

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

In the Matter of)
) **DECISION AND ORDER NO. 355**
OCEANIC TIME WARNER CABLE LLC,)
By and through)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
)
For Approval of Transfer of Cable Franchises)
for the Island of Oahu, Island of Kauai, East)
Hawaii (Hilo), West Hawaii (Kona), County of)
Maui (excluding Lahaina), and Lahaina)
_____)

DECISION AND ORDER NO. 355

I. INTRODUCTION

On or about March 20, 2012, Time Warner Entertainment Company, L.P.'s ("**TWE**") informed the Department of Commerce and Consumer Affairs ("**Department**") of its parent company's intent to restructure the company, and asked the Department to consent to TWE's request to assign/transfer its Hawaii cable franchises for the Island of Oahu, Island of Kauai, East Hawaii (Hilo), West Hawaii (Kona), County of Maui (excluding Lahaina), and Lahaina from TWE to Oceanic Time Warner Cable LLC ("**OTWC**"). After careful consideration, the Department hereby grants TWE's request for the following reasons.

II. BACKGROUND

A. Applicants Oceanic Time Warner Cable LLC and Time Warner Entertainment Company, L.P.

TWE is a Delaware limited partnership authorized to do business in the State of Hawaii ("**State**"). In 1992, TWE commenced service in the State, doing business as Oceanic Time Warner Cable ("**Oceanic**") on Oahu and ultimately expanded cable service to other neighbor islands throughout the State upon the acquisition of cable franchises in other Counties. Oceanic is a division of TWE and under the control of TWE's management. TWE is an indirect, wholly-owned subsidiary of Time Warner Cable ("**TWC**"), the second largest cable operator in the nation.

OTWC is a Delaware corporation authorized to business in the State of Hawaii,¹ and is also an indirect, wholly-owned subsidiary of TWC.

The cable franchises held by TWE cover the entire State and are particularly described in Decision and Order (“**D&O**”) No. 346 for Oahu; D&O Nos. 239, 241, 261 and 317 for Maui County (excluding Lahaina); D&O Nos. 174, 245, and 261 for Lahaina; D&O Nos. 173, 244, 261, 318, 322 and 335 for West Hawaii (Kona); D&O Nos. 185, 242, 261 and 335 for East Hawaii (Hilo); and D&O Nos. 291 and 319 for Kauai.

On April 27, 2009, TWE notified the Department of its intent to renew its East Hawaii (Hilo) and West Hawaii (Kona) franchises. On July 20, 2011, TWE submitted a written Application which incorporated the renewals of its East Hawaii and West Hawaii cable franchises. The East Hawaii and West Hawaii cable franchises have been extended to October 23, 2012 pending disposition of the renewal applications.

On June 2, 2011, TWE notified the Department of its intent to renew its Maui County (excluding Lahaina) and Lahaina cable franchises (which are set to expire on December 31, 2013), and also requested that the Department consolidate these franchises into a single Maui franchise order.

B. TWE’s Hawaii Cable Franchises

TWC is undergoing an internal reorganization whereby its cable operations will be conducted through seven (7) regional companies designed to simplify management reporting and create a more geographically rational structure. One of the regional companies is OTWC, which is registered in the State and intends to operate in Hawaii. Pursuant to the March 12, 2012 “Restructuring Agreement,” TWE intends to transfer all rights, title, interests, obligations, and liabilities in its Hawaii cable operations to OTWC, an indirect, wholly-owned subsidiary of TWC.²

After the completion of TWC’s internal reorganization, OTWC will hold all of the Hawaii cable assets transferred by TWE, including all franchises, licenses, contracts and leases formerly held by TWE. This transaction is expected to close on or about the end of September 2012 subject to closing conditions.

TWE represents that the transaction will not result in a “transfer of control” because TWC will retain ultimate ownership and management authority over the Hawaii cable franchises and will continue to do business in the State as Oceanic. TWE further asserts that:

1. Local management and staff will remain the same and will continue to manage the day-to-day operations of the Hawaii cable systems;

¹ OTWC was formed on February 6, 2012 in the State of Delaware.

² This transaction is illustrated in Exhibit “A,” attached to TWE’s March 19, 2012 FCC Form 394, and documents submitted to the Department on or about April 26, 2012, and TWE’s responses to the Department’s May 11, 2012 and July 10, 2012 Information Requests.

2. There will be absolutely no impact on the Hawaii cable systems or on services to Subscribers, on business policies, or on business practices;
3. There will be no changes to Oceanic's financial ability to continue all of its services to its customers and obligations under the Hawaii cable franchises;
4. There will be no changes to the manner in which TWC's financial resources are allocated to OTWC;
5. OTWC will not be paying any funds or revenues, or transferring any assets, benefits or interests to TWE (or any other TWC entity) in exchange for the assignment of the cable franchises in Hawaii;
6. No new long-term or new short-term debt is projected for OTWC and OTWC shall not be a guarantor for any of TWC's obligations or any other obligations of any parent company; and
7. OTWC agrees to comply with the terms and conditions of TWE's Hawaii cable franchises and applicable State and federal law.

