June 24, 2011

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

In the Matter of the Application for a Cable Franchise for **HAWAIIAN TELCOM SERVICES COMPANY, INC.**	**DECISION AND ORDER NO. 352**

DECISION AND ORDER NO. 352

I. INTRODUCTION

Pursuant to Hawaii Revised Statutes section 440G-4, the Director of the Department of Commerce and Consumer Affairs ("**DCCA**") hereby grants a non-exclusive cable franchise to Hawaiian Telcom Services Company, Inc. ("**HTSC**"), a Delaware corporation, subject to the following terms, conditions, and requirements of this Decision and Order.

A. Definitions

For purposes of this Decision and Order, 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; and (b) PEG access facilities, including but not limited to real property and equipment related to the use of such channel capacity or any PEG activity.

3. "**Access Operating Fee**" or "**AOF**" means the annualized fee paid by HTSC to the Director or Director's designee for PEG or other purposes specified by the Director.

4. "**Access Organization**" or "**PEG Access Organization**" means any nonprofit organization 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 which 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 HTSC, including HTSC's parent, sister, and subsidiary corporations/entities.

6. "**Affiliate Services Agreement**" means the agreement between Holdco, HTCI, HTI, and HTSC that became effective on May 3, 2005 and amended on October 1, 2006 by Amendment No. 1 to that Agreement, addressing the provision of facilities and support to HTSC for the provision of unregulated services, including the Cable Service.

7. "**Annual Fee**" means the Annual Fee required to be paid by HTSC pursuant to HRS section 440G-15, HAR section 16-132-2, and applicable Decisions and Orders issued by DCCA, as may be amended from time to time.

8. "**Application**" means the Application for a Cable Franchise for the island of Oahu submitted by HTSC on November 5, 2010, along with supplemental materials filed thereafter by HTSC.

9. "**Basic Service Tier**" means the lowest cost tier of Cable Service offered by HTSC to all of its Subscribers, which includes, at a minimum, the retransmission of local television broadcast signals, Franchise Required Channels and PEG Access Channels.

10. "**Cable Franchise**" means the authority issued by DCCA through a Decision and Order or Franchise Order to operate a Cable System and provide Cable Service in a geographic region in the State.

11. "**Cable Service**" shall have the meaning set forth in HRS section 440G-3 and applicable Law and includes the video programming service provided by HTSC.

12. "**Cable System**" or "**System**" shall have the meaning set forth in HRS section 440G-3 and applicable Law, and includes the facilities owned and operated by HTSC Affiliate, HTI, it the extent that those facilities are used by HTSC to provide a Cable Service.

13. "**CAC**" means DCCA's Cable Advisory Committee.

14. "**CATV**" means the Cable Television Division of DCCA.

15. "**Capital Fund Payments**" means capital contributions made by HTSC to the Director or the Director's designee, to the extent permitted under applicable Law, for PEG Access Facilities and Equipment.

16. "**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 Franchise Required Channels.

17. "**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, etc.), and codified at 47 U.S.C. section 521, et seq.

18. "**DCCA**" **or** "**Department**" means the State of Hawaii Department of Commerce and Consumer Affairs.

19. "**Decision and Order**" or "**Franchise Order**" means a cable franchise order issued by the Director pursuant to HRS chapter 440G.

20. "**Director**" means the Director of DCCA.

21. "**Director of Civil Defense**" means the Director of the State of Hawaii Civil Defense.

22. "**DSL**" means digital subscriber line.

23. "**DOE**" means the State of Hawaii 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.

25. "**Educational Access Channel**" means any Channel of the Cable System that is made available by HTSC for use by educational authorities and agencies (e.g., currently, the University of Hawaii, State Department of Education, etc.), and accredited educational institutions in Hawaii for noncommercial educational purposes.

26. "**Emergency Authorities**" means the Director of Civil Defense; Deputy Director of Civil Defense; Administrator of the Oahu Civil Defense Agency, City and County of Honolulu; Deputy Administrator of the Oahu Civil Defense Agency, City and County of Honolulu; and any other similar Person designated by the Director.

27. "**Emergency Override System**" means the emergency alert system specified in this Decision and Order.

28. "**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.

29. "**FCC**" means the Federal Communications Commission.

30. "**Franchise Fee**" shall have the meaning set forth in section 542 of the Communications Act. At the time of this Decision and Order, this term includes the Access Operating Fee, HPTF Fee, and DCCA's Annual Fee specified in HAR chapter 16-132.

31. "**Franchise Required Channels**" means the seven (7) Channels provided by HTSC pursuant to this Decision and Order for programming by governmental and educational entities.

32. "**Government Access Channel**" means any Channel on the Cable System made available for use by governmental entities (e.g., city, county, and State governments; including any departments or agencies thereof).

33. "**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 the subsequent collection of such debt shall be included as part of Gross Revenues. In the case of a video service that is packaged, bundled, or functionally integrated with other services, capabilities,

or applications, HTSC 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, HTSC shall use the same method of determining revenues under generally accepted accounting principles as that which HTSC uses in determining revenues for the purpose of reporting to federal and state regulatory agencies. Furthermore, HTSC 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.

34. "**HAIS**" means the Hawai'i Association of Independent Schools.

35. "**HAR**" means the Hawaii Administrative Rules.

36. "**HENC**" means the Hawai'i Educational Networking Consortium, which is a consortium comprised of representatives from accredited educational institutions within the State of Hawaii, including public and private lower and higher education schools such as the UH, DOE, the East-West Center, and HAIS.

37. "**HDTV**" means high definition television programming.

38. "**HITS**" means the Hawaii 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.

39. "**Holdco**" means Hawaiian Telcom Holdco, Inc., a Delaware corporation.

40. "**HPTF**" means the Hawaii Public Television Foundation.

41. "**HPTF Fee**" means the fee HTSC pays to HPTF for HPTF-related services, as directed by the Director.

42. "**HPUC**" means the Hawaii Public Utilities Commission.

43. "**HRS**" means the Hawaii Revised Statutes.

44. "**HTCI**" means Hawaiian Telcom Communications, Inc., a Delaware corporation.

45. "**HTI**" means Hawaiian Telcom, Inc., a Hawaii corporation.

46. "**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.

47. "**IPTV**" means Internet protocol ("**IP**") television.

48. "**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.

49. "**LFA**" means the local franchising authority (i.e., the State of Hawaii through the DCCA).

50. "**Local Origination Programming**" means programming of local interest produced by HTSC employees or contractors.

51. "**Olelo**" means ʻŌlelo Community Television, dba ʻŌlelo Community Media, a Hawaiʻi non-profit corporation.

52. "**PBS Hawai'i**" means the public television station licensed to the HPTF.

53. "**PEG**" means public, educational, or governmental.

54. "**PEGNet**" means the infrastructure that is used by the PEG Access Organization, UH, DOE, and government agencies at the State Capitol and Honolulu Hale to send video programming to the cable operator for cablecasting on PEG Access Channels.

55. "**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 does not include the Director or DCCA.

56. "**Public Access Channel**" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

57. "**Public Highways**" shall have the meaning set forth in HRS section 264-1.

58. "**Public Place**" includes any property, building, structure, or water to which the public has a right of access and use.

59. "**Service Area**" means those areas described in Section IV.B.

60. "**State**" means the State of Hawaii, including its political subdivisions.

61. "**Subscriber**" means any Person lawfully receiving any Cable Service.

62. "**TWE**" means Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable of Hawaii.

63. "**UH**" means the University of Hawaii.

64. "**VDSL2**" means the Very high bit rate Digital Subscriber Line 2 digital signal transmission standard.

65. "**VOD**" mean video-on-demand.

II. BACKGROUND

A. Applicant HTSC

HTSC is a Delaware corporation authorized to do business in the State. HTSC is a wholly-owned subsidiary of HTCI, a holding company which in turn is a wholly-owned subsidiary of Holdco. Holdco oversees the Hawaiian Telcom family of companies, which collectively offer telecommunications and information services to residential and business customers throughout the State. HTSC operates the unregulated businesses of the Hawaiian Telcom companies including long distance service, advanced communications and network, DSL service and dial-up Internet access services and wireless services. HTSC's proposed video programming service has been represented by HTSC to be essential to strengthen the long-term financial position of the Hawaiian Telcom companies.

B. HTSC's Proposed Cable Service

HTSC proposes to deliver its "next generation" digital Cable Service to all areas on the island of Oahu via IPTV technology. The IP-based network utilized by HTSC is designed to deliver multiple services over a common network platform. HTSC indicates that it plans to offer a full suite of services and equipment in its IPTV system design that brings advanced digital video quality and flexibility in the services and applications in interactive television.

HTSC proposes to deliver its digital Cable Service initially using VDSL2 protocol. HTSC will not limit access to its Cable Service to consumers that subscribe to HTSC's VDSL2 Internet access service. Although the VDSL2 service is required as a platform to deliver the Cable Services, a customer may subscribe to HTSC's Cable Service without having to subscribe to HTSC's VDSL2 Internet access service.

HTSC's Cable Service will be delivered via HTI's VDSL2 lines which are co-extensive with HTI's telephone service. As of the date of this Decision and Order, HTI is in the process of upgrading its network to VDSL2, and HTSC's Cable Service is not yet available in all geographical areas on Oahu. As the VDSL2 network is upgraded, HTSC states that it will roll out its Cable Service to more subscribers based upon consumer demand, and HTSC's use of IPTV technology will provide advanced digital video quality and flexibility in the services and applications. HTSC represents that it will provide new programming content that will appeal to the unique blend of cultures and interests in the local community using its Cable Service.

C. History of the Application for a Cable Franchise

On November 5, 2010, HTSC submitted a written Application for Oahu and supporting documents, including confidential exhibits, along with its Application fee.[1]

On December 3, 2010, DCCA sent its "First Request for Clarification/ Supplemental Information" and "First Request for Clarification/Supplemental Information" for confidential information (collectively, "**First Request**") to HTSC to obtain information deemed necessary for DCCA to process the Application and accept it for filing.

HTSC responded to DCCA's First Request on December 16, 2010 and submitted additional materials regarding its Application. These materials did not include sufficient information to accept the Application for filing, and on January 26, 2011, DCCA requested additional information in order to complete the processing of the Application. Under separate cover,

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[1] On May 5, 2006, HTSC submitted a previous "Application for a Cable Franchise" to DCCA. Because HTSC, Holdco, HTCI, HTI and certain other affiliates filed voluntary petitions for bankruptcy protection on December 1, 2008, work on this Application was suspended pending completion of the bankruptcy case. The Bankruptcy Court entered an order on December 30, 2009 confirming the Plan of Reorganization. The Plan of Reorganization became effective, and HTSC and other Debtors emerged from bankruptcy on October 28, 2010. HTSC subsequently withdrew its 2006 Application on November 5, 2010.

DCCA also requested that HTSC provide its responses to information requests pertaining to information that HTSC asserted was confidential ("**Second Request**").

On February 9, 2011, HTSC responded to DCCA's Second Request for information.

On March 16, 2011, DCCA accepted the Application for filing and pursuant to HAR section 16-133-16, the one hundred-twenty (120) day period to process the Application commenced.

DCCA held two public hearings on the Application on April 13, 2011 at 6:30 p.m. at the Kapolei Middle School Cultural Center, Kapolei, Hawai`i, and on April 14, 2011 at 6:00 p.m. at the Washington Middle School Cafeteria, Honolulu Hawaii. Notice of the public hearings was published in the Honolulu Star-Advertiser on March 21 and March 28, 2011. Copies of the Application were available for review during normal business hours at the Hawaiian Telcom Building Retail Store and at CATV. The Application was also posted on DCCA's webpage. DCCA received written comments on the Application on or before April 21, 2011.

The Application was placed on the agenda for the CAC's June 7, 2011 meeting. The CAC members present discussed the Application and expressed their comments to the Director. The CAC members did not object to the granting of the Application, but expressed a number of concerns.

CAC members expressed concerns regarding HTSC's use of switched VDSL2 technology to provide to Subscribers only those channels that are being viewed at any particular time. CAC members and the public in attendance raised questions about any time lag when switching channels and whether the overall capacity of the network could accommodate large numbers of Subscribers without degradation or loss of signals. CAC members also expressed concerns about the financial stability of HTSC and its Affiliates, and the ability of HTSC and its Affiliates to manage the customer service requirements that are likely to result from the launch of HTSC's Cable Service. Finally, members of the public in attendance at the meeting raised concerns about the placement of PEG channels in the channel line up and the information presented regarding PEG channels in electronic program guides.

On June 13, 2011, HTSC represented that the Application, all exhibits and supporting documents were up to date and current.

III. DISCUSSION

The Director has carefully considered HTSC's representations in its Application and supporting materials in connection with the Application. The Director has also considered the public need for the proposed service and comments received from the public and community members. Based on the foregoing, the Director has determined that: HTSC has the requisite financial, legal, and technical ability to maintain a Cable System; and HTSC's proposal as modified by this Decision and Order is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

The Director hereby grants HTSC's Application for a non-exclusive Cable Franchise subject to the terms, conditions, and requirements specified in this Decision and Order.

A. Standard of Review

1. Federal Law

Federal cable franchise guidelines are generally set forth in the Communications Act. Section 541 of the Communications Act allows an LFA to award cable franchises within its jurisdiction and also sets forth provisions and requirements that the LFA may impose on an applicant.

2. State Law

The regulatory powers of the Director regarding Cable Franchises and cable operators are generally set forth in HRS chapter 440G (the Hawaii Cable Communications Systems Law) and HAR chapter 16-135 sets forth the administrative rules regarding new applications for a Cable Franchise.

HTSC is proposing to operate an IP-based video distribution technology using the existing infrastructure of its Affiliate, HTI. HTSC is therefore the operator of a Cable System and is a facilities-based provider of Cable Services pursuant to 47 U.S.C. Section 522, and accordingly, is subject to regulation under HRS Chapter 440G.

B. Financial Ability of HTSC

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

On December 1, 2008, Holdco, HTCI, HTI, HTSC, and certain other applicants filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in order to facilitate the restructuring of their debt in In re Hawaiian Telcom Communications, Inc., Case No. 08-02005. The U.S. Bankruptcy Court for the District of Hawaii approved the Plan of Reorganization of HTCI and its debtor Affiliates ("**Plan**") and the security arrangements associated with the Plan. As a result of the Plan, outstanding debt of approximately $1.2 billion was reduced to a $300 million senior secured 5-year term loan issued to HTCI's senior secured creditors. HTCI's senior secured creditors also received all the new common stock in Holdco. Under a Guarantee and Collateral Agreement dated October 28, 2010 ("**Guarantee**"), HTSC and HTI guaranteed the obligations under the new term loan and also entered into a collateral agreement, pledged their respective capital stock, and granted a security interest in and mortgages on substantially all of their respective tangible and intangible assets to secure this guarantee.

The Guarantee remains in effect until terminated or released when the loan obligations are paid in full. HTSC does not anticipate that this will occur unless HTCI obtains another loan facility and pays down the current term loan, but expects any new lenders to require similar guarantees and collateral agreements. HTSC shall inform the Director of any changes in the Guarantee.

Last year, the HPUC reviewed and approved certain applicable portions of the Plan and related financial arrangements in Decision and Order filed September 22, 2010, For an Order Approving the Joint Chapter 11 Plan of Reorganization for Hawaiian Telcom Communications, Inc. and its Debtor Affiliates, Including Security Arrangements, Docket No. 2010-0001. While the HPUC determined that HTSC and HTI were financially fit and able to properly perform their public utility services, it required HTSC and HTI to adhere to certain regulatory conditions. The HPUC stated that if the financial projections and assumptions of HTSC and HTI align with actual results, both HTSC and HTI would appear to be fit and able to perform their required services; however, if certain business assumptions or anticipated revenues failed to materialize fully, then HTI's fitness and ability to perform its public utility service would be in jeopardy. To address their concerns, the HPUC required reporting related to the new financing and other regulatory conditions to allow monitoring of HTSC and HTI and their related Affiliates' financial fitness.

On May 26, 2011, HTSC and HTI submitted a request to the HPUC for an order approving proposed modified financing arrangements for the $300 million senior secured 5-year term loan and $30 million revolving credit facility. HTSC has assured DCCA that the loan amount will not increase and HTSC and HTI's obligations under the Guarantee and revolving credit facility will remain the same, subject to a possible inclusion of an option to increase the term loan amount by up to $50 million. HTSC asserts that the proposed refinancing would improve HTSC and HTI's financial position by reducing the interest rate on its loan obligations. On June 17, 2011, the HPUC issued a Decision and Order approving HTSC's and HTI's request. The HPUC found the proposed financing arrangements to be reasonable and in the public interest and required that HPUC approval be obtained prior to exercising the option to increase the term loan amount by up to $50 million.

Despite HTSC's 2008 Chapter 11 filing and 2010 emergence from bankruptcy, DCCA believes that the potential benefits to the public of having competition in the cable television market on Oahu, combined with customer protections included herein, offset reservations about HTSC's financial fitness. If, for any reason, HTSC is unable to provide Cable Service to consumers, its Subscribers will be able to still obtain Cable Service of the incumbent cable television operator, TWE[2]. In addition, HTSC will be obtaining transport of its Cable Service on HTI's infrastructure, and it does not plan to construct redundant Facilities, which would potentially damage streets and sidewalks and other public rights-of-way. If this Cable Franchise is terminated or revoked, HTSC maintains that there should be little or no HTSC installed Facilities that need to be removed from highways and other public places pursuant to HRS section 440G-8.2.

In addition, in the event HTSC is not able to provide Cable Service, its parent company, HTCI will guarantee HTSC's obligation to reimburse any advanced monthly service fees and equipment rental fees paid by Subscribers for services unrendered, and HTCI will provide such reimbursement if HTSC fails or is otherwise unable to do so. These measures will minimize potential harm to Subscribers.

Given the above, the Director concludes that HTSC, with the backing and support of the other Hawaiian Telcom companies, has the financial capability and resources to initiate and maintain its Cable Service and, with its Affiliates, operate a Cable System; provided that it complies with the terms and conditions that are contained in this Decision and Order.

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[2] TWE is the incumbent cable operator on the island of Oahu and has been providing Cable Service to Oahu households since 1992.

C. Technical Ability of HTSC

Unlike traditional Cable Systems, HTSC's design utilizes IPTV packet technology to deliver digital video services over HTI's network, which is used both by HTSC and HTI. HTI's existing network or IP backbone, owned by HTI and maintained by its technicians, is a typical telephone company architecture consisting of copper cable loops starting from central offices or remote digital loop carriers to the Subscribers' premises. The existing network is being upgraded to VDSL2, which utilizes existing copper facilities already in place and allows increased bandwidth to accommodate new services for Subscribers. HTSC's use of HTI's network is covered by the Affiliate Services Agreement.

HTSC has completed construction of its video head-end which receives national-level linear television programming and on-demand content. Local Channels will be received using a combination of direct fiber optic connections and over the air receivers. All content is digitized, packetized and encrypted at the video head-end and then transported across HTSC's private IP backbone network utilizing HTI's network. The transport and access network consists primarily of fiber facilities between central offices ("**COs**") and remote terminals (fiber-to-the-node ("FTTN") and fiber-to-the-premise ("FTTP") design methodologies) with the last mile access provided via copper-based local loop facilities. In a Subscriber's premises, a modem and set-top boxes for each television are required.

The network architecture of HTSC's IP-based distribution system results in only the selected Channel(s) being distributed to the Subscriber's residence. This enables HTSC to have no theoretical maximum Channel count and will enable HTSC to increase its Channel capacity to add new programming and services. HTSC's Cable System will be able to provide HDTV programming, video on demand, and pay per view services.

Although cable systems using FTTN and VDSL2 distribution systems exist in the United States and are providing services to consumers, questions remain regarding the implementation measures that will be required to adapt HTI's existing copper-based local loop to successfully accommodate this video distribution system. Further, even though HTSC will deliver to Subscribers only those channels being viewed at any particular time, concerns have been expressed regarding whether the capacity of the network utilized by HTSC will be sufficient to accommodate large numbers of Subscribers without disruptive degradation and disruptions in video distribution streams.

Despite the technical issues that must be addressed in the deployment of HTSC's Cable Service, in DCCA's assessment, HTSC, working with its

Affiliates, is in a good position to deliver the proposed Cable Service. HTSC's Affiliate, HTI, has long history of providing telecommunications services to residents and businesses in the State. HTSC asserts that HTI has demonstrated expertise in building and maintaining complex IP-based data networks. In addition, HTI has sharing agreements with electric utilities, and county and State governments to share costs on commonly used infrastructure and has long working relationships with residential developers, their general contractors, and their consultants. HTSC plans to utilize HTI's relationships as it deploys its Cable Service business.

Accordingly, the Director finds that although HTSC does not own the physical network that will be used to distribute its Cable Service, it does appear to have access to the physical network and technical capabilities (via HTI) to construct, maintain and operate a Cable System on Oahu. Further, the Director is imposing in this Cable Franchise several measures to ensure that technical advancements and any needed improvements are incorporated by HTSC into the Cable System either on HTSC's own initiative, or at the direction of the Director.

D. <u>Operational Ability of HTSC</u>

In order to provide its Cable Service, HTSC plans to use HTI's network to transmit programming to Subscribers. HTSC will also use HTI's customer service and administrative, accounting, and operational and technical support.

HTSC asserts that it will be able to secure the additional manpower and technical expertise to operate and maintain the network and support systems necessary to ensure reliability of its Cable Service primarily through its Affiliate, HTI. HTI intends to staff as needed additional installation and repair technicians specifically trained for video installations and repair, and additional customer service representatives to meet increased inquiries and order-related services for the Cable Service. HTSC will provide dedicated technicians to maintain the video headend location, and HTI's central office technicians that provide the daily care and maintenance of the video transport network.

Through its Affiliate Services Agreement, HTSC has provided assurances that it will be able to secure the resources and network capacity for the term of the Cable Franchise that are necessary to fulfill its Cable Franchise obligations. Accordingly, if there is any change in the provisions in the Affiliate Services Agreement and/or Amendment No. 1 pertaining to HTSC's use of HTI's network infrastructure and manpower resources, and/or relating to the cancellation and termination provisions of the Affiliate Services Agreement, HTSC shall notify the Director in writing within ten (10) calendar days of any such changes.

In the event HTI is sold, or there is a change in control as specified in this Decision and Order, or its network infrastructure assets are transferred to another entity, and HTI's successor fails to provide HTSC access to, or sufficient capacity on its network for HTSC to transport its Cable Service to Subscribers, HTSC shall immediately secure a new source of capacity. If HTSC fails to secure a new source of capacity within the timeframe set forth by the Director, then its Cable Franchise shall be automatically revoked pursuant to this Decision and Order.

Based upon the representations of HTSC and based on its relationship with HTI and other Hawaiian Telcom companies, and the use of HTI's network infrastructure and technicians, the Director finds that HTSC has the operational ability to provide safe, adequate, and reliable Cable Service on Oahu.

E. <u>Customer Service Support</u>

HTSC intends to utilize HTI's customer support structure, including its customer service centers, customer service standards, and bill payment locations. HTSC intends to bill for its Cable Service to Subscribers on the same billing statement used by HTI and HTSC for their other communications services, including HTI's local telephone service. Customer service personnel will be specifically trained and staffed to handle Cable Service sales and support calls. HTSC agrees to meet all applicable federal cable television customer service standards, including those set forth in 47 CFR sections 76.309, 76.1602, and 76.1603.

In 2006 and for a period of time thereafter, HTI experienced difficulties in handling customer billing and calls.[3] In Docket No. 2006-0400, the HPUC initiated a proceeding to examine HTI's service quality and performance levels and standards in relation to its retail and wholesale customers. That Docket was closed by the HPUC pursuant to an Order filed on May 27, 2011. HTSC represents that HTI has since the 2006 difficulties improved its customer service support infrastructure, including new

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[3] In connection with the 2005 sale and transfer of the Hawaiian Telcom businesses from Verizon to The Carlyle Group, HTI created new back-office systems in the State and initially engaged BearingPoint to set up the back office and IT infrastructure. After the transition in 2006 from Verizon's systems to HTI's systems, HTI experienced serious difficulty in its back-office customer support systems, which resulted in long waiting times, extremely slow transaction processing times, repair and installation delays, and billing errors (however, HTI's network did not experience any disruptions). After HTI terminated its contract with BearingPoint, it entered into an agreement with Accenture Ltd. in 2007 to complete the development and deployment of HTI's key customer service business support systems and to provide ongoing applications management. In 2009, HTI signed a five-year agreement with Accenture Ltd. that amended the prior agreement and lowered costs while improving operational efficiencies.

ordering, provisioning and service assurance functions for the proposed Cable Service which were implemented in 2010.

DCCA has reservations about the ability of HTI's customer service operations to install, maintain and support the proposed Cable Service and to handle the anticipated additional customer calls for ordering, installing, technical support, and billing as HTSC deploys its Cable Service. Concerns have been raised by the CAC and others that the deployment of a VDSL2-based Cable System could result in installation and service issues that could impose significant burdens on HTI's customer service capabilities.

HTSC understands and agrees that it is ultimately responsible for ensuring that it has sufficient customer service capability to handle the inquiries and service calls of its Cable Service Subscribers. HTSC accepts this responsibility to provide sufficient customer service either through establishing its own call services or through purchasing adequate services through another entity.

HTSC represents that any material deficiencies in the customer support infrastructure and customer service center manned by HTI's employees have been remedied. Because of its status as a new entrant in the competitive Cable Service business, HTSC emphasizes that unless it provides quality customer service, it will not succeed in the Cable Service marketplace.

Based upon the representations of HTSC, its relationship with HTI and other Hawaiian Telcom companies, and its agreement with HTI to use HTI's existing customer service operations for its Cable Service Subscribers, the Director finds that HTSC has the ability to provide adequate and reliable customer service for its Cable Service on Oahu.

F. HTSC's Ability to Provide Safe, Adequate, and Reliable Cable Service at a Reasonable Cost

HTSC asserts that its Cable Service will provide public benefits in terms of content, value, customer service, more advanced IPTV technology and innovative products and services. Over the term of the Cable Franchise, but subject to technological, economic and competitive market factors, HTSC has stated its intention to make its Cable Service available to all, or nearly all, residents of Oahu. HTSC plans to extend its Cable Service to new developments as well as established neighborhoods to meet the increasing demands for video programming service.

HTSC asserts that a successful Cable Service will not only promote competition, but is essential to strengthen the long term position of the

Hawaiian Telcom companies and will complement their existing product portfolios. A key strategy for HTSC and its Affiliate, HTI, is the sale of "bundled" services (i.e., the sale of several services combined together, usually at a lower cost) to offer service packages that include the new Cable Service in a bundle with other existing services offered by HTSC and HTI. HTSC asserts that bundled services would be more attractive to customers with the inclusion of the proposed video programming, and HTSC would be able to benefit from HTI's existing customer base to promote and sell its products. Specific bundled service offerings and pricing for the bundles are currently under development.

HTSC acknowledges that adequate and reliable Cable Service demands responsive customer service. As discussed above, HTSC commits to minimizing the number of customer-related problems and to respond quickly and efficiently if problems do arise. HTSC has also committed to meet or exceed all State and federal customer service standards where technically and economically feasible.

Based upon the representations of HTSC and based on its relationship with its affiliated company, HTI, and other Hawaiian Telcom companies, and the use of HTI's network infrastructure and customer service operations, the Director finds that HTSC has the ability to provide safe, adequate, and reliable Cable Service to the public at a reasonable cost.

G. The Public Need for Proposed Cable Service

HTSC asserts that the issuance of a Cable Franchise to HTSC is in the best interests of Oahu and its residents and will provide needed competition and choice in the video services market long dominated by one cable operator (i.e., TWE). HTSC claims that the dominant status long enjoyed by TWE creates a significant barrier to entry for HTSC or any competitor, and HTSC is seeking a Cable Franchise with terms that appropriately reflect the unique competitive challenges facing it and that will allow it to be financially viable in the early years of the Cable Franchise.

Federal law favors competition in the provision of Cable Services to consumers and encourages robust competition that results in higher customer service quality, improved programming, and lower rates (e.g., 47 U.S.C. section 521(6) states that the purpose of the Communications Act is to promote competition in cable communications).

The State also favors the entry of competitors in the cable television industry in Hawaii and supports a competitive environment for communications services. The intent behind encouraging new cable programming competition is to benefit Oahu consumers by helping to support greater customer choice for different services, to ensure diversity in programming content, to promote pricing options, to encourage high quality customer service, to encourage the development and deployment of innovative communications and broadband technology and to provide innovative products and services. It is DCCA's hope that an additional Cable System operator in the State will provide consumers with additional choices, new product offerings and lower prices.

The State has required Cable System operators to extend Cable Service to rural areas and to adequately serve future community needs. Moreover, pursuant to federal law, in awarding a franchise, DCCA must assure that access to Cable Service is not denied to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides. See, 47 U.S.C. section 541(a)(3).

Consequently, DCCA is concerned about the limited geographic coverage of the initial deployment of HTSC's Cable Service, because it would result in a significant percentage of Oahu households not being able to subscribe to HTSC's Cable Service in the foreseeable future. HTSC maintains that because of its different technology and delivery mechanism as compared to a traditional Cable System, it is unable to provide its Cable Service to geographical areas beyond the VDSL2 loop limit from its central offices without expending considerably more financial resources. As a result, HTSC contends that it is not economically feasible to commit to providing Cable Service to all areas of Oahu during its initial deployment. HTSC, however, states that it intends, over the term of the Cable Franchise subject to technological, economic and competitive market factors, to make its Cable Service available to all, or nearly all, residents of Oahu. HTSC intends to provide Cable Service to all census tract areas,[4] which would include rural and homestead areas where HTI is the telephone service provider.

HTSC asserts that since there is an incumbent Cable System operator serving the franchise area, the current requirements imposed upon TWE should not also be imposed upon a new competitor in the cable television market. HTSC emphasizes that it faces a completely different set of competitive circumstances than those faced by TWE when TWE first was granted a Cable Franchise to the Oahu market. HTSC argues that TWE has had a long time presence on Oahu for more than two decades and provides Cable Service to approximately ninety-one percent (91%) of all Oahu households and ninety-four percent (94%) of those with a television. HTSC claims that it must take away market share from the incumbent Cable System operator, which is a far different situation than what the incumbent Cable System operator once faced. HTSC submits that to impose build out requirements identical to those imposed on the Cable

4 This would not include military bases, which require separate cable franchises.

System operator incumbent would make entry into the current cable television market on Oahu prohibitively risky and constitute an unreasonable barrier to entry. As a result, HTSC argues that the initial Cable Franchise requirements imposed on it should be less burdensome than the requirements imposed on the incumbent Cable System operator.

HTSC further argues that its proposal to utilize the VDSL2 infrastructure of its Affiliate, HTI, will result in minimal impact to the public rights-of-way since HTSC will use the existing infrastructure and network of HTI. HTSC states that the grant of a Cable Franchise to HTSC will not result in any additional unreasonable adverse aesthetic impact upon public property since the Facilities used to provide HTSC's Cable Service will be the same Facilities used to provide the other services that will be carried by HTI's network. This absence of unreasonable adverse aesthetic impact upon public property provides a further public interest justification for the grant of HTSC's Application.

DCCA concurs with HTSC that it is in the public interest to have another competitor to provide Cable Service. DCCA is also cognizant that requiring a new entrant in the cable television market to build out to an entire Cable Franchise area too quickly may adversely affect its ability to provide competitive products at competitive prices. DCCA acknowledges that HTSC's proposed Cable Service should have a positive effect on the marketplace for Cable Services on Oahu, and its equipment and Facilities (i.e., outside utility boxes) should not have a material adverse aesthetic impact on Oahu's environment.

The Director remains concerned, however, that, absent a requirement to eventually make its service available to all households in Oahu, a Cable System operator could "cherry pick" its market area, providing Cable Service only in areas that are the least expensive to serve, or the source of the potentially greatest revenues. If a Cable System operator were permitted to build out in this manner, it could provide that operator with an unfair competitive advantage as compared to the incumbent operator. Such a business practice could also increase barriers to market entry for a third cable franchisee in Oahu.

When these competing factors are considered in the balance, the Director finds that it is reasonable for HTSC to begin to offer Cable Service within a smaller geographic area on Oahu. The Director's finding, however, is based in part on HTSC's stated intention to eventually make its Cable Service available to all, or nearly all, of Oahu's households prior to the end of the initial term of the Cable Franchise, subject to technological, economic and competitive market factors. In order to facilitate this extension of service, the Director is imposing the Cable System build-out planning and reporting requirements indicated in Section IV.B. of this

Decision and Order. The Director will utilize the results of these planning and reporting activities to closely monitor HTSC's progress in expanding the coverage and availability of its Cable Service and will take any necessary corrective action as appropriate during the initial term of this Cable Franchise and in the context of any franchise renewal proceeding.

H. Suitability of HTSC to Operate a Cable System

In evaluating the suitability of HTSC, the Director considered (among other things) the relationship of HTSC to its Affiliate, HTI. HTSC was formed in 2004 in connection with the Carlyle Group's acquisition of Verizon's Hawai`i businesses in order to provide non-regulated communications services, such as high-speed Internet and wireless businesses, which were not being provided by HTI. In December 2008, HTSC and certain other Hawaiian Telcom Affiliates filed for Chapter 11 bankruptcy protection in order to restructure their debts. On October 28, 2010, HTSC and Affiliates emerged from Chapter 11 with the senior secured creditors from the bankruptcy proceedings becoming the owners of nearly all of the new equity of the reorganized Holdco. Pursuant to the Plan, Holdco is in the process of becoming a publicly traded company. HTCI presently owns all the outstanding stock of two subsidiaries, HTI and HTSC. Both HTCI and Holdco have no independent assets, liabilities, or operations.

The relationship between HTSC and the other Hawaiian Telcom companies is deeply intertwined, and the Application itself often does not distinguish between HTSC and HTI. HTI is an incumbent local exchange carrier ("**ILEC**") that can trace its history back to 1883 when King David Kalakaua granted a charter to a predecessor company.

The network infrastructure and the network operations center, used by both HTI and HTSC, are owned by HTI. Based upon working agreements, HTSC relies upon the services and staff of HTI for technical support, billing and back office assistance, and customer service. Operational policies and financial investments appear to compliment and benefit all of the Hawaiian Telcom companies.

The State also considered the relationship between HTSC and its parent company, HTCI. HTSC's proposed Cable Service has the formal endorsement and support of HTCI's Board of Directors, which approved HTSC's proposed Cable Service, including the pro forma budget. In December 2010, the HTCI Board of Directors approved the HTCI 2011 budget, which included a separate five (5) year business plan for HTSC's Cable Service.

Although this Cable Franchise is being issued to HTSC, any Affiliate, joint venture, partner, or controlling entity of HTSC involved in the ownership or operation of the Cable System that would constitute a "cable operator" as defined in H.R.S. Section 440G-3 is also subject to, and shall comply with, the terms and conditions of this Decision and Order. HTSC shall be fully liable for any act or omission of an Affiliate that controls HTSC or is responsible in any manner for the management of the Cable System or the provision of Facilities thereof that results in a breach of this Decision and Order, as if the act or omission was the act or omission of HTSC.

Based upon the representations of HTSC in its application, and subject to the discussion below of other relevant factors, there are no facts that have been presented to the Director that give rise to a rebuttable presumption that HTSC fails to meet the character criterion under HRS section 440G-8(b) and HAR section 16-135-15. Therefore, the Director concludes that HTSC satisfies the general suitability and character requirements for the issuance of a Cable Franchise under State law.

IV. TERMS AND CONDITIONS OF THE CABLE FRANCHISE

A. The Privilege of a Cable 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. The Cable Franchise 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, which HTSC has recognized and assumed. 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 agreeing to the grant of this Cable Franchise, HTSC: (a) acknowledges and accepts the State's legal right to issue and enforce the terms, conditions, and requirements of this Decision and Order; (b) agrees that it shall not oppose intervention by the State in any proceeding affecting the enforcement of its rights under this Decision and Order; (c) accepts and agrees to each and every term, provision, condition, and requirement contained herein; and (d) agrees that the Cable Franchise was granted pursuant to processes and procedures consistent with applicable Law; and, agrees that it shall not raise any claim or defense to the contrary.

HTSC acknowledges that it shall be bound by the terms, conditions, and requirements of this Franchise Order and its officers and directors shall be responsible for conducting its operations.

B. Service Area

This Cable Franchise shall cover the island of Oahu, City and County of Honolulu, State of Hawaii.

Prior to the end of the term of this Cable Franchise, HTSC shall make its Cable Service available to all, or nearly all, residents on the island of Oahu, taking into consideration technological, economic and competitive market factors. HTSC shall not deny its Cable Service to any group of potential Cable Service Subscribers because of the income of the residents of the local area in which such group resides subject to the line extension policy and feasibility provisions set forth in this Decision and Order. A subscription to HTSC's Internet access service shall not be a prerequisite for consumers to subscribe to HTSC's Cable Service.

No later than three (3) months after the third (3rd) anniversary of the effective date of this Cable Franchise, HTSC shall prepare and submit a report to DCCA on the service availability and coverage of its Cable Service, and whether it meets its planned Cable Service availability for Oahu households and timetable set forth in this Decision and Order, which HTSC identified as confidential and which was submitted with its Application (Confidential Exhibit VIII.J.2). If HTSC's actual build out differs materially from its projected service goals and timeframe, it shall explain the reasons for such difference.

Subsequently, no later than three (3) months after the fifth (5^{th}) anniversary of the effective date of this Cable Franchise, HTSC shall update its report to DCCA on its Cable Service availability and coverage of its Cable Service programming to Oahu households. HTSC shall also develop and submit a plan to DCCA delineating the completion of the deployment of its Cable Service and coverage to all households in the Cable Franchise area during the remainder of the franchise term, taking into account HTSC's market penetration and market success at that time and other considerations set forth in this Section IV.B. If HTSC's actual build out differs materially from its projected service goals and timeframe, it shall explain the reason for such difference.

No later than three (3) months after the tenth (10^{th}) anniversary of the effective date of this Cable Franchise, HTSC shall prepare and submit to DCCA a report on its five (5) year plan, and if HTSC's actual build out differs materially from its projected service goals and timeframe in its five (5) year plan, it shall explain the reasons for such difference.

Notwithstanding these considerations, the Director reserves the right to issue further Decisions and Orders on HTSC's service availability and coverage during the term of this Cable Franchise.

As part of its planned Cable Service availability to all geographic areas of the Cable Franchise territory, within six (6) months after the third (3rd) anniversary of the effective date of this Cable Franchise, HTSC shall schedule a meeting with CATV to develop a plan to complete its deployment of its Cable Service and availability to all households in the Cable Franchise area during the remainder of the Cable Franchise term, taking into account HTSC's market penetration and market success at that time. Notwithstanding these considerations, the Director reserves the right to issue further Decisions and Orders on HTSC's Cable Service availability and coverage during the term of this Cable Franchise.

C. Programming Tiers

1. Basic Service Tier

The programming in HTSC's Basic Service Tier shall be provided to all Subscribers. Subject to availability, HTSC shall carry programming on its Cable System in each of the following broad categories in its Basic Service Tier.

a. Public access programming;
b. Educational access programming;
c. Governmental access programming;
d. Public nonprofit stations with national programming; and
e. Broadcast television stations as required by the FCC or applicable Law.

In addition to the above programming, HTSC may in its discretion include additional programming in its Basic Service Tier.

Notwithstanding any other provision to the contrary, HTSC 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 programming changes in its Basic Service Tier. HTSC shall have the right to petition the Director for modifications to the programming requirements for the Basic Service Tier as warranted by the development of technology or other factors during the term of the Cable Franchise.

2. Other Programming Service Tiers

In addition to the Basic Service Tier, HTSC shall have the discretion to offer other tiers of programming to Subscribers; provided that these other tiers shall, at a minimum, include the Basic Service Tier in the packages offered to Subscribers. Except as otherwise provided in this Decision and Order, HTSC 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 tiers of video programming. HTSC shall not be required to obtain the Director's prior written approval to change the programming in these other tiers. HTSC shall have the right to petition the Director for modifications to the requirement of the inclusion of the Basic Service Tier in all other tiers as warranted by the development of technology or other factors during the term of the Cable Franchise.

3. Leased Commercial Access

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

D. Local Origination Programming

HTSC has expressed an interest in producing its own local origination programming and DCCA encourages HTSC's endeavors to provide local programming so it can be competitive with other Cable System operators.

E. Franchise Required Channels

Pursuant to this Decision and Order, HTSC shall provide one (1) additional digital PEG Access Channel (described in F.2 below) and seven (7) digital Franchise Required Channels, for a total of fourteen (14) Channels. The Director or Director's designee shall allocate the Franchise Required Channels, or portions thereof, provided that allocations made with respect to public access shall comply with applicable Law.

For each Franchise Required Channel, HTSC shall provide a direct connection to its headend from a designated site to be determined by the entity or entities to which the Channel is allocated for the transmission of video programming. HTSC shall be solely responsible for all costs and maintenance of each connection. However, the cost for any Facilities and equipment to implement each digital Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection at the entity/entities' designated site) shall be borne by the entity or entities to which the Franchise Required Channels are allocated as described in further detail below.

1. Franchise Required Channel for State Government

Within a reasonable time after receipt of a written Letter Order of the Director, HTSC shall make available to the Legislature (Senate and House of Representatives) and the Executive Branch (Governor's Office and Lieutenant Governor), collectively, one (1) digital Franchise Required Channel for governmental programming. HTSC shall provide a connection to its headend from the State Capitol for the transmission of governmental programming on this Channel. HTSC shall be solely responsible for all costs for the connection to the State Capitol (i.e., the cost of any type of terminal equipment required to activate and use the connection). However, the cost for any Facilities and equipment to implement and operate this digital Channel at the State Capitol or for operation of the Channel shall be borne by the Executive Branch and the Legislature.

2. Franchise Required Channel for the City and County of Honolulu

HTSC shall make available to the Mayor of the City and County of Honolulu and the Honolulu City Council, collectively, one (1) digital Franchise Required Channel for governmental programming originating from Honolulu Hale. HTSC shall provide a connection to its headend from Honolulu Hale for the transmission of governmental programming on this channel. HTSC shall be solely responsible for all costs for the connection to Honolulu Hale (i.e., the cost of any type of terminal equipment required to activate and use the connection). However, the cost for any Facilities and equipment to implement and operate this digital Channel at Honolulu Hale or for operation of the Channel shall be borne by the City and County of Honolulu.

3. Franchise Required Channel for the County of Hawaii

HTSC shall provide one (1) digital Franchise Required Channel on its Oahu Cable System to the Mayor of the County of Hawaii and the Hawaii County Council, collectively. The Channel shall be made available on HTSC's Oahu Cable System upon the issuance of a Cable Franchise to HTSC for the County of Hawaii and within a reasonable time after receipt of a written Order of the Director;

provided that the digital Channel is included in the Hawai'i Cable Franchise Orders.

4. **Franchise Required Channel for the County of Maui**

HTSC shall provide one (1) digital Franchise Required Channel on its Oahu Cable System to the Mayor of the County of Maui and the Maui County Council, collectively. The Channel shall be made available on HTSC's Oahu Cable System upon the issuance of a Cable Franchise to HTSC for the County of Maui and within a reasonable time after receipt of a written Order of the Director; provided that the digital Channel is included in the Maui Cable Franchise Orders.

5. **Franchise Required Channel for the County of Kauai**

HTSC shall provide one (1) digital Franchise Required Channel on its Oahu Cable System to the Mayor of the County of Kauai and the Kauai County Council, collectively. The Channel shall be made available on HTSC's Oahu Cable System upon the issuance of a Cable Franchise to HTSC for the County of Kauai and within a reasonable time after receipt of a written Order of the Director; provided that the digital Channel is included in the Kauai Cable Franchise Order.

6. **Franchise Required Channel for Educational Programming**

Within a reasonable time after receipt of a written Letter Order of the Director, HTSC shall provide one (1) digital Franchise Required Channel to HENC for accredited educational programming. HTSC shall provide a connection to its headend from a designated site to be determined by HENC for the transmission of educational programming on this channel. HTSC shall be solely responsible for all costs for the connection to the site (i.e., the cost of any type of terminal equipment required to active and use the connection). However, the cost for any Facilities and equipment to implement this digital Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection at HENC's designated site) or for the operation of the Channel shall be borne by HENC.

Upon the issuance of a Cable Franchise in another county in the State, and within a reasonable time after receipt of a written Letter Order of the Director, HTSC shall make available the Channel to all its Subscribers across its franchise areas; provided that this Channel is included in the Cable Franchise(s) for other county(ies).

7. Franchise Required Channel for Video-on-Demand Educational Programming

In addition to the statewide educational Channel provided for in this Decision and Order above, HTSC shall provide VOD program capability to HENC with sufficient video storage to service all of accredited education on Oahu within a reasonable time after receipt of a written Letter Order of the Director for accredited educational programming by HENC over HTSC's Oahu Cable System. HTSC shall provide a connection from a site to be determined by HENC for the transmission of accredited educational programming in a mutually acceptable format. HTSC shall be responsible to provide equipment and software so that there shall be no ongoing recurring costs to HENC, the State, and/or DCCA. HTSC and HENC shall consult with one another to determine the total number of programming hours HTSC shall maintain on its server for the VOD educational service.

8. Additional Franchise Required Channels

Upon reasonable request and supported by sufficient justification, the Director may allocate additional Franchise Required Channels. After requesting and reviewing input from relevant stakeholders, the Director shall have the sole discretion to determine whether to provide any additional Franchise Required Channels.

F. PEG Access Channels

DCCA supports PEG access in Hawaii as a means for Subscribers to receive programming that reflects the views of the communities in which they reside. The Director also values PEG access because it provides a forum where people can voice concerns to the community and encourage community dialog.

HTSC shall work cooperatively with the Director or the Director's designee regarding PEG access on Oahu. For each PEG Access Channel, HTSC shall provide a direct connection to its headend from a designated site to be determined by the entity to which the Channel is allocated for the transmission of programming.

HTSC shall be solely responsible for all costs and maintenance of each connection. HTSC shall be responsible for providing equipment and software to maintain the connections so that there shall be no ongoing recurring costs to the Oahu PEG Access Organization(s), the DOE, the UH, or the Director or Director's designee. If at any time, a new PEG Access Organization is designated and selected to provide PEG access in the Oahu Cable Franchise area, HTSC shall bear the reasonable cost of providing a connection to the Facilities of that PEG Access Organization. If a PEG Access Organization moves from a Facility that has been previously connected by HTSC, the PEG Access Organization shall be responsible for the cost of connecting its new Facility to HTSC's headend. The cost for any Facilities and equipment to implement each PEG Access Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection) shall be borne by the entity or entities that are responsible for managing the PEG Access Channel(s).

HTSC shall provide connections and digital set-top boxes to enable the Oahu PEG Access Organization, the UH, the DOE or the Director's designee to monitor all PEG access channels simultaneously for quality assurance and troubleshooting at its main Facility with no ongoing recurring costs to the Oahu PEG Access Organization, UH, DOE, or the Director's designee.

1. Digital PEG Access Channels

HTSC shall designate and make available to the Director or the Director's designee at no cost to the State and/or DCCA the following:

a. Four (4) Channels for PEG access programming by the Oahu PEG Access Organization(s).

b. Two (2) Channels for accredited educational programming currently managed by HENC pursuant to its contract with Olelo, the current designated PEG Access Organization on Oahu. The two educational Channels shall be dedicated to accredited educational programming: one (1) for the UH, and one (1) for the DOE and HAIS.

HTSC shall provide a direct connection to its headend from the Oahu PEG Access Organization's main Facility for the transmission of access programming via PEGNet. HTSC shall be solely responsible for all costs for the connection to the PEG Access Organization. However, the cost for any Facilities and equipment to implement this digital Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection) shall be borne solely by the PEG Access Organization(s) on Oahu.

2. Additional Digital PEG Access Channel

Upon the issuance of a Cable Franchise in another county in the State, and within a reasonable time after receipt of a written Order of the Director, HTSC shall make available to the Director or the Director's designee one (1) additional digital Channel for public-related PEG Access programming to be programmed pursuant to the direction of the Director's designee on a first-come, first-served basis. HTSC shall make available the Channel to all its Subscribers across its Cable Franchise areas; provided that this Channel is included in the Cable Franchise(s) for other county(ies). HTSC and the PEG Access Organization on Oahu shall work together to develop the implementation and the activation date for this digital Channel. HTSC shall provide a direct connection to its headend from the PEG Access Organization's main Facility for the transmission of access programming. HTSC shall be solely responsible for all costs for the connection to the PEG Access Organization. The cost for any Facilities and equipment to implement this digital Channel shall be borne solely by the PEG Access Organization on Oahu.

3. **Additional PEG Access Channels**

Upon reasonable request and supported by sufficient justification, the Oahu PEG Access Organization(s) 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 require HTSC to provide any additional PEG access Channels. HTSC shall provide connections and digital set-top boxes to enable the Oahu PEG Access Organization or the Director's designee to monitor any additional PEG Access Channels with no ongoing recurring costs to the Oahu PEG Access Organization or the Director's designee.

4. **Two-way PEG Access Connectivity Capacity**

HTSC and the Oahu PEG Access Organization(s) shall confer in the selection of two (2) sites for their connection to the Oahu PEG Access Organization(s) for the purposes of enabling video connectivity, such as video conferencing, between each site with the Oahu PEG Access Organization(s)' main facility. HTSC and the Oahu PEG Access Organization(s) shall determine the implementation methodology and HTSC shall implement and be responsible for the connection of the two (2) sites selected. However, all equipment costs to activate and utilize the connection (i.e., the cost of any type of terminal equipment required to activate and use the connection) shall be borne solely by the Oahu PEG Access Organization(s).

5. **Designation or Selection of the Oahu PEG Access Organization(s)**

The Director shall have the sole discretion to designate or select one (1) or more entities to manage and operate the PEG Access Facilities and Equipment and the Access Channels, and receive the Access Operating Fee and Capital Fund Payments on Oahu.

6. **Unused Time**

Pursuant to Section 531(d) of the Communications Act, HTSC shall be permitted to use time on one 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 Access Channel(s) are not scheduled for use at least seventy-two (72) hours in advance of such time or times desired by HTSC; provided that any use of such Access Channel(s) by HTSC 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 Access Channels shall be identified as such by an appropriate announcement made at least twenty-four (24) hours in advance, and preceding and following each non-PEG access use.

Notwithstanding any other provision to the contrary, if any 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 Access Channel by HTSC shall be suspended for such time as the minimum access use of the Access Channel is maintained; provided that the provisions of this paragraph may be waived by the Director for good cause.

G. **Requirements for Franchise Required Channels and PEG Access Channels**

1. **Technical Quality**

The technical quality of all Franchise Required Channels and PEG Access Channels, to the extent within HTSC's control, shall be at least equivalent to the technical and picture quality of the local broadcast television stations which are affiliates of major national broadcast networks and satisfy the requirements contained in applicable provisions in the HAR. Subject to FCC regulations, the

Cable System shall be so constructed and operated that, to the extent within HTSC's control, there is no significant deterioration in the quality of 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, sync or frame loss, signal drop outs, and other interference and distortions and delays.

High definition program content on the Franchise Required Channels and PEG Access Channels shall be transmitted via high definition.

2. **Channel Placement**

All PEG access Channels, once made available, shall be used for PEG access and shall be transmitted to all Subscribers on HTSC's Basic Service Tier unless otherwise permitted by this Decision and Order or directed by the Director. Although DCCA acknowledges that HTSC may determine Channel placement at its sole discretion, HTSC agrees to assign each PEG Access Channel its own dedicated Channel number and shall not move the PEG Access Channels without at least thirty (30) calendar days' prior written notification to the Director. HTSC shall ensure that Subscribers can locate and view all PEG Access Channels in the same manner as other commercial Channels of video programming offered by HTSC, unless otherwise agreed to by the Director.

HTSC agrees to keep all Franchise Required Channels reasonably contiguous in the Channel lineup. HTSC also agrees to keep all PEG Access Channels reasonably contiguous in the Channel lineup. HTSC further agrees to keep all Franchise Required Channels reasonably contiguous with the PEG Access Channels in the Channel lineup, or, if it is impractical to make them reasonably contiguous, as close together in the Channel lineup as reasonably possible.

3. **Promotional "Tune-in," Public Service Announcements**

When HTSC acquires ad insertion capabilities, in addition to any public service announcements that HTSC may be required to provide pursuant to any State, federal or county Law or agreement, HTSC shall cablecast on its cable Channels, without charge to the State or the Director's designees, at least 1,800 public service announcements per calendar year, each thirty (30) seconds in length relating to the subjects below. The beneficiaries of the public service announcements shall work collaboratively to maximize the use of the allocated spots. The airing of the public service announcements shall be on any Channel that HTSC has ad insertion capabilities and is permitted to insert commercial or promotional segments and otherwise in a manner consistent with HTSC's public service announcement policy. HTSC shall have the sole discretion to determine on which Channel(s) to air the public service announcements. The promotional public service announcements shall be allocated approximately as follows:

a. PEG Access Organization (1,000 spots);

b. Executive Branch (Governor's Office and Lieutenant Governor's Office) and Legislature (Senate and House of Representatives) (total of 200 spots);

c. Mayor of the City and County of Honolulu and Honolulu City Council (total of 200 spots); and

d. HENC (400 spots).

HTSC shall be provided with the cablecast-ready public service announcements for airing by the applicable organizations in a format mutually acceptable to the parties.

4. Program Guides

HTSC shall include all Franchise Required Channels and PEG Access Channels in its on-screen TV guide and online program guide and channel lineup without charge to the State or the Director's designees. HTSC shall also maintain a process whereby the operators of Franchise Required Channels and PEG Access Channels can populate HTSC's on-screen TV guide and online program guide and channel lineup with information regarding program titles, contents and other information normally supplied in such guides.

H. <u>Developing Technologies</u>

1. <u>Technology Upgrade Plans</u>

The Department 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. Further, concerns have been raised by the CAC regarding the technical feasibility of using HTI's existing copper-based local loop infrastructure to provide a reliable and high-quality video service using FTTN and VDSL2 technology.

As such, the Director must be able to address the needs of Oahu Subscribers for upgrades relative to changes in network infrastructure design, video delivery technology, and advanced services such as enhanced digital programming and other related matters. In connection therewith, the Director may also review PEG access, INET requirements and/or point to point circuits, new technologies and services, and any other matter related to the Cable System and Cable Franchise area.

For every five (5) year period during the Cable Franchise term, HTSC shall submit a Technology Upgrade Plan for its Cable System to DCCA. The first Technology Upgrade Plan is due on August 1, 2016 and thereafter August 1, 2021. The Technology Upgrade Plan shall report on the technical performance of HTSC's existing FTTN and VDSL2-based infrastructure and a summary of complaints received regarding same. The plan should also discuss new developments in video delivery technology and present an anticipