i into a single cable franchise, as further discussed in this D&O.

A. Definitions

For purposes of this D&O, the following words and terms shall have the meanings specified below. Words not defined shall be given their common and ordinary meaning.

1. "**Access Channel**" or "**PEG Access Channel**" means any Channel on the Cable System made available for PEG use.
2. "**Access Facilities and Equipment**" or "**PEG Access Facilities and Equipment**" means: (a) Channel capacity designated for PEG use; (b) 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 (c) equipment related to the use of such Channel capacity or any PEG activity, and/or purchased with PEG Access Operating Fees and/or Capital Fund Payments.
3. "**Access Operating Fee**" or "**AOF**" means the annualized fee paid by OTWC to the Director or Director's designee for PEG Access or other purposes specified by the Director.

4. **“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.
5. **“Affiliate”** means any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with OTWC, including OTWC's parent corporation and any subsidiaries of OTWC.
6. **“Annual Fee”** means the Annual Fee required to be paid by OTWC pursuant to HRS § 440G-15, HAR § 16-132-2, and applicable D&Os issued by DCCA, as may be amended from time to time.
7. **“Application”** means the consolidated “Application for Renewal of East Hawai`i and West Hawai`i Cable Television Franchises” submitted by OTWC on July 20, 2011, along with supplemental materials filed thereafter by OTWC (including but not limited to OTWC’s February 8, 2013 “First Amended Application of Renewal for Cable Television Franchise”).
8. **“Basic Service”** means the level of programming service that includes, at a minimum, all broadcast Channels, all PEG Access Channels, any additional programming added by OTWC, and any programming identified in Section IV.C.1. of this D&O, and is made available to all Subscribers.
9. **“Broadcast Television Stations”** means local commercial television stations as referenced under 47 United States Code (**“USC”**) §§ 534 and 535.
10. **“Cable Drop”** means the cable from the feeder line to the Subscriber’s premises, or video signal drop.
11. **“Cable Franchise”** means the authority issued by DCCA through a D&O to operate a Cable System and provide Cable Service in a geographic region in the State.
12. **“Cable Service”** shall have the meaning set forth in HRS § 440G-3, as amended, and applicable Law, as amended and includes the video programming service provided by OTWC.
13. **“Cable System”** or **“System”** shall have the meaning set forth in HRS § 440G-3 and applicable Law, as amended.
14. **“CAC”** means DCCA’s Cable Advisory Committee.
15. **“CATV”** means the Cable Television Division of DCCA.

16. **“Capital Fund Payments”** means capital contributions made by OTWC to the PEG Access Organization(s), the Director, or the Director’s designee, to the extent permitted under the Communications Act, for PEG Access Facilities and Equipment.
17. **“Channel”** means a unit of Cable Service identified and selected by a Channel number or similar designation, and includes without limitation PEG Access Channels and shall have the meaning set forth in section 522(4) of the Communications Act, as amended.
18. **“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.
19. **“DCCA”** means the State of Hawai‘i Department of Commerce and Consumer Affairs.
20. **“Decision and Order”** means a cable franchise order issued by the Director pursuant to HRS chapter 440G.
21. **“Director”** means the Director of DCCA.
22. **“Director of the Hawai‘i Emergency Management Agency”** or **“Director of HIEMA”** means the Director of the State of Hawai‘i Emergency Management Agency.
23. **“DOE”** means the State of Hawai‘i Department of Education, and shall include representation of State chartered school interests, whose interests and access shall be no less than those afforded to any other State public school or collection of public schools.
24. **“EAS”** means Emergency Alert System, as required under section 624(g) of the Communications Act, as amended.
25. **“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.
26. **“Educational Access Channel”** means any Channel of the Cable System that is made available by OTWC for use by educational authorities and agencies and accredited educational institutions in the State.

27. **"Emergency Authorities"** means the Director of HIEMA; Deputy Director of HIEMA; Administrator of the Hawai'i County Civil Defense Agency; Deputy Administrator of the Hawai'i County Civil Defense Agency; and any other similar Person designated by the Director.
28. **"Emergency Override System"** means the emergency alert system specified in this D&O.
29. **"Facility"** or **"Facilities"** includes real property, antenna, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, fiber, and other personal property used by a cable operator in providing service to its Subscribers.
30. **"FCC"** means the Federal Communications Commission.
31. **"Franchise Fee"** shall have the meaning set forth in section 542 of the Communications Act, as amended. At the time of this D&O, 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.
32. **"Franchise Order"** means a D&O granting or renewing a Cable Franchise.
33. **"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.
34. **"Government Access Channel"** means any Channel on the Cable System made available for government use.
35. **"Gross Revenues"** includes, subject to applicable federal and State Law (as may be amended from time to time), for the purpose of calculating the Access Operating Fee and HPTF Fee, revenue from charges billed to and collected from Subscribers for Cable Service. 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, OTWC 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, OTWC shall use the same method of determining revenues under generally accepted accounting principles as that which OTWC uses in determining revenues for the purpose of reporting to federal and state regulatory agencies. Further, OTWC 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.

36. **"HAIS"** means the Hawai`i Association of Independent Schools.
37. **"HAR"** means the Hawai`i Administrative Rules.
38. **"Hawai`i Island"** means the island of Hawai`i.
39. **"HD"** means high definition video programming.
40. **"HITS"** means the Hawai`i Interactive Television System, a microwave system owned and operated by UH that provides an interisland video service utilized by UH, DOE, State agencies, and others.
41. **"HPTF"** means the Hawai`i Public Television Foundation.
42. **"HPTF Fee"** means the annualized fee paid by OTWC to HPTF at the direction of the Director for HPTF-related services as may be directed by the Director.
43. **"HRS"** means the Hawai`i Revised Statutes.
44. **"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.
45. **"INET Connection"** or **"INET connection"** means an INET connection to a specific site, or an INET related service (e.g., reconfiguration, upgrades, etc.).
46. **"Law"** means any federal or State law (including common law), constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body, as amended.

47. “**LFA**” means the local franchising authority (i.e., the State of Hawai`i through DCCA).
48. “**Local Origination Programming**” means programming of local interest produced by OTWC employees or contractors, or by other locally-based program producers, professional or amateur, but does not include PEG Access programming.
49. “**Merina**” means Merina & Company, LLP, a consultant retained by DCCA to assist DCCA in this Cable Franchise renewal process.
50. “**Na Leo**” means Nā Leo ‘O Hawai`i, a Hawai`i non-profit corporation, and refers to the current PEG Access Organization for the island of Hawai`i as of the date of this D&O.
51. “**OTWC**” means Oceanic Time Warner Cable LLC, and any of its affiliates and/or successors.
52. “**OTWC’s Actual Cost**” means OTWC’s actual cost of labor and materials for an installation or project (including, but not limited to, the cost of materials, including all applicable taxes and shipping charges; cost of labor, including unemployment insurance, workers’ compensation insurance and all employee benefits and taxes; and rental cost for equipment and machinery), provided that the necessary infrastructure (i.e., conduit capacity, pole attachment permits, etc.) and rights of way exist for OTWC to commence and complete the installation or project.
53. “**PBS Hawai`i**” means the public television station licensed to the HPTF.
54. “**PEG**” means public, educational, or governmental.
55. “**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.
56. “**PEG Access Channel**” means any Channel on the Cable Systems made available by cable operator(s) for noncommercial public, educational or governmental programming.
57. “**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.

58. **"Person"** means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit; provided that this term shall not include the Director or DCCA.
59. **"Public Access"** programming means non-commercial programming produced, developed or offered by individuals, groups and organizations for public interest purposes.
60. **"Public Highways"** shall have the meaning set forth in HRS § 264-1, as amended.
61. **"Public Places"** includes any property, building, structure, or water to which the public has a right of access and use.
62. **"SDV"** means switched digital video.
63. **"Service Area"** means those areas described in Section IV.B. of this D&O.
64. **"State"** means the State of Hawai`i, including its political subdivisions.
65. **"Subscriber"** means any Person lawfully receiving any Cable Service.
66. **"TWC"** means Time Warner Cable Inc.
67. **"TWE"** means Time Warner Entertainment Company, L.P.
68. **"UH"** means the University of Hawai`i.
69. **"VOD"** mean video-on-demand.

II. **BACKGROUND**

A. **Applicant OTWC**

OTWC,¹ a Delaware limited liability company, is authorized to conduct business in the State. In 2012, pursuant to D&O No. 355, DCCA authorized the transfer of the State's Cable Franchises for the island of O`ahu, island of Kaua`i, East Hawai`i (Hilo), West Hawai`i (Kona), County of Maui (excluding Lahaina), and Lahaina from TWE to OTWC in connection to an internal reorganization or restructuring of TWC's subsidiaries and operating companies. During the transfer proceedings, OTWC acknowledged that some of the Cable Franchises were subject to renewal and agreed that if the Cable

¹ TWE is OTWC's predecessor-in-interest and was the entity that began this renewal proceeding, as discussed later in this D&O. For purposes of this D&O, unless specifically noted otherwise, any reference to OTWC shall also mean and include TWE.

Franchises were renewed by DCCA, OTWC would fully assume and carry out the renewal requirements proposed in the renewal applications.

In its February 8, 2013 Amended Application for Renewal of the East and West Hawai'i Cable Franchises, OTWC adopted the application and supporting documents submitted by TWE on September 21, 2012, as well as all subsequent submissions, as if it were filed by OTWC itself. OTWC acknowledged and agreed to be bound by the terms, conditions, and requirements of the East and West Hawai'i Cable Franchise Orders and to satisfy all existing obligations of the East and West Hawai'i Cable Franchises. OTWC further agreed to and accepted the program of performance of TWE in connection with the renewal of the East and West Hawai'i Cable Franchises, and fully assume and carry out the program of performance proposed by TWE in its initial Application. OTWC also acknowledged that it was subject to the outcome of the renewal proceeding herein, including any decisions or measures that are taken by the Director as a part of the renewal proceeding that are based in whole or in part on the performance of TWE during prior Cable Franchise terms.

On July 15, 2015, Charter Communications Inc. ("**Charter**") and TWC ("**Transfer Applicants**") jointly submitted their Application for Transfer of Cable Television Franchise and the FCC's Form 394 and various exhibits and attachments ("**Transfer Application**") with DCCA. Through the application, Transfer Applicants requested that the Director approve the transfer of control of OTWC's six (6) cable television franchises throughout the State from TWC to Charter, which is part of an overall national transaction ("**Proposed Transfer**"). Among other things, the Transfer Applicants represented that they have no current plans to request any changes to the current cable franchise D&Os and that Charter has certified that it would use its "best efforts" to comply with the terms of the franchises and applicable State laws and regulations and that it would cure any violations and defaults, if any, as promptly as possible. In addition, the Transfer Applicants stated that the Proposed Transfer would result in more jobs and investments, better broadband service (i.e., no data caps, no usage based pricing, and no modem or early termination fees) and video products, and increased innovation, among other public benefits. They committed to the protection of "open internet"; faster broadband speeds and affordable and unlimited broadband service; investment in customer service; and quicker rollout of advance technology.

By letter issued on August 14, 2015, DCCA accepted the Transfer Application as filed within the time prescribed by Law, among other matters. On the Proposed Transfer DCCA: (1) held nine (9) public hearings on the Transfer Application throughout the State from September 8, 2015, through September 17, 2015; (2) issued numerous information requests; (3) received various comments and arguments for and against the Proposed Transfer; (4) conducted a CAC meeting; and (5) worked towards completing its review and issuing a decision with the time prescribed by federal law.²

² Federal rules require LFAs to act upon an application to transfer ownership of a cable system within 120 days from the submission of a completed FCC Form 394, together with all exhibits and any additional information required by the terms of the franchise agreement or applicable State law. If an LFA fails to act

On December 17, 2015, DCCA issued D&O No. 366 approving the Proposed Transfer, with conditions. In the D&O, DCCA, among other things required OTWC/Charter to:

- Provide a broadband service for low-income consumers in Hawai'i (providing households with children that have a student participating in the National School Lunch Program and seniors, age 65 and older who are eligible and receive federal Supplemental Security Income benefits, with broadband service initially for \$14.99/month, at speeds up to 30 Megabits per second ("Mbps") download, and 4 Mbps upload) within three (3) years of the close of the transaction.
- Invest ten million dollars (\$10,000,000.00) to build out its networks in Hawai'i; and build out one thousand (1,000) new line extensions of its networks to homes in its Hawai'i cable franchise areas within four (4) years of the close of the transaction.
- Provide one thousand (1,000) new public WiFi access points within four (4) years of the close of the transaction, a hundred (100) of these new access points to be deployed at public parks, civic and community centers, and other public open areas and gathering places as specified and directed by DCCA, in consultation with OTWC/Charter.
- Obtain a one million dollar (\$1,000,000.00) performance bond payable to DCCA on, among other matters, a determination that Charter/OTWC failed to comply with the build out requirements or the WiFi obligations of the Decision and Order.
- Within thirty (30) months after the close of the transaction, transition virtually all of OTWC's cable systems to all-digital networks and, upon the conversion, Charter/OTWC shall provide, among other things, subscribers up to two (2) digital transport adaptors or "basic boxes" free of charge for a period of up to two (2) years, depending on the level of service, and make them available at OTWC's customer service centers or for delivery by mail (including pre-paid return service).

While the DCCA completed its review and issued D&O No. 366, the Proposed Transfer is still pending, and the Proposed Transfer has not yet closed.

B. OTWC's Cable System

OTWC's Cable System employs a hybrid fiber-coaxial network. OTWC transmits signals on its system via laser-fed fiber optic cable from origination points known as

within the 120-day period, the transfer request will be deemed granted, unless extended by mutual agreement. See 47 Code of Federal Regulations § 76.502.

“headends” and “hubs” to a group of distribution “nodes” and uses coaxial cable to deliver these signals from the individual nodes to the homes of Subscribers. There are two (2) headends on Hawai`i Island, one (1) located in Hilo and the other in Kona with ten (10) hubs at the following locations: Mauna Lani, Waimea, Honokaa, Kapehu, Pahoa, Volcano, Maku`u, Naalehu, Hawi, and South Kona.

The East Hawai`i Cable System has been upgraded by OTWC to a total bandwidth of seven hundred fifty (750) MHz, and currently provides approximately four hundred sixty-one (461) Standard Digital (“SD”), one hundred eighty (180) HD, and sixty (60) analog Channels of programming, with digital headroom for additional digital Channels. The West Hawai`i Cable System operates at eight hundred seventy (870) MHz, and also currently provides approximately four hundred sixty-one (461) SD, one hundred eighty (180) HD, and sixty-one (61) analog Channels of programming. Both Hawai`i Island Cable Systems currently have two (2) leased Access Channels.

As of December 31, 2015, there were approximately 46,000 OTWC Subscribers on Hawai`i Island. Out of this total, more than half are digital / analog Subscribers and the rest are analog Subscribers.

Among the Channels provided by OTWC are PEG Access Channels, which are managed by Na Leo, the current Hawai`i Island PEG Access Organization. Na Leo is responsible for the cablecasting of access programming on Channels 53, 54 and 55 in the current analog, as well as digital, Channel lineup. Na Leo cablecasts governmental programming on Channel 55. Digital channels 355 (TEC), 356 (TEACH), and 358 (OCUHDL) are Educational Access Channels programmed by the UH, DOE, and HAIS.

OTWC also offers residential and commercial customers high-speed data services (e.g., Road Runner) and digital phone service. OTWC sells its services separately or offers bundled services at a discount to its customers.

C. History of the East Hawai`i and West Hawai`i Cable Franchise Renewal Applications

On April 28, 2009, DCCA received OTWC’s written Notices of Intent to request renewal of its East Hawai`i and West Hawai`i Cable Franchises on the island of Hawai`i (“**Hawai`i Island Franchises**”). OTWC also requested that DCCA consider consolidating the two (2) renewal proceedings and issuing a single consolidated renewal Cable Franchise encompassing both Cable Systems for the island of Hawai`i. On May 8, 2009, DCCA sent written notices to OTWC acknowledging receipt of OTWC’s Notices of Intent to request renewal of its Hawai`i Island Franchises. DCCA also acknowledged OTWC’s request to consolidate the two (2) renewal proceedings and for the issuance of a single consolidated D&O for the island of Hawai`i, but requested that OTWC provide support for its consolidation request.

DCCA initiated the renewal review process and retained Merina to assist in the Cable Franchise renewal process. DCCA ascertained future cable-related community

needs and interests, through various studies and reviews. In April 2010, Merina spoke to different community, government, and educational agencies and representatives in preparation of community needs assessment that included the following ascertainment activities:

- A financial review of OTWC to determine their financial capacity for carrying out future operations on the island of Hawai'i;
- An engineering review of OTWC's Hawai'i Cable Systems, focusing on its current and future capacity; and
- A review of OTWC's past compliance with its obligations under its current Hawai'i Island Franchises.

In addition, DCCA held a series of meetings with various stakeholders and groups in the government, educational, and non-profit sectors having particularly strong knowledge, history, or interest in TWE's Cable Systems on the island of Hawai'i. Merina also created and distributed a community questionnaire and customer satisfaction survey to the public through the public meetings and DCCA's website, as well as through other means. In July 2010, DCCA held two (2) public meetings on the island of Hawai'i (i.e., in Hilo and Kona) to ensure that the public had ample opportunity to provide input on the renewal process. DCCA also solicited written comments from the public.

On October 20, 2010, Merina submitted to DCCA its "Community Ascertainment and Related-Activities Report", which represented Merina's description of the results of the principal ascertainment and related background study activities. After review and analysis of Merina's Report, DCCA informed TWE on June 23, 2011 that the ascertainment process was completed.

On July 20, 2011, TWE submitted its "First Amended Application for Renewal of Cable Television Franchise" for the East and West Hawai'i franchises and Exhibits "A" through "D", along with its application fees to DCCA. TWE also requested consolidation of the East and West Hawai'i Cable Franchises into a single Cable Franchise for the entire Island of Hawai'i for a period of twenty (20) years. On July 27, 2011, DCCA sent a "Request for Clarification of Application" to TWE to obtain additional information necessary for DCCA to process the Application and accept it for filing. On August 2, 2011, TWE filed its Response to DCCA's Request for Clarification. On August 4, 2011, DCCA accepted the Application, as amended by the August 2, 2011 response for filing.

DCCA sent additional information requests to TWE on September 2, 2011. TWE filed its response on September 26, 2011.

Pursuant to HAR § 16-133-30, DCCA held public hearings on the Application with respect to each Cable System to afford the public the opportunity to submit oral or written data, views, or arguments on the Application. The public hearings were held as

follows: September 6, 2011, at Hilo County Council Chambers, and September 7, 2011, at King Kamehameha Kona Beach Hotel. Notice of the hearings was published in The Hawaii Tribune Herald and West Hawaii Today newspapers on August 15 and 22, 2011, respectively. Copies of the Application were made available for review during normal business hours at TWE's locations in Kona and Hilo, and also at CATV. The Application was also posted on DCCA's webpage. DCCA established September 13, 2011, as the deadline for receipt of public comments concerning the Application.

The Application was placed on the agenda for the CAC's December 12, 2011 meeting. The CAC members present discussed the Application and expressed their comments to the Director. The CAC members did not object to the approval of the Application.

Over the course of several months, DCCA and TWE met to discuss the terms of the consolidated renewed Cable Franchise. Because DCCA and TWE were unable to finalize the renewal by December 31, 2011, the parties mutually agreed by letter dated December 14, 2011 to extend the current franchises from December 31, 2011 to March 1, 2012 to allow further discussion and additional time for DCCA to make a decision on the Application. On February 23, 2012, DCCA and TWE further extended the Cable Franchise periods from March 1, 2012 to April 16, 2012.

On March 20, 2012, TWE submitted to DCCA FCC Form 394 with an attached Exhibit "A"³ for each of its Cable Franchises in the State, including the Hilo and Kona Cable Franchises. The Form 394s were filed in connection with the proposed internal reorganization of TWC and resulting transfer of TWE's Hawai'i Cable Franchises to OTWC. Pursuant to D&O No. 355, DCCA approved TWE's request to assign or transfer all of its Cable Franchises in the State to OTWC.

On April 12, 2012, DCCA and TWE entered into another extension of the Cable Franchise periods from April 16, 2012 to May 31, 2012. On May 11, 2012, TWE provided additional information to DCCA on franchise assignee OTWC. On May 25, 2012, DCCA and TWE agreed to a further extension of the franchise period from May 31, 2012 to September 5, 2012. In view of the continuing discussions on franchise provisions and the proposed transfer of TWE's Cable Franchises in the State, DCCA further extended the time for it to make a decision on the Hawai'i Island Franchise renewals from September 5, 2012 to October 23, 2012. On October 17, 2012, DCCA and TWE agreed to another extension until December 7, 2012.

On October 15, 2012, TWC informed DCCA that its internal restructuring closed effective September 30, 2012, and all cable assets in the State were transferred from TWE to OTWC. On February 8, 2013, OTWC submitted an Amended Application to DCCA requesting renewal of the Hawai'i Island Franchises that were issued to TWE, updating the information previously submitted by TWE, acknowledging that DCCA's decision to renew the Cable Franchises would be based in part on the past performance

³ Exhibit "A" included a March 12, 2012 Restructuring Agreement between TWC, TWE, OTWC as well as other TWC subsidiaries and affiliates.

of TWE, and accepting in its entirety the program of performance of TWE included in the Application and all subsequent amendments.

Concurrently, the parties agreed to further extend the Hawai'i Island Franchise periods to November 30, 2014, and then again to March 20, 2015, in light of the Amended Application and continuing discussions on outstanding matters. For these same reasons, the parties also mutually agreed to extend the Hawai'i Island Franchise periods a number of additional times since March 20, 2015, the latest of which was from February 29, 2016 to March 14, 2016.

On November 25, 2013, the FCC granted OTWC's petition for determination of effective competition on the island of Hawai'i and deregulated OTWC's Basic Service rates for the Hawai'i Island Franchises.

On March 4, 2014, OTWC and DCCA, as well as other parties in a proceeding regarding OTWC's Oahu Cable Franchise, reached a stipulated agreement to resolve certain matters raised in proceedings before the Office of Administrative Hearings.⁴

III. DISCUSSION

The Director has carefully considered OTWC's representations in its Application, and supporting materials. The Director has also considered the community needs assessment and comments received from the public, elected officials, and community members. Based on the foregoing, the Director has determined that:

- OTWC has the requisite financial, legal, and technical ability to maintain a Cable System in the State;
- OTWC has substantially complied with the material terms of its existing Cable Franchises and with applicable Law;
- Quality of OTWC's service has been reasonable in light of community needs;
- OTWC's proposal, as modified by this D&O, is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests; and
- OTWC's request to consolidate the East Hawai'i and West Hawai'i Cable Franchises is reasonable in light of OTWC's representations that it will result in more efficient and cost-effective administration.

⁴ See, the March 4, 2014 "Stipulation to Settle All Claims of the Parties", CTV-2013-1, before DCCA's Office of Administrative Hearing of Hawai'i (i.e., this is a stipulated agreement between OTWC, DCCA, 'Ōiēlo Community Media, and the City Council of the City and County of Honolulu ("**March 4, 2014 Stipulated Agreement**")).

As such, the Director hereby grants OTWC's Application for the renewal of its non-exclusive East and West Hawai'i Cable Franchises and for the consolidation of the two (2) Cable Franchises into a single Cable Franchise, subject to the terms, conditions, and requirements specified in this D&O. As a further condition for the consolidation of the two (2) Cable Franchises, within one (1) year from the date of this D&O, OTWC shall provide the same level of service throughout the consolidated Cable Franchise and upgrade the total bandwidth of the East Hawai'i Cable System to at least eight hundred seventy (870) MHz, which is the same bandwidth currently used in the West Hawai'i Cable System. In addition, OTWC shall comply with all provisions and requirements contained in D&O No. 366.

A. Standard of Review

1. Federal Law

Federal franchise renewal guidelines are generally set forth in the Communications Act. Section 541 of the Communications Act allows an LFA to award one or more Cable Franchises within its jurisdiction and also sets forth provisions and requirements that the LFA may impose on a franchisee.

2. State Law

The regulatory powers of the Director regarding Cable Franchises and cable operators are generally set forth in HRS chapter 440G (the Hawai'i Cable Television Systems law), and specifically in HRS § 440G-10. Subchapter 3 of HAR chapter 16-133 sets forth the administrative rules regarding Cable Franchise renewal applications. Irrespective of the technology used to deliver its video programming service, OTWC is a facilities-based provider of Cable Service pursuant to 47 USC § 522, and accordingly, is subject to regulation under HRS chapter 440G.

B. Financial Ability of OTWC

Based on its past record of performance and an analysis of the consolidated financial statements contained in TWC's most recent filing with the Securities and Exchange Commission and OTWC's financial statements for its operations in the State, DCCA concludes that OTWC has demonstrated a sound financial base, maintained consistent profitable operating results, and met the financial requirements to renew the Cable Franchises. OTWC is and has been in a stable financial position with regard to maintaining its level of assets without incurring an appreciable amount of debt.

C. Technical Ability of OTWC

Based upon an engineering review of OTWC's Cable System design and a review of OTWC's performance, DCCA concludes that OTWC's Cable System is technically sound. OTWC's performance and quality levels are within FCC requirements. Furthermore, its operations, maintenance, and repair activities are well

organized and performed with attention to detail and with long-term reliability as a priority.

Local, over-the-air programming carried on OTWC's Cable System is captured/received by antennas and/or fiber links at OTWC's headend in Mililani, and non-local mainland programming is also captured/received via satellite dishes at OTWC's headend in Mililani and/or fiber links from the mainland. Inter-island content is carried to the island of Hawai'i over fiber optic cable that is exclusively used by OTWC for its requirements. First used in 2005, the inter-island fiber provides two-way capabilities, supporting advanced services such VOD and high-speed data.

There is consistency in the operations and a uniform level of quality and reliability across both of the East Hawai'i and West Hawai'i Cable Systems. The engineering review of OTWC's Cable Systems concluded that from a technical perspective, the merging of the two Cable Systems should be a relatively simple transition for OTWC.

D. Operational Ability of OTWC

DCCA concludes that OTWC is capable of operating the consolidated Cable System authorized by this D&O. OTWC has consistently demonstrated since 1995 its ability to operate first its West Hawai'i Cable System, and then its East Hawai'i Cable System in accordance with its Cable Franchise obligations. None of the responses and comments received by DCCA questioned OTWC's ability to operate a consolidated Cable System on the island of Hawai'i.

Since 2001, OTWC has conducted annual customer satisfaction surveys of its Subscribers in the State. The most recent survey results conducted in October 2015 indicated that its Subscribers (including Hawai'i Island Subscribers) were generally satisfied with OTWC's services and OTWC's product service performance. In addition, Merina, as part of the ascertainment of future cable-related community needs and interests, conducted a Subscriber survey of OTWC's Hawai'i Island service. According to survey results, OTWC received an overall rating of "good" and "very good" for its service and performance on the island of Hawai'i.

E. Compliance with the Current Franchise Order

DCCA concludes that OTWC is in substantial compliance with existing Franchise Orders and with applicable Law. In connection with the ascertainment process, Merina reviewed OTWC's compliance with the terms and conditions contained in the various Cable Franchise and letter orders, as well as OTWC's compliance with applicable Law. Based on this review, Merina determined that OTWC was in full or substantial compliance with its Cable Franchise obligations. DCCA notes, however, that OTWC has missed various reporting deadlines. OTWC has stated its goal of reporting back to DCCA on the status of complaints and inquiries regarding its cable service within fourteen (14) calendar days of receipt of any complaint.

F. Customer Service

DCCA concludes that OTWC has generally provided satisfactory customer service to Subscribers. However, there is always room for improvement. OTWC provides Subscribers several means of gaining information, answering questions, placing orders, and reporting service trouble. Customers can access OTWC through the telephone, via e-mail, and in person. OTWC's front-line employees are provided with targeted answers and solutions to solve Subscribers' inquiries quickly and on the first call. In addition, OTWC has increased the number of customer service representatives handling calls at its Hilo office for Hawai'i Island Subscribers and has opened up another call center on the west side of Hawai'i Island. While OTWC is trying to handle service calls locally, OTWC also utilizes the services of offshore (i.e., outside the State) call centers to handle overflow calls of a non-technical nature, and each call center has the means to route high call volumes to other call centers.

Despite OTWC's efforts, DCCA has received calls from consumers about delays in reaching a customer care representative or scheduling an in-home repair visit, which are discussed further in Section IV.Q.1. of this D&O. DCCA, therefore, also concludes that specific terms regarding customer service requirements are warranted.

G. OTWC's Proposal to Meet the Future Cable-Related Community Needs and Interests of Hawai'i Island Cable Subscribers

Finally, DCCA determines that OTWC's proposal to meet the future cable-related community needs and interests of Hawai'i Island Subscribers, as modified in this D&O, is reasonable. In its Application, subsequent amendment, responses to information requests ("IRs"), and discussions with DCCA, OTWC made various representations and/or commitments in order to address the future cable-related needs of OTWC's Hawai'i Island Subscribers. Although all representations made by OTWC in connection with its Application, subsequent amendment and responses to IRs are considered material by the State, some of the most significant representations include OTWC's commitment to:

- Ensure that consolidation of the East Hawai'i and West Hawai'i Cable Franchises would result in more efficient and cost-effective administration of a single Cable Franchise by DCCA and in the operations of OTWC, and ensure that all Hawai'i Island Subscribers would benefit from the terms of a single consolidated Cable Franchise.
- Continue to improve and expand its Cable System and services and continue the transition from analog to digital distribution technology in order to recover bandwidth, increase operational efficiency, and permit expanded video and data services for its customers. OTWC has also agreed to expand its high definition programming, and increase access to digital VOD. DCCA further notes that while broadband is not a service governed by the terms of this Cable Franchise, D&O No. 366, which

approved the transfer of control of OTWC's Cable Franchises in the State to Charter from TWC notes at page 15 that "Within twelve (12) months of the closing of the Proposed Transaction, Charter/OTWC shall bring its base level 60 Megabits per second ("Mbps") broadband service to Hawaii consumers in areas where all-digital Cable Systems are available."

- Continue to provide operating funding for the Hawai'i Island PEG Access Organization at the current level of THREE PERCENT (3%) of OTWC's Gross Revenues as required under its previous Cable Franchise. OTWC proposes to provide annual capital payments to the Hawai'i Island PEG Access Organization totaling ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) for the East and West Hawai'i Cable Franchises (or a total of \$120,000.00 for a consolidated Hawai'i Island Franchise).
- Provide PEG Access Channels and adjust the number of PEG Access Channels as warranted by the availability or deployment of technology, the level of demand for PEG Access programming, and the long-term best interests of Hawai'i Island Subscribers as a whole. Previously OTWC migrated two (2) Educational Access Channels to digital format in December 2011 and January 2012, and has made available one (1) VOD Educational Channel to Hawai'i Island Subscribers. OTWC also plans to migrate the other PEG Access Channels, as with other Channels on its Cable Systems, to digital distribution during the Cable Franchise term.
- Make available to Hawai'i Island Subscribers the following PEG Access Channels, in addition to the existing PEG Access Channels:
 - one (1) digital Educational Access Channel to UH Hilo;
 - two (2) statewide Governmental VOD Channels;
 - one (1) Government Linear channel;
 - one (1) statewide PEG VOD Channel; and
 - one (1) statewide PEG Linear Channel.
- Convert its analog bandwidth to a digital system over time. During the migration of analog Channels to digital Channels, OTWC plans to provide upon request, at no charge, basic set-top boxes or similar devices to analog Subscribers who require them to continue to view linear analog PEG Access Channels that have transitioned to digital format, for as long as OTWC offers analog service and as long as the Subscriber maintains the same level of analog service.
- Continue to support the INET system and work collaboratively with the State in the extension, performance, and design of the INET.

- Continue to provide ONE PERCENT (1%) of its annual Gross Revenues to HPTF, dba PBS Hawaii (the successor to the Hawaii Public Broadcasting Authority).
- Continue to expand the reach and coverage of Local Origination Programming, such as the programming on OC 16, including high school sporting events and local entertainment programs.

OTWC is seeking a renewed Cable Franchise term of twenty (20) years. OTWC's Application observes that the future will likely bring a progression of new developments, services, and associated cable television technology. OTWC's access and distribution networks therefore need to evolve and be upgraded to deliver the features that Subscribers demand through a combination of one or more technologies.

In its Application, OTWC contends that its network architecture is sufficiently flexible and extensive to support its Subscribers' current requirements. OTWC looks to the promise of digital technology, and concludes that, as new services are developed and delivered to Subscribers over the next several years, OTWC will be able to utilize existing available bandwidth more efficiently without having to invest in costly upgrades. OTWC expects to expand HD offerings to approximately one hundred fifty (150) HD channels.

OTWC has deployed SDV, which makes more efficient use of network capacity by transmitting only those digital Channels that are being watched to a Subscriber at any given moment. Because not all Channels are being watched at the same time by any one Subscriber, SDV technology sends the digital video in a more efficient manner so that freed-up bandwidth may be utilized for other purposes. Digital bandwidth recovery statewide would expand OTWC's SDV capacity from twenty (20) to twenty-eight (28) SDV channel slots. Once completed, approximately one hundred (100) HD and one hundred eighty (180) SD video channels would be delivered to service groups of approximately 400-500 digital tuners on an on-demand basis.

In OTWC's hybrid fiber-coax distribution system, digital Channels are transported from OTWC's headends in Hilo and Kona to distribution hubs. Fiber optic cable extends from the distribution hubs to nodes, and from these nodes, digital signals are transported to homes on coaxial cables. At the distribution hubs, Channels for SDV are reserved for groups of homes. Each digital Channel has its own Channel number, and a Subscriber sends a request for a specific Channel via a set-top converter box or TiVo tuning adaptor to the distribution hub. If a Channel is not already being transmitted on the coaxial line, the distribution hub sends the digital Channel to Subscriber via the fiber optic node.

OTWC's Subscribers currently receive service through a combination of digital and analog transmissions. Digital Subscribers using a OTWC-provided set-top VOD box or similar device generally have access to an interactive program guide, interactive Channels, VOD services, music Channels, seasonal sports packages, premium

services (e.g., HBO), caller ID on television (with digital phone service), and digital video recorders (“DVR”). OTWC also offers whole house DVR and remote DVR management, which allows customers who subscribe to the DVR to program their DVRs over the Internet. OTWC also offers expanded VOD technology to provide Subscribers enhanced services such as “Start Over”, which allows Subscribers using a OTWC-provided set-top VOD box or similar device can restart select “in progress” programs and “Look Back”, which allows Subscribers to view previously aired programs that they have missed. In addition, OTWC Subscribers can stream live TV plus watch hours of TV shows and movies on various platforms and devices, including smart phones, tablets, and personal computers.

OTWC has also introduced a system-wide “tru2way” technology, a set of hardware and software specifications that creates a common platform for set-top box applications regardless of the box’s operating system and permits the integration of set-top box functionality into televisions. With tru2way technology, OTWC’s digital Subscribers will be able to receive OTWC’s two (2) -way video services through an OTWC-approved digital set-top box, or through tru2way-enabled televisions and other devices.

IV. TERMS AND CONDITIONS OF THE CABLE FRANCHISE

A. 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 easements for the construction, use, operation, and maintenance of a Cable System for a fixed period. This D&O confers no right, title, or interest in any public right-of-way beyond those expressly conferred herein. The privilege of a Cable Franchise also carries with it associated obligations. OTWC recognizes that there are certain responsibilities it assumes when issued a Cable Franchise. These include operating a Cable System that is reliable, responsive, and responsible to the public it serves, providing the widest possible diversity of information sources and services to its Subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and PEG Access as requested by the Director.

By accepting renewal of its franchises, OTWC: (a) acknowledges and accepts the State’s legal right to issue and enforce the terms, conditions, and requirements of this D&O; (b) agrees that it shall not oppose intervention by the State in any proceeding affecting the enforcement of its rights under this D&O; (c) accepts and agrees to each and every term, provision, condition, and requirement contained herein; and (d) agrees that the renewal of its Hawai’i Island Franchises were granted pursuant to processes and procedures consistent with applicable Law, and agrees that it shall not raise any claim or defense to the contrary.

OTWC acknowledges that it shall be bound by the terms, conditions, and requirements of this D&O, and its officers and directors shall be responsible for directing its operations; however, local OTWC personnel shall continue to manage and be responsible for day-to-day operations of the Cable System in the State.

B. Service Area

OTWC's request to consolidate the East Hawai'i and West Hawai'i Cable Franchises into a single Cable Franchise covering the entire island of Hawai'i, County of Hawai'i, is **granted** on the condition that the quality of service will be the same for all areas of Hawai'i Island.

During the term of this Cable Franchise, OTWC shall make available to all residents on the Island of Hawai'i, its Cable Service, which shall include the minimum programming specified in the following Section IV.C. of this D&O. OTWC shall not deny service to any group of potential Subscribers because of the income of the residents of the local area in which such group resides, provided the local area otherwise meets OTWC's twenty-five (25) homes per mile line extension policy and the feasibility provisions set forth in Section IV.R.6. of this D&O.

C. Minimum Programming Requirements

1. Basic Service Programming

The following programming shall be provided on the basic service tier:

- a. Public Access programming;
- b. Educational Access programming;
- c. Governmental Access programming; and
- d. Public non-profit stations with national programming and broadcast television stations as required by the FCC or applicable Law.

Notwithstanding any other provision to the contrary, OTWC shall comply with federal programming requirements, as may be amended from time to time, and shall provide thirty (30) calendar days' advance written notice to the Director and Subscribers of any proposed changes to the manner in which the Basic Service programming list above is carried, including, but not limited to, the scope and nature of its availability, the technology used to transmit the programming, and its channel placement. OTWC shall have the right to petition the Director for modifications to the programming requirements for the Basic Service programming as warranted by the development of technology or other factors during the term of the franchise.

2. Other Programming

In addition to the Basic Service programming, OTWC shall have the discretion to offer other programming and tiers of programming to Subscribers; provided that OTWC shall, at a minimum, include the Basic Service programming in the packages offered to Subscribers. Except as otherwise provided in this D&O, OTWC shall provide at least thirty (30) calendar days' written notice to the Director and provide reasonable notice to Subscribers of any proposed programming changes to its other programming or tiers of programming. OTWC shall not be required to obtain the Director's prior written approval to change the programming in these other tiers. OTWC shall have the right to petition the Director for modifications to the requirement of the inclusion of the Basic Service programming in all Cable Service packages as warranted by the development of technology or other factors during the term of this Cable Franchise.

3. Leased Commercial Access

Consistent with the Communications Act, within thirty (30) days after the effective date of this Cable Franchise, OTWC shall file with the Director and provide a published schedule of terms, conditions, and charges for the leasing of its Cable System Channels for commercial use.

D. Local Origination Programming

OTWC airs locally produced original programming that currently addresses such subjects as local news, surf conditions, weather, cooking, pet care, beauty contests, healthy living, and craft demonstrations, and are subject to change based on subscriber interests. OTWC indicated that it plans to expand its reach and coverage of local high school and college sporting events, mostly in HD programming. OTWC also supports local producers and communities for the production of concerts and special programs.

The Director recognizes that Local Origination Programming is a significant benefit to the community, providing for diversity in programming with an emphasis on local issues and concerns. OTWC has made a commitment to continue Local Origination Programming. The Director commends OTWC for its efforts to deliver a broad range of diverse entertaining, informative, and educational programming by supporting Local Origination Programming, and requires that OTWC continue to reserve one Channel for Local Origination Programming as a condition of this D&O provided that OTWC continues to produce and broadcast Local Origination Programming on any island.

E. PEG Access

1. Designation or Selection of PEG Access Organization(s)

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 Channels, and receive the Access Operating Fee and Capital Fund Payments.

OTWC shall work cooperatively with the Director or the Director's designee(s) regarding PEG Access on Hawai'i Island and in the coordination and operation of the PEG Access Channels.

If, at any time, a new Director's designee is selected by the Director to provide PEG Access for the Hawai'i Island franchise (other than the Hawai'i Island PEG Access Organization designated as of the date this D&O is issued), OTWC shall bear the reasonable cost, not to exceed ONE HUNDRED THOUSAND AND NO/DOLLARS (\$100,000.00), to provide a connection to the main facility of that Director's designee.

If the Director's designee(s) relocates its main facility, it shall be solely responsible for all costs required to re-establish connecting its new main facility to OTWC's headend. OTWC may recover time and material costs only.

2. PEG Access Channels

OTWC shall continue to designate and make available to the Director or the Director's designee(s) at no cost to the State, the Director, or the Director's designee(s) at least three (3) Channels for PEG Access programming.

For the PEG Access Channels, OTWC shall provide and/or continue to maintain a connection from its headend to the Director or Director's designee(s) Hilo facility. OTWC shall be solely responsible for all costs and maintenance of each connection and shall also be responsible for the equipment to activate each connection. OTWC shall be responsible for providing, replacing and/or updating equipment and software at its headend and facilities so that there shall be no ongoing recurring costs to the State, DCCA, or the Director or Director's designee(s), subject to the provisions herein.

The cost for any facilities, equipment, and software to implement and operate each PEG Access Channel, including equipment required to utilize the connection provided by OTWC such as any needed signal conversion equipment or hardware, shall be borne by the entity or entities that are responsible for managing the PEG Access Channels.

In the future, if alternate content delivery systems are adopted by OTWC, upon mutual request and consent of both OTWC and the Director or the Director's designee(s), OTWC shall adopt the new content delivery system in place of any PEG Access Channel and be responsible for the cost for the conversion to the new content delivery system.

3. Additional Digital PEG Access Channels

Pursuant to the March 4, 2014 Stipulated Agreement, OTWC shall also make available one (1) statewide VOD channel to be utilized by the Director or the Director's designee(s) ("**PEG VOD Channel**"), and one (1) linear statewide PEG Access Channel ("**PEG Linear Digital Channel**") to be shared by the Director or the Director's designee(s). OTWC shall make these digital PEG Access Channels available no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.

The issuance of the letter order and implementation of the PEG VOD Channel and the PEG Linear Digital Channel are dependent upon agreement by the Director or the Director's designee(s) regarding the operation, cost, and management of these Channels.

OTWC agrees that it will not object to the Director's or the Director's designee(s)' use of the same PEG Access Facilities and Equipment to upload programming on both the Government VOD channel and the PEG VOD Channel.

a. PEG VOD Channel

DCCA intends to have the PEG VOD Channel be jointly utilized by the Director or the Director's designee(s) and to have the Director or the Director's designee(s) in each Cable Franchise area to be responsible to encode, upload, manage, and operate its own content, including, but not limited to, encoding the content to OTWC's VOD specifications, managing the content metadata to OTWC's VOD specifications, and providing the content to OTWC.

Content on the PEG VOD Channel shall be uploaded via an Internet connection for storage and distribution (or by such other means as mutually agreed to by DCCA and OTWC), and OTWC shall be responsible for all costs and equipment at its headend and facility, including the connection required to receive the content. If, in the future, another type of connection is required to upload content to the PEG VOD Channels, OTWC shall provide that connection at no cost to the State, DCCA, Counties, Director, or the Director's designee(s), upon request.

DCCA shall require that the Director or the Director's designee(s) be responsible for the cost of the Internet connection to its facility and the cost of the implementation including but not limited to the software and hardware required to activate and use the connection at its facility, and be required to upload and manage the content on the PEG VOD Channel as provided herein. If, in the future, another type of connection is required to upload content to the PEG VOD Channels, OTWC shall provide that connection at no cost to the State, DCCA, Counties, Director, or the Director's designee(s).

DCCA and OTWC do not intend for the PEG VOD Channel to be used as an archive with unlimited storage capacity, and DCCA intends to require that its content shall be actively managed by the Director or the Director's designee(s) consistent with this intent. However, OTWC shall provide, two hundred (200) hours of storage capacity for the PEG VOD Channel; provided that the Director or the Director's designee(s) may purchase additional storage capacity, at cost, from OTWC.

b. PEG Linear Digital Channel

DCCA intends to have the statewide PEG Linear Digital Channel be jointly utilized by the Director or the Director's designee(s) and to have the Director or the Director's designee(s) in each franchise area be responsible to encode, manage, and operate its own content, including, but not limited to, uploading the content to the Director's designee(s) on Oahu, in a manner mutually agreed upon by all the Director's designees(s) throughout the State. DCCA intends to have all of the Director's designee(s) to be responsible for the costs of any facilities, software, and equipment to implement and operate the PEG Linear Digital Channel as provided herein.

DCCA intends for the Director's designee(s) to be responsible for the content of the PEG Linear Digital Channel, and to partner together with other designees to implement this Channel and to agree on program scheduling and operational policies. DCCA shall work with the designees towards this end. At such time that an agreement is reached regarding the Channel by the Director's designee(s), the Director shall issue a letter order instructing OTWC to proceed with the provisioning of this Channel.

OTWC shall be solely responsible for all costs and maintenance of the connection required to feed the scheduled content for the statewide PEG Linear Digital Channel from the Director's designee(s) on Oahu existing main facility, to OTWC so that there will be no ongoing reoccurring costs to the State Government, or the Director or the Director's designee(s). If the Director's designee relocates its main facility, it shall be solely responsible for all costs required to re-establish the connection described herein. OTWC may recover time and material costs only.

4. Government Access Channels

Pursuant to March 4, 2014 Stipulated Agreement, OTWC shall also make available two (2) VOD Channels ("**Government VOD Channels**") and one (1) linear digital Channel ("**State Government Linear Channel**") to the State Government and the various County governments (collectively "**Government Channels**").

OTWC shall make available the following Channels:

- a. One (1) VOD Channel shall be dedicated collectively to the State Government (i.e., Legislature, Office of the Governor, Executive Branch agencies, Judiciary, etc.) that shall be referred to as the "**State Government VOD Channel.**"

OTWC shall make the State Government VOD Channel available no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.⁵

- b. One (1) VOD Channel shall be dedicated collectively to County governments (i.e., City and County of Honolulu, County of Maui, County of Hawai'i, and County of Kauai) that shall be referred to as the "**County Government VOD Channel.**"

OTWC shall make the County Government VOD Channel available no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.

- c. One (1) statewide linear Channel dedicated to State Governmental programming (i.e., by the Legislature, Office of the Governor, Executive Branch agencies, Judiciary, etc.) that shall be referred to as the "**State Government Linear Channel.**"

OTWC shall make the State Government Linear Channel available no later than six (6) months after the issuance of a separate letter order by DCCA.⁶

The Government Channels shall be considered to be PEG Access Channels that are dedicated to government programming; provided that the Director or the Director's designee(s) shall not be prohibited from producing or airing government programming on other Channels. OTWC shall coordinate with the Director or Director's designee(s) on the operation and management of the Government Channels. Content on the Government VOD Channels shall be uploaded via the Internet for storage and distribution (or such other means as mutually agreed to by DCCA and OTWC), and OTWC agrees to be responsible for all costs and equipment at its headend and facility to receive the content.

DCCA shall request that the Director's designee(s) on Oahu be responsible to organize, operate, and maintain the technical operations of the State Government VOD Channel.

The Director's designees shall be responsible for the cost of the Internet connection to each of its facilities, and the cost of any facilities, software, and equipment to prepare and upload content, as related to each of its respective franchise areas, to the State Government VOD Channel as provided herein, including, but not limited to,

⁵ On October 3, 2014, the Director sent OTWC a letter directing it to make available the State Government VOD Channel no later than one hundred twenty (120) calendar days after the date of the letter.

⁶ On October 3, 2014, the Director sent OTWC a letter directing it to make available the State Government Linear Digital Channel no later than six (6) months after the date of the letter.

encoding content to OTWC VOD specifications, managing the content metadata to OTWC specifications, and providing the content to OTWC. If, in the future, another type of connection is required to upload content to the VOD Channels, OTWC shall provide that connection at no cost to the State, DCCA, Counties, Director, or the Director's designee(s).

DCCA shall also request that the Director or the Director's designee(s) be responsible to organize, manage, and maintain the technical operations of the County Government VOD Channel as related to each of its respective franchise areas, including, but not limited to encoding the content to OTWC VOD specifications, managing the content metadata to OTWC specifications, and providing the content to OTWC. DCCA also intends for the County of Hawai'i to be responsible for the content being provided for its storage allocation on the County Government VOD Channel, and to work and partner with the Director or the Director's designee(s) to implement this County Government VOD Channel. DCCA shall work with County representatives to implement the County Government VOD Channel.

DCCA shall request that the Director or the Director's designee(s) on Oahu be responsible to organize, manage, and maintain the technical operations of the State Government Linear Digital Channel and shall be responsible for the costs of the implementation (i.e., the software and equipment required to activate and operate this Channel) at its facility and manage the content on the State Government Linear Digital Channel as provided herein. OTWC shall be solely responsible for all costs and maintenance of the connection required to feed the scheduled content for the State Government Linear Digital Channel from the Director or the Director's designee(s) on Oahu to OTWC so that there will be no ongoing reoccurring costs to the State, DCCA, Counties, the Director, or the Director's designee(s).

DCCA intends for the Hawai'i State Legislature, the Office of the Governor, Executive Branch agencies, and the Judiciary to be responsible for the content of the State Government VOD Channel and the State Government Linear Channel, and to partner with the Director or the Director's designee(s) to implement these Government Channels and establish programming and scheduling policies. DCCA shall work with the governmental entities towards this end.

DCCA and OTWC do not intend for the Government VOD Channels to be used as an archive with unlimited storage capacity, and their content shall be managed by the governmental entities consistent with this intent. However, OTWC shall provide two hundred (200) total hours of storage capacity for the State Government VOD Channel and two hundred (200) hours of storage capacity for the Hawaii County Government VOD Channel, for a total of four hundred (400) hours for the State Government VOD and Hawaii County Government VOD Channel; provided that the State and/or the County may purchase additional storage capacity, at cost, from OTWC.

5. VOD Channel Equipment Training

OTWC shall provide initial training to the Director or the Director's designee(s) on the operation of the VOD equipment at a mutually agreeable date and time at no cost to the State, DCCA, the Director, and/or the Director's designee(s). Such training shall be offered by OTWC to the Director or the Director's designee(s) at a mutually agreeable date, but no later than within sixty (60) calendar days of the installation and implementation of the VOD equipment and system. OTWC shall not be required to provide ongoing training to new employees of the Director or the Director's designee(s) on the operation of the VOD equipment; however, OTWC shall be responsible for providing, at no cost, additional training when changes are made to the VOD system, which in turn, require a change to the original processes and/or procedures being performed by the Director or the Director's designee(s) as part of its responsibilities. Such additional training shall be offered by OTWC to the Director or the Director's designee(s) at a mutually agreeable date, but no later than within sixty (60) calendar days after the date the changes were made to the VOD system.

6. Educational Access Channels

There are four (4) Educational Access Channels currently managed by UH and DOE: two (2) for the UH and two (2) for the DOE and HAIS (currently one (1) DOE VOD Channel is not activated). The Educational Access Channels shall be dedicated to accredited educational programming.

Upon request by the University of Hawai'i at Hilo ("**UH Hilo**"), OTWC shall make available an additional digital Channel or alternate content delivery service dedicated to deliver content and live video with audio, provided by the UH Hilo, utilizing technology already deployed on OTWC's cable television distribution system, at the same technical quality as local broadcasters that are affiliates of major national broadcast networks to Hawai'i Island Subscribers. OTWC shall make available this Channel no later than one hundred twenty (120) calendar days after the issuance of a separate letter order by DCCA.

In conjunction with this implementation of this digital Channel or alternate delivery service, OTWC shall provide and maintain a video transport connection from UH Hilo to OTWC's headend facility on Hawai'i Island.

OTWC shall provide and maintain all equipment to activate the video transport connection for this digital Channel or alternate content delivery service to the selected sites at no cost to the State, UH, Hawai'i Island PEG Access Organization, Director, or Director's designee(s). The Hawai'i Island PEG Access Organization or the Director's designee(s) will continue to maintain the signals from any of the Educational Access Channels that currently pass through its facilities to the cable operator(s)' headends and to continue to assume the cost of any electrical power for these connections.

DCCA reserves the right to address the direct payment of funds already collected but not distributed as of the Effective Date to support the Educational Access Channels through the PEG designation process under HRS § 440G-8.3 (as amended) and/or through subsequent D&Os.

7. Additional PEG Access Channels

If additional PEG Access Channels are allocated on any other island, upon reasonable request and supported by sufficient justification including an ongoing proposed schedule of PEG Access programming, the Director or the Director's designee(s) and/or educational agencies may request the Director to allocate additional PEG Access Channels. After requesting and reviewing input from relevant stakeholders, the Director shall have the sole discretion to determine whether to provide any additional PEG Access Channels.

8. Two-way PEG Access Connectivity Capacity

OTWC shall provide at no cost to the State, the Director, or the Director's designee(s), a bi-directional connection between the Hilo and Kona facilities of the Director or the Director's designee(s), that is capable of transporting video program content files and live video and audio at the same technical quality as local broadcasters that are affiliates of major national broadcast networks.

OTWC and the Director or the Director's designee(s) shall determine the implementation methodology. Consistent with D&O No. 357, OTWC shall be responsible for the video transport connection between the Hilo and Kona sites and shall provide and maintain all equipment to activate this connection to the selected sites at no cost to the State, the Director, or the Director's designee(s). The Director or the Director's designee(s) shall pay all equipment and software costs at both ends (i.e., fiber termination device and/or any needed signal conversion equipment or hardware) to utilize the connection provided by OTWC.

The connection specified in the preceding paragraph shall be contingent on OTWC's ability to implement the connection without incurring unreasonable costs, and/or the absence of situations or conditions outside of OTWC's control that prevent the connection from being made. If OTWC determines that the connection cannot be timely completed, OTWC shall notify DCCA within seven (7) calendar days from the date of that determination, specifying in detail why the connection cannot be completed.

If DCCA agrees with OTWC's reasons that the connection cannot be timely completed, the Director or the Director's designee(s) shall have the option of selecting an alternate site, or delaying the designation of an alternate site until such time that a suitable site can be designated. If DCCA disagrees with OTWC's assessment of why it is not able to timely complete the connection, DCCA shall notify OTWC of the disagreement, and OTWC shall have the opportunity to present additional information to DCCA, if warranted. DCCA, after consideration of OTWC's reasons why it believes the

connection cannot be timely completed without incurring unreasonable cost, shall have sole authority to determine whether the connection can be made.

If the Director or the Director's designee(s) moves from a facility that has been previously connected by OTWC, the Director or the Director's designee(s) shall be responsible for the cost of relocating the connection from its new facility to OTWC's Hilo headend. OTWC shall provide the connection at cost (i.e., OTWC may recover time and material costs only).

9. Two-way Connectivity from Hawai'i State Legislature to the Director or the Director's designee(s)

OTWC shall provide connectivity from the Hawai'i State Legislature on Oahu, to the Hilo facility of the Director or the Director's designee(s), that will provide the same level of video transport, capacity, or same number of feeds from the Hawai'i State Legislature as what is fed to the Director or Director's designee(s) facility on Oahu from the Hawai'i State Legislature at the State Capitol in Honolulu.

OTWC shall provide a bi-directional connection within ninety (90) calendar days after issuance of a letter order by DCCA to two (2) of the Director or Director's designee(s) facilities on Hawai'i Island for the purpose of allowing residents to view Legislative proceedings and provide oral testimony through the use of video teleconferencing technology. These connections are to be provided to the selected sites at no cost to the State, the Director, or the Director's designee(s). The Director or the Director's designee(s) shall pay for equipment and software costs including any needed signal conversion equipment or hardware, to utilize the connection provided by OTWC at its end of the connection.

The connection specified in the preceding paragraph shall be contingent on OTWC's ability to implement the connection without incurring unreasonable costs, and/or the absence of situations or conditions outside of OTWC's control that prevent the connection from being made. If OTWC determines that the connection cannot be timely completed, OTWC shall notify DCCA within seven (7) calendar days from the date of that determination, specifying in detail why the connection cannot be completed.

DCCA, after consideration of OTWC's reasons why it believes the connection cannot be timely completed without incurring unreasonable cost, shall have sole authority to determine whether the connection can be made.

10. Hawai'i County Government Connectivity

OTWC shall provide the following connections sufficient to transport live HD video and audio from the Hawai'i County Council Chambers in Hilo to the Director or Director's designee(s) currently existing (as of the date of the issuance of this D&O) Hilo facility, and from the Council Chambers at the West Hawai'i Civic Center in Kona to the Director or the Director's designee(s) currently existing (as of the date of the issuance of

this D&O) facility in Hilo, no later than six (6) months from the date of the issuance of a separate letter order by the Director, which shall be issued upon notification by the County that it has procured the necessary equipment to organize, operate and maintain the technical operations for the connection and is ready to proceed with implementing the connection.

OTWC, the Director or the Director's designee(s), and Hawai'i County Government shall determine the implementation methodology. OTWC shall be responsible for the video transport connections to the selected sites. The Director, the Director's designee(s) or Hawai'i County Government shall provide and maintain all equipment to activate these connections to the selected sites at their cost. The intent of this connection is to allow the Hawai'i County Council proceedings to be cablecast live. The Hawai'i County Government shall be responsible to organize, operate, and maintain the technical operations for this connection and manage the content on this connection. However, DCCA intends for the Director or Director's designee(s) to partner with the Hawai'i County Government to utilize these connections to allow residents in rural areas to view live County Government proceedings.

The connection specified in the preceding paragraph shall be contingent on OTWC's ability to implement the connection without incurring unreasonable costs, and/or the absence of situations or conditions outside of OTWC's control that prevent the connection from being made. If OTWC determines that the connection cannot be timely completed, OTWC shall notify DCCA within seven (7) calendar days from the date of that determination, specifying in detail why the connection cannot be completed.

DCCA, after consideration of OTWC's reasons why it believes the connection cannot be timely completed without incurring unreasonable cost, shall have sole authority to determine whether the connection can be made.

11. Unused Time

Pursuant to section 531(d) of the Communications Act, OTWC 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 OTWC; provided that any use of such PEG Access Channel(s) by OTWC 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 OTWC 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.

12. Applicability of the March 4, 2014 Stipulated Agreement

Through the March 4, 2014 Stipulated Agreement (or "**Stipulation**"), the parties to that proceeding settled matters relating to OTWC's Oahu cable franchise as documented in the Stipulation and addressed various matters, including but not limited, to Franchise Required Channels ("**FRCs**") that OTWC was obligated to make available to each county's mayor and county council through OTWC's Oahu cable system, including the Mayor of the County of Hawai'i and the Hawai'i County Council.⁷ In short, given OTWC's agreement to provide Government Channels (i.e., one (1) VOD Channel dedicated collectively to the State government, one (1) VOD Channel dedicated collectively to County governments, and one (1) linear digital Channel dedicated collectively to the State government) as set forth in the Stipulation, it was agreed that OTWC no longer would be required to make the FRCs available to the State Government and various County Governments as described in Section IV.E. of D&O No. 346, OTWC's Oahu Franchise Order and, that with respect to OTWC's neighbor island cable franchises, including Hawai'i island, OTWC would no longer be required to provide FRCs to the other County governments when those franchises were renewed.⁸ Related to the above, the parties also reached certain agreements regarding the provision of PEG Access Channels (i.e., one (1) statewide PEG VOD Channel to be utilized by the Director or the Director's designee and one (1) statewide PEG Linear Digital Channel to be shared by the Director or the Director's designee(s)); set-top boxes to view the PEG Access Channels, including the Government Channels; and the Educational Access Channels.

Given the agreements reached and set forth in the Stipulation, DCCA and OTWC agree to adopt the provisions of the Stipulation herein, but only relating to: i) the availability of the Government Channels, PEG VOD Channel and PEG Linear Digital Channel on OTWC's Hawaii island System; ii) the availability of the set top boxes to Hawaii island subscribers to view the PEG Access Channels, including the Government Channels (as governed by Section III.C. of the Stipulation); and iii) the Capital Fund disclosure and review provisions of Section III.E. of the Stipulation; provided, however, that for purposes of clarity, DCCA and OTWC agree that: i) nothing in the Stipulation as adopted herein shall require OTWC to make available any additional Government Channels, PEG VOD Channels or PEG Linear Digital Channels for the Hawaii Island system beyond those provided on Oahu pursuant to the Stipulation; ii) nothing in the Stipulation as adopted herein shall require OTWC to provide any funding to the Hawaii island PEG Access Organization as a result of the availability of the Government Channels, PEG VOD Channels and the PEG Linear Digital Channel on the Hawaii Island

⁷ See D&O No. 346, issued on January 14, 2010, at 17.

⁸ See Stipulation at 3-4.

System; and iii) nothing in the Stipulation as adopted herein shall govern the amount or methodology of calculating the Capital Fund Payments to the Hawaii island PEG Access Organization or the Director's Designee(s). The Stipulation is attached hereto as Exhibit "A".

F. Requirements for PEG Access Channels

1. Technical Quality

The technical quality of all PEG Access Channels, to the extent within OTWC's control, shall be at least equivalent to the technical and picture quality of the local broadcast television stations on Oahu, which are Affiliates of major national broadcast networks and satisfy the requirements contained in applicable provisions of the HAR. Subject to FCC regulations, the Cable System shall be so constructed and operated that, to the extent within OTWC's control, there is no significant deterioration in the quality of PEG Access Channel signals or leased access Channels signals resulting from the transportation of the video signal, either upstream or downstream, as compared with any other Channel on the Cable System. Deterioration refers to any signal problem, including but not limited to ghost images, other interference, distortions, dropouts, freezes, and delays.

2. 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 D&O or directed by the Director. Although DCCA acknowledges that OTWC may determine Channel placement at its sole discretion, OTWC agrees to assign each PEG Access Channel its own dedicated Channel number (i.e., the current Channel numbering is 52, 53, and 54) and shall not move the PEG Access Channels without at least thirty (30) calendar days' prior written notification to the DCCA and the PEG Access Organization. OTWC, however, shall use its best efforts to provide more than thirty (30) calendar days' prior notice to Subscribers before moving a PEG Access Channel to another Channel number. OTWC agrees to keep all PEG Access Channels reasonably contiguous in the Channel lineup. Upon mutual agreement to transmit PEG Access Channels in HD format, OTWC shall place the HD format PEG Access Channels in reasonable proximity to each other and shall meet with DCCA at its request to discuss the placement of those channels in relation to the local Broadcast HD Channels.

OTWC shall also consult and work directly with the Director or the Director's designee(s) on moving a PEG Access Channel to another Channel number.

OTWC 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.

3. Promotional “Tune-in,”⁹ Public Service Announcements

In addition to any public service announcements (“PSAs”) that OTWC may be required to provide pursuant to any State, federal, or county Law or agreement, OTWC shall cablecast on its Channels, without charge to the State, the Director, or the Director’s designee(s), at least 1,800 PSAs per calendar year, commencing July 1, 2016, each thirty (30) seconds in length relating to the subjects below. The promotional PSAs shall be allocated approximately as follows:

- a. The Director or the Director’s designee(s) (500 PSAs);
- b. Executive Branch (Governor’s Office and Lieutenant Governor’s Office) and Legislature (Senate and House of Representatives) (total of 400 PSAs);
- c. Mayor of the County of Hawai`i and Hawai`i County City Council (total of 400 PSAs);
- d. DOE and UH (400 PSAs); and
- e. DCCA Director (100 PSAs).

The Director, the Director’s designee(s), and governmental entities shall work collaboratively with OTWC to maximize the use of the allocated PSAs. The airing of the PSAs shall be on any Channel(s) that OTWC is permitted to insert commercial or promotional segments and otherwise in a manner consistent with OTWC’s PSA policy. OTWC 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 OTWC shall exercise its discretion in a manner that provides all Subscribers with reasonable opportunities to see these advertisements.

The Director, the Director’s designee(s), or governmental entities shall be responsible for creating their respective PSAs and shall provide OTWC with cablecast-ready PSAs for airing.

G. Developing Technologies

1. OTWC’s Digital Migration

OTWC represents that it plans to continue its commitment to efficiently allocate usable cable spectrum. Over the next several years, OTWC proposes to reallocate its cable bandwidth by migrating the cable spectrum currently used for analog transmissions to a digital format to free up more usable bandwidth for other services for the benefit of all Subscribers. As a result of this transition from analog to digital, OTWC will be able to offer Subscribers significant benefits and advanced video services,

⁹ “Tune-in” announcements are promotional announcements intended to increase viewership.

potentially including additional Channels and programming choices, improving picture quality (i.e., HD programming), more efficient methods of viewing programs and videos, more options to view programs in various formats, and the ability to interconnect with household wired and wireless devices currently available and in the future.

Pursuant to federal law, OTWC may transition any Channel in its analog lineup to its digital service in its sole discretion; provided that OTWC ensures that all Subscribers have access to PEG Access Basic Service Programming Channels, regardless of whether they are subscribing to analog or digital Cable Service, by making available digital equipment to basic-only Subscribers at minimal additional cost.

a. Written Notification to Subscribers of Change. OTWC shall provide at least thirty (30) calendar days' prior written notification to all Subscribers of the transition of a non-PEG Access Channel from analog to digital and shall provide a copy of this written notification to the DCCA. OTWC, however, shall use its best efforts to provide more than thirty (30) calendar days' prior notice to Subscribers before migrating a non-PEG Access Channel to digital only format.

OTWC shall provide at least thirty (30) calendar days' prior written notification to all Subscribers and to the PEG Access organization of the transition of a PEG Access Channel from analog to digital and shall provide a copy of this written notification to the DCCA. OTWC, however, shall use its best efforts to provide more than thirty (30) calendar days' prior notice to the PEG Access organization and to Subscribers before migrating a PEG Access Channel to digital only format.

b. Notification Spots. In addition, OTWC shall cablecast notification spots on an analog Channel transitioning to digital service at least thirty (30) days prior to the move if OTWC has the right to do so. OTWC shall also cablecast notification spots on Channels other than those migrated if OTWC has the right to do so, and these notification spots shall not be counted towards the number of PSAs in Section IV.F.3. in this D&O.

c. As a further condition of this D&O, OTWC shall ensure that under normal operating conditions, the response time for its System to process a Subscriber's request for a SDV channel and send a program from the distribution hub shall not exceed a one (1) second average delay, and that SDV channels shall not include a drop-down menu selection.

d. Set-Top Boxes to View the Migrated PEG Access Channels, Including Government Channels. OTWC shall make two (2) different types of set top boxes available to Subscribers to access the migrated Government Channels and PEG Access Channels.

The first type of set top box (i.e., DTA or digital transport adapter, or the "**basic box**") allows analog Subscribers to view linear analog PEG Access Channels that OTWC migrates to digital format. This basic box cannot access functions and services

that require two-way functionality including but not limited to Pay-Per-View and VOD services.

For analog Subscribers who wish to view the State Government Linear Channel, PEG Linear Channel, and/or any linear analog PEG Access Channel migrated to digital format, OTWC agrees to provide, upon request, at any time within the periods described herein, a basic box free of charge to an analog Subscriber (and an additional basic box upon further request) until OTWC no longer provides analog service in its Hawai'i Island franchise, or for a period of thirty (30) months after the date of this D&O, whichever period is longer.

The sunset period for free set top digital boxes that are provided to Subscribers pursuant to Section IV.G.1.d. above, shall not apply to free set top digital boxes that were requested by Subscribers prior to the date of this D&O for the purpose of viewing the TEC or TEACH Education Channels on Hawai'i Island. In the event a free set top digital box no longer is operational, then OTWC may replace the set top digital box with a basic box for these Subscribers.

OTWC agrees to make the requested basic boxes available to Subscribers, with an option for Subscribers to pick up the boxes through its customer service centers or for delivery by mail service at no additional charge to the Subscriber.

At least forty-five (45) calendar days' prior to the expiration of the free box period described above, OTWC shall provide specific written notice to Subscribers with free basic boxes informing them of the upcoming charges for the boxes and also providing Subscribers instructions for returning the boxes to OTWC without charge for the returns, including drop off at customer service centers or for return by mail service at no charge to the Subscriber. Furthermore, OTWC shall provide assistance in the return of free boxes to Subscribers at no charge. After the expiration of the free box period, OTWC may charge Subscribers its published rate for each basic box. If, during the period that the basic box is being provided free of charge, a Subscriber upgrades to a service that requires an upgraded box, OTWC may charge the Subscriber its published rate for the upgraded box, provided that OTWC notifies the Subscriber in advance of the new charge.

The second type of set top box (i.e., the "**VOD box**") allows analog Subscribers to view migrated PEG linear Channels to digital format and also allows Subscribers to access PEG content and services that require two-way communication with OTWC's cable television distribution system such as, but not limited to PEG Access Channels, including the Government VOD Channels. OTWC agrees to provide, upon request, within the time period described below, to analog Subscribers who wish to view the PEG VOD Channels, including the Government VOD Channels, a minimum discount of thirty percent (30%) off OTWC's published rate for each such VOD box. OTWC agrees to provide the discounted VOD boxes until OTWC no longer provides analog service in its Hawai'i Island franchise, or for a period of thirty (30) months after the date of this D&O, whichever period is longer.

OTWC agrees to make the requested VOD boxes available to Subscribers, with an option for Subscribers to pick up the boxes through its customer service centers or for delivery by mail service at no additional charge to the Subscriber.

At least forty-five (45) days prior to the expiration of the discounted VOD box period described above, OTWC shall provide specific written notice to Subscribers with discounted boxes informing them of the upcoming charges for the VOD boxes and also providing Subscribers instructions for returning the VOD boxes to OTWC without charge for the returns, including drop off at customer service centers or for return by mail service at no charge to the Subscriber. Furthermore, OTWC shall provide assistance in the return of discounted VOD boxes to Subscribers at no charge. After the expiration of the discounted VOD box period, OTWC may charge Subscribers its published rate for each VOD box. If, during the period that the VOD box is being provided at the discounted rate to view the PEG VOD Channels, including the Government VOD Channels, a Subscriber upgrades to a service that requires a VOD box, OTWC may charge the Subscriber its published rate for the VOD box, provided that OTWC notifies the Subscriber in advance of the new charge.

e. Set-Top Boxes to View the non-PEG Access Channels.
OTWC may charge Subscribers a reasonable published rate for each basic box and VOD box provided to view the migrated non-PEG Access Channels.

2. Technology Upgrade Plans

DCCA is cognizant of the increasing pace of change in the technology sector, and that the definition of “state of the art” is changing faster than ever before. Technological investment today must be made with an eye toward ensuring compatibility with what has yet to be developed, and a Cable Franchise cannot be the basis upon which services are frozen in time, but instead must encourage those services to evolve and remain current. As such, the Director must be able to address the needs of Hawai`i Island Subscribers for upgrades relative to advanced services such as enhanced digital programming and other related matters. In connection therewith, the Director may also review PEG Access, INET interconnect or connect requirements and/or point to point circuits, new technologies and services, and any other matter related to the Cable System and Service Area.

OTWC shall make available equivalent services to all Subscribers in the State, and upgrades to neighbor island Cable Franchises shall be on par with OTWC’s services available on Oahu.

OTWC shall submit a statewide technology upgrade plan (hereafter referred as “**technology upgrade plan**”) to DCCA every five (5) years, that includes upgrade plans for the Hawai`i Island Cable System. When submitting a statewide technology upgrade plan, OTWC shall: clearly indicate to which franchise area the plan applies and the applicable D&Os; note any exceptions; and fully comply with all other aspects of the

technology upgrade plan requirement, as set forth in D&Os for all its Cable Franchises in the State, and as the Director may further require from time to time.

The technology upgrade plan shall report on new developments in cable technology and present an anticipated timetable for the incorporation of new developments in the Hawai'i Island Cable System. In addition, the plan shall describe the effect and costs of new technological developments on community needs and interests and also on PEG Access, and the effect and compatibility and costs of those technological changes on consumer electronic equipment. OTWC, to the extent such information is reasonably available, shall also describe how other cable companies have incorporated, or are planning to incorporate, new technological developments into their Cable Systems and the estimated timetable for doing so. OTWC shall also address in its plans, among other things, the following: impacts to PEG Access and PEG Access Channels, State and local government, and schools and libraries, INET interconnection or connection requirements, broadband Internet speeds, and other matters related to its Cable System and the Service Area. Nothing herein shall preclude OTWC from filing confidential, proprietary and/or competitively sensitive information under seal with DCCA.

In the event that OTWC's Hawaii Island and/or statewide technology upgrade plan, as applicable), fails to include any of the criteria established above, the Director may require OTWC to amend and/or update its technology upgrade plan. If OTWC fails or refuses to submit an amended and/or updated technology upgrade plan as requested by the Director, OTWC shall provide a statement explaining why continuation of its Cable Franchise notwithstanding such non-compliance serves the public interest within fifteen (15) calendar days after receipt of the Director's request.

The Director may also request that OTWC improve its technology upgrade plan to incorporate new technologies in Hawai'i Island more rapidly. If OTWC fails or refuses to submit and/or adhere to an improved technology upgrade plan as requested by the Director, OTWC shall provide a statement explaining why continuation of its Cable Franchise, notwithstanding its non-compliance serves the public interest within fifteen (15) calendar days after receipt of the Director's request.

The Director shall review all statements provided by OTWC regarding how its refusal or failure serves the public interest and, in the Director's sole discretion, shall approve or reject the statements. The Director may also request additional information supporting OTWC's public interest statement. In the event that the Director rejects OTWC's public interest statement, the Director may require OTWC to submit a revised statement or technology upgrade plan. The Director shall have the option to reduce the duration of the Cable Franchise renewal term (provided that if the term of this Cable Franchise is reduced, OTWC shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47 USC § 546(a) as may be amended), or take any other appropriate action consistent with this D&O and applicable Law, in the event OTWC's fails to either submit a revised and/or improved technology upgrade plan consistent with the direction of the Director or a statement that is accepted

by the Director explaining why continuation of its Cable Franchise, notwithstanding its non-compliance, serves the public interest.

Furthermore, in the event that OTWC fails to submit a technology upgrade plan by the established deadline and/or the Director determines that OTWC has failed to implement a previously submitted technology upgrade plan, OTWC shall be provided a reasonable time to cure any deficiencies or provide a statement of how continuation of its Cable Franchise, notwithstanding such non-compliance, serves the public interest.

Failure to remedy the deficiency or deficiencies within a reasonable time, or failure to provide a statement that is accepted by the Director explaining why OTWC's non-compliance serves the public interest, shall subject OTWC, at the sole option and discretion of the Director, to a reduction of the Cable Franchise renewal term (provided that if the term of this Cable Franchise is reduced, OTWC shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47 USC § 546(a) as may be amended), or any other appropriate action taken by the Director and consistent with this D&O and applicable Law.

3. Future Digital Upgrades to the PEG Access Channels

As part of its technology upgrade plan discussed above, OTWC shall consider and address digital upgrades to the equipment and facilities of the Director's designee(s), and any new content delivery technologies that could be used for PEG Access purposes.

H. Access Operating Fee

1. Payment of AOF

During each year of the Franchise term and subject to further order of the Director, OTWC shall pay an Access Operating Fee to be used for PEG Access purposes and/or any other public purpose(s) as determined by the Director in the Director's sole discretion.

OTWC shall pay the Access Operating Fee to the Director or the Director's designee(s), by January 31st of each year of the Cable Franchise term, or at such other time(s) as directed by the Director. The Director shall have the sole discretion to modify the amount and/or timing of the payment of the Access Operating Fee, and the recipient(s) of the Access Operating Fees.

2. Calculation of AOFs

During the term of the Cable Franchise, OTWC shall pay an AOF equal to THREE PERCENT (3%) of OTWC's Gross Revenue for its Hawai'i Island Cable

Franchise for the applicable preceding calendar year, subject to further order of the Director.

3. Access Operating Fee Reports

Commencing on January 31, 2017, and on January 31st of each year thereafter, OTWC shall submit to the Director copies of the Access Operating Fee payments paid to the Director or the Director's designee(s), during the prior calendar year, together with its Gross Revenues statement, and any other supporting information requested by the Director. OTWC shall provide a sworn statement as to the accuracy and completeness of these reports.

4. Director's Authority

Notwithstanding any other provision to the contrary, the Director may, at any time and in the Director's sole discretion, reconsider and amend the amount, the timing of the payments, the use, and/or the recipient(s) of the Access Operating Fees.

5. Obligation to Pay Upon Transfer

In any subsequent transfer of the Cable System, OTWC shall pay the Director or the Director's designee(s), all currently outstanding Access Operating Fees required to be provided in this D&O prior to the effective date of the transfer.

6. Education Access Channels Funding

The Director reserves the right to address direct payment of PEG Access Fees to support the Education Access Channels.

I. Capital Fund Payments

1. Payments in January 2017

On January 31, 2017, or at such other time(s) as directed by the Director, OTWC shall make an annual Capital Fund Payment of ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00) to the Director or the Director's designee(s).

2. Schedule of Future Payments

Commencing January 31, 2018, and every January 31st thereafter, or at such other time(s) as directed by the Director (but not to exceed one annual payment in the following amount), OTWC shall pay the following Capital Fund Payments for PEG Access Facilities and Equipment to the Director or the Director's designee(s): \$125,000.00 multiplied by the percentage change of the United States Department of Labor seasonally adjusted Consumer Price Index (CPI) for all Urban Consumers

Honolulu for all items (1982 – 1984 = 100) from the then-most current period available and the comparable preceding year's CPI, but not less than \$125,000.00 total from OTWC's and any other franchised cable operator on Hawai'i Island combined.

The Director reserves the authority to change the recipient(s) of the Capital Fund Payments for any reason, or to adjust the above Capital Fund Payments to the Director or the Director's designee(s) pursuant to the following paragraph. OTWC and the Director's designee(s) shall have the ability to petition the Director to increase or decrease the above Capital Fund Payments to the Director or the Director's designee(s) based upon the following requirements.

Based upon the number of all Basic Service Subscribers in all Hawai'i Island franchises as of December 31, 2015, if the number of Basic Service Subscribers on Hawai'i Island at the end of a calendar year increases or decreases at least five percent (5%), either OTWC or the Director's designee(s) may petition the Director for an increase or decrease in the Capital Fund Payments; provided that either party may submit such petition only once per calendar year.

The Director shall have the sole authority and discretion to grant or deny the above petitions. Before changing the amount of the above Capital Fund Payments, the Director shall require the petitioning party to provide substantial justification for its request.

If OTWC refuses to accept the designated Capital Fund payment schedule, the Director shall have the option to reduce the duration of the Cable Franchise renewal term (provided that if the term of Cable Franchise is reduced, OTWC shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47 USC § 546(a) as may be amended), or take any other appropriate action consistent with this D&O and applicable Law. Furthermore, in the event that OTWC fails to adhere to a previously submitted schedule for Capital Fund Payments, OTWC shall be provided a reasonable time to cure any deficiencies or provide a statement of how such non-compliance serves the overall public interest.

The Director shall review all statements provided by OTWC regarding how its non-compliance serves the overall public interest and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting OTWC's overall public interest statement. In the event that the Director rejects OTWC's overall public interest statement, the Director may require OTWC to submit a revised statement.

Failure to remedy the non-compliance within a reasonable time, or failure to provide an explanation that is acceptable to the Director regarding how the non-compliance serves the overall public interest, shall subject OTWC, at the option and discretion of the Director, to a reduction of the Cable Franchise renewal term; provided that if the term of this Cable Franchise is reduced, OTWC shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47

USC § 546(a) as may be amended, or any other appropriate action taken by the Director and consistent with this D&O and applicable Law.

OTWC does not and will not object to PEG Access programming being streamed on the Internet by the Director or the Director's designee(s) that is produced using PEG Access Facilities and Equipment that was funded by Capital Fund Payments; provided that such programming was originally produced for and carried on a PEG Access Channel prior to, or concurrently with, being streamed on the Internet.

3. Obligation to pay upon a transfer

In any subsequent transfer of the Cable System, OTWC shall pay the Director or the Director's designee(s) all currently outstanding PEG Capital Fund Payments for PEG Access required to be provided in this D&O prior to the effective date of the transfer.

4. Capital Fund Payment Uses

The Capital Fund Payments for the provision of PEG Access Facilities and Equipment required to be provided by OTWC under this Franchise Order shall be deemed to be capital contributions to the extent permitted under section 542(g)(2)(C) of the Communications Act and subsequent FCC interpretations, and shall not be used for operating expenses of the designated PEG Access Organization or the Director's designee(s). The Capital Fund payments shall be used for public, educational, or governmental Access Equipment and Facilities, including the need to upgrade and replace the facilities and equipment for the PEG Access Organization, educational entities and governmental agencies, and/or the Director's designee(s) in light of the anticipated technological changes to the Hawai'i Island Cable System and the use of any new content delivery technologies used to deliver PEG Access programming.

5. Capital Fund Payment Reports

Commencing on January 31, 2017, and on January 31st of each year thereafter, OTWC shall submit to the Director copies of the Capital Fund Payments and any other supporting information requested by the Director. OTWC shall provide a sworn statement as to the accuracy and completeness of these reports.

J. Termination of Access Operating Fee and Capital Fund Payments.

At the sole direction of the Director, which shall be provided in writing, OTWC may suspend paying the Access Operating Fees and Capital Fund Payments if any of the following events occur:

1. First-run or original PEG Access programming cablecast on each PEG Access Channel falls below a minimum of seventy-five

percent (75%) of the total number of available hours per PEG Access Channel during the previous year;

2. Such payments (i.e., AOFs and Capital Fund Payments) are used for non-PEG Access purposes;
3. The Director's designee(s) fails to comply with any of the provisions in the PEG Access contracts with the DCCA, as determined in the sole discretion of the Director; or
4. The Director determines that a suspension is in the best interest of the State and/or Subscribers.

OTWC's obligation to make such payments shall be reinstated at the sole direction of the Director.

K. Annual Fee Payment to DCCA

OTWC shall pay to DCCA an Annual Fee as specified in HRS chapter 440G and HAR chapter 16-132, which currently states that the Annual Fee shall be ONE PERCENT (1%) of the income received from Subscribers for Cable Services rendered during the preceding calendar year, or as otherwise ordered by the Director. Pursuant to the January 21, 2014 Letter Order and D&O No. 364, OTWC's Annual Fee Payments to the DCCA were increased in order to provide additional funding to DCCA and for other worthwhile projects. Accordingly, OTWC shall pay to the DCCA an Annual Fee calculated as follows:

1. On January 31, 2017, and on January 31st of each year thereafter, FIVE PERCENT (5%) of annual Gross Revenues for its Hawai'i Island franchise less the AOF and HPTF Fee as described in this D&O, or as otherwise ordered by the Director.
2. Commencing on January 31, 2017, and on January 31st of each year thereafter, OTWC shall submit to the Director copies of the Annual Fee Payments, together with its statement of income received from Subscribers, and any other supporting information requested by the Director. OTWC shall provide a sworn statement as to the accuracy and completeness of these reports.

L. Networks

1. Institutional Network

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 components

of all Cable Franchises approved by DCCA. The maintenance and continued expansion of the State's INET is a significant and essential component of the State's strategy for its communications infrastructure.

OTWC has expressed its continuing commitment to support the growth of the State's INET and its continued maintenance. OTWC has committed to provide a number of connections at no cost to the State or DCCA, along with additional connections, for which OTWC's Actual Cost shall be borne by the State or DCCA, as may be required by the Director. OTWC also proposes to maintain and repair these connections in a timely manner at no charge or cost to the State, DCCA, Director's Designee, or Subscribers.

OTWC has agreed to an INET contribution that includes three (3) major components. First, OTWC has agreed to provide and maintain at no charge or cost to the State various connections during the Cable Franchise term. Second, OTWC has agreed to provide and maintain further additional connections as requested by the State based upon the cost of labor and materials to OTWC. Third, OTWC has agreed to continue any obligation to provide Interisland fiber capacity to the State for INET purposes so long as OTWC holds any Cable Franchise authorizing it to provide Cable Service in the State. Each of these contributions is subject to the following provisions:

a. New INET Connections at No Cost. During the Cable Franchise term and pursuant to the terms of this subsection, OTWC, at no cost or charge to the State or Subscribers, shall install and maintain fiber optic lines, materials, and electronics for two (2)-way broadband video, voice and data capabilities to interconnect existing INET sites with sites selected by the Director within OTWC's Cable Franchise areas statewide. The total installation cost (labor and materials) for the INET connections requested by the Director and provided by OTWC pursuant to this subsection shall not exceed the present value of ONE MILLION DOLLARS (\$1,000,000.00), based upon a discount rate of THREE PERCENT (3%) during the Cable Franchise term ("**Franchise INET Connection Fund**"), as discussed below.

Commencing in year three (3) of the Cable Franchise term, the present value of each INET connection installed pursuant to this section shall be calculated using the formula:

$$FV / (1+r)^{n-3} = PV,$$

where "FV" (or "future value") is the value of the INET connection at the time the connection is provided; "r" is the interest rate expressed as a decimal; "n" is the number of years from the effective date of the Cable Franchise term; and "PV" is the calculated present value.

The first INET connection shall be subtracted from the total Franchise INET Connection Fund of ONE MILLION DOLLARS (\$1,000,000.00), regardless of which year in the Cable Franchise term such first connection is made. By

way of example and not limitation, if the first INET connection pursuant to this section is installed six (6) years from the effective date of the Cable Franchise at a cost of \$50,000.00, then the calculated present value of the connection would be \$45,757.00 (i.e., $\$50,000.00 / (1.03)^{6-3} = \$45,757.00$). The remaining available balance of the Franchise INET Connection Fund at that point would then be \$954,243.00 (i.e., $\$1,000,000.00 - \$45,757.00 = \$954,243.00$).

b. Connections to Fire Stations, Police Stations, Schools, Institutions of Higher Learning and Libraries. OTWC also shall provide and maintain at no charge or cost to the State, County, or Subscribers, connections for two (2)-way broadband video, voice and data capabilities, and interconnecting network sites between the INET system and Hawai'i Island fire stations, police stations, schools, institutions of higher learning and libraries as provided in this paragraph. Within six (6) months of a request by the Director, OTWC shall install up to three (3) such connections per year of the franchise term at a cost not to exceed EIGHTEEN THOUSAND AND NO/DOLLARS (\$18,000.00) per connection. Any unused connections that are not requested for specific sites within each year of the franchise term shall expire on the anniversary of the Effective Date and may not be used in subsequent years of the franchise term.

c. INET Connection Provided to the State on OTWC's Actual Cost. Within six (6) months of a request by the Director, OTWC shall provide two (2) strands of dark fiber optic cable (and other equipment to utilize the fiber for interisland and on-island connections as may be mutually agreed to by the parties) to be used for INET connections for two (2)-way broadband video, voice, and data capabilities interconnecting network sites to be determined by the Director and shall be reimbursed by the State for OTWC's Actual Cost. The requesting agency, department, or other governmental entity shall be solely responsible for reimbursing OTWC's Actual Cost required for the connections. The State shall not incur any reoccurring costs for such connections. Upon OTWC's submission of invoices for the cost of such connections and a diagram showing the fiber optic route and terminating points, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department, or governmental entity shall promptly reimburse OTWC for OTWC's Actual Cost.

d. All Connections. OTWC shall maintain and repair the fiber optic lines (and, as may be mutually agreed to by the parties for interisland and on-island connections, the fiber optic cables, patch panels, and OTWC's Coarse Wave Division Multiplexer (CWDM) filters) up to the termination point of each network site/connection at no charge or cost to the State or Subscribers. OTWC shall work with the Director's staff, consultants, and others designated by the Director to maintain and expand the INET and to develop and implement coordinated plans for its use. When requesting connections, the State shall be cognizant of OTWC's scheduling, manpower, resource limitations, and the cost of the connections compared to the public benefits provided.

Notice of requests for connections shall be made to OTWC by DCCA. OTWC shall work cooperatively with the agency, department or governmental entity affected and others designated by the Director, and shall develop and submit a plan for any such connection including, but not limited to, construction timetables and cost estimates within sixty (60) calendar days after receipt of the Director's request. In the event that OTWC's access to conduits is not obtainable for connecting any of the sites, OTWC shall immediately apprise the Director in writing of the situation or circumstances. OTWC shall provide DCCA with notice of completion of connections to DCCA within thirty (30) calendar days of completion of a connection, and other project information as required by the Director. Notices and other project information to be provided under this subsection shall be in writing unless otherwise directed by the Director.

OTWC may construct the INET connections required under this Section IV.L.1. in a manner OTWC deems appropriate, consistent with the provisions contained herein, unless otherwise advised or requested by the Director. OTWC may utilize contractors to construct or maintain all or any portion of the INET, including without limitation other cable operators.

e. Future Plans for INET Sites/Connections. If OTWC fails or refuses to provide a requested INET connection as requested by the Director, OTWC shall provide a statement explaining why it is unable to perform the request and how its actions and/or inactions serves the overall public interest. The Director shall review all statements provided by OTWC and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting OTWC's statements. In the event that the Director rejects a statement, the Director may require OTWC to submit a revised statement, including a revised INET proposal.

In the event that the Director determines that OTWC has unreasonably failed or refused to provide for an INET connection, OTWC shall be provided a reasonable time to cure any deficiencies or provide a statement that is accepted by the Director explaining how such non-compliance serves the overall public interest. Failure or refusal to provide the requested connection or to remedy the deficiency or deficiencies within a reasonable time, or failure to provide an explanation that is accepted by the Director explaining how OTWC's non-compliance serves the overall public interest, shall subject OTWC, at the option of the Director, to a reduction of the Cable Franchise renewal term (provided that if the term of this Cable Franchise is reduced, OTWC shall be allowed adequate time to provide notice of the commencement of renewal proceedings pursuant to 47 USC § 546(a) as may be amended), an assessment of a fine, or any other appropriate action taken by the Director and consistent with this D&O and applicable Law.

f. Interisland Fiber Capacity for INET Purposes. OTWC shall continue to provide interisland fiber capacity, more specifically lambdas (i.e., colors in the spectrum) and the maintenance of infrastructure necessary to use the lambdas, throughout the State for INET purposes as provided in the Memorandum of Agreement