To that end, TWE represents that OTWC will continue to be responsible for all of TWE's franchise commitments, accept and assume responsibility for TWE's past performance under its Hawaii cable franchises, and be subject to the Department's decision regarding the currently pending renewal applications and performance of TWE as a cable operator in the State.

C. TWE and OTWC's Transfer/Assignment of Cable Franchises

On March 20, 2012, TWE submitted Form 394 to the Federal Communications Commission ("FCC") along with an attached Exhibit "A"³ for each of its Hawaii cable franchises. The Form 394s were filed in connection with the proposed internal reorganization of TWC and transfer of TWE's Hawaii cable franchises to OTWC and were deemed by TWE as an initial application for transfer of TWE's Hawaii cable franchises to OTWC.

After receiving the Form 394s, the Department informed TWE of the need for additional information on the operational and financial qualifications of the prospective transferee, OTWC. On April 26, 2012, TWE provided information on OTWC's incorporation and list of officers. The Department requested further information about OTWC from TWE, and the Department and TWE continued to discuss the proposed transaction. On May 11, 2012, TWE provided additional information on OTWC in connection with the franchise renewals of the East Hawaii and West Hawaii franchises. On June 26, 2012, the Department requested that TWE provide further information on

³ Exhibit "A" included financial information for parent company TWC, and the March 12, 2012 Restructuring Agreement between TWC, TWE, and OTWC as well as other TWC subsidiaries and affiliates.

the proposed transfer of the Hawaii cable franchises to OTWC, and TWE submitted its responses to the Department on July 10, 2012.

Pursuant to Hawaii Revised Statutes (“HRS”) sections 440G-7 and 8, and Hawaii Administrative Rules section 16-133-14, public hearings on the Form 394s for the transfer of TWE’s Hawaii cable franchises to OTWC were held as follows:

1. East Hawaii (Hilo) – August 27, 2012, at 10:00 a.m., State Office Building;
2. West Hawaii (Kona) – August 30, 2012, at 10:00 a.m., King Kamehameha Kona Beach Hotel Ballroom #1;
3. Lahaina – August 28, 2012, at 1:00 p.m., West Maui Senior Center Multi Purpose Room;
4. Maui County (except for Lahaina) – August 29, 2012, at 1:00 p.m., J. Walter Cameron Auditorium;
5. Kauai – August 31, 2012, at 10:00 a.m., Liquor Department Conference Room 3; and
6. Oahu – September 6, 2012, at 3:30 p.m., King Kalakaua Building, Queen Liliuokalani Room.

Notices of the public hearings were published on August 5 and 12, 2012 in the Honolulu Star-Advertiser, The Maui News, West Hawaii Today, Hawaii Tribune Herald and The Garden Island. Copies of the Form 394s and supporting documents were available for review during normal business hours at the offices of TWE in each Hawaii franchise area and at the Department’s Cable Television Division. In addition, the Form 394s and supplemental information were posted online at the Department’s webpage. The Department established September 13, 2012 as the deadline for receipt of public comments concerning the transfer. There were no comments that expressed opposition to the transfer/assignment or that questioned the qualifications of OTWC.

The proposed transfer/assignment was placed on the agenda for the September 17, 2012 meeting of the Cable Advisory Committee (“CAC”). At the meeting, the CAC members did not object to the grant of the transfer/assignment.

III. DISCUSSION

The Department has considered TWE’s and OTWC’s representations in the Form 394s, attached Exhibits and subsequently submitted supporting materials. The Department has also considered TWE’s representations at the public hearings, and comments received from the public and community members.

Based on the foregoing, the Department has determined that there is no evidence that exists in the record that suggests that OTWC lacks the requisite financial,

legal, and technical ability to maintain a cable system and provide the services, facilities, and equipment as required in TWE's cable franchises. OTWC is owned and ultimately controlled by the same entity, TWC, that owns and controls the current cable franchise holder, and based upon the material representations of TWE and OTWC,⁴ the Department reasonably concludes that OTWC appears to be able to continue to operate and maintain the same level of services to Subscribers, and that the management, operations, systems and financial obligations of Oceanic shall remain materially unchanged.

The Department therefore finds that it is in the public interest to approve the transfer of TWE's Hawaii cable franchises to OTWC. The Department hereby grants TWE's transfer/assignment of its six (6) Hawaii cable franchises to OTWC subject to the terms, conditions, and requirements specified in this D&O and all other applicable Orders issued by the Department.

D. THE LAW

The transfer of a cable franchise is made pursuant to the Cable Television Consumer Protection and Competition Act of 1992, 47 USC sections 521 et seq.

The regulatory powers of the Department regarding the transfer of a cable franchise are set forth in HRS sections 440G-7, 440G-8, 440G-10.1, and 440G-12.

E. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a right to use and occupy public places, highways, and easements that are of a limited and scarce nature. Substantial economic benefits may flow to the recipient as a consequence of this privilege. The privilege of a franchise therefore carries associated obligations with it. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both 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 public, educational, and governmental ("PEG") access.

F. Franchise Obligations

In addition to the requirements under the State's laws and rules, OTWC's franchise obligations are set forth in D&O No. 346 for Oahu; D&O Nos. 239, 241, 261 and 317 for Maui County (excluding Lahaina); D&O Nos. 174, 245, and 261 for Lahaina; D&O Nos. 173, 244, 261, 318, 322 and 335 for West Hawaii (Kona); D&O Nos. 185, 242, 261 and 335 for East Hawaii (Hilo); and D&O Nos. 291 and 319 for Kauai.

⁴ It is noted that all representations made by TWE and OTWC in connection with the subject transfer/assignment of the Hawaii cable franchises are considered material by the State.

OTWC has acknowledged and agreed to be bound by the terms, conditions, requirements, orders and letter orders of TWE's Hawaii cable franchises described above, satisfy all existing obligations of TWE's Hawaii cable franchises, comply with the renewal requirements of any of the Hawaii cable franchises, and comply with all applicable State and federal laws and rules. OTWC also acknowledged that some of the franchises are currently subject to renewal and OTWC agrees that, if the franchises are renewed, it fully assumes and will carry out the renewal requirements proposed by TWE in the renewal applications. OTWC further acknowledges that it is subject to the outcome of those renewal proceedings, including any decisions or measures that are taken by the Department as a part of the renewal proceedings that are based on the performance of TWE during prior cable franchise terms. Accordingly, the transfer of TWE's Hawaii cable franchises to OTWC appears to have no adverse consequences upon the current terms and conditions of service to Subscribers, and will not affect the local management of the Hawaii cable systems.

Finally, the Department notes that franchise obligations relating to cable system upgrades, INET interconnections or connections, franchise fee contributions, PEG access funding, Hawaii Public Television Foundation, and other matters are set forth in the above-referenced D&Os.

IV. ORDER

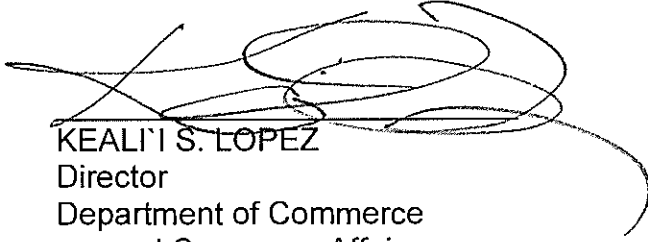
NOW THEREFORE, TWE's request to assign or transfer all of its Hawaii cable franchises to OTWC is hereby **GRANTED**, subject to the following:

1. TWC's internal reorganization (as described in the March 12, 2012 Restructuring Agreement) is completed without any material changes to the Restructuring Agreement that was last reviewed by the Department.
2. TWE shall notify the Department in writing of the completion of TWC's internal reorganization and whether any material changes were made to the Restructuring Agreement. This notification shall be provided within fourteen (14) calendar days after the internal reorganization has been completed.
3. If there are any material changes to the Restructuring Agreement, TWC's internal reorganization, or structure/operation of TWE's Hawaii cable systems, the Department reserves the right to review such changes and take any appropriate action to protect the public interest, including but not limited to rescinding this D&O.
4. TWC, TWE, and OTWC shall comply with the conditions, obligations, and requirements imposed by the FCC in connection with TWC's internal reorganization.

Except as otherwise provided in this D&O, the terms and conditions of all of TWE's Hawaii cable franchises shall continue to be in full force and effect.

Notwithstanding any provision to the contrary, if TWC's internal reorganization (as described in its March 12, 2012 Restructuring Agreement) is not completed (without material changes) within one hundred eighty (180) calendar days from the date of this D&O, this D&O shall be automatically rescinded, and all of the terms and conditions in TWE's prior Hawaii cable franchises shall be in full force and effect.

DATED: Honolulu, Hawaii, September 21, 2012.

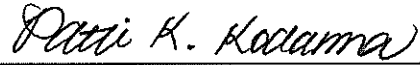


KEALI'I S. LOPEZ
Director
Department of Commerce
and Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 355 was served upon the following person at the address shown below by mailing the same, postage prepaid, on this 21st day of September, 2012.

BRIAN A. KANG, Esq.
Watanabe Ing LLP
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813



Patti K. Kodama
Patti K. Kodama
Secretary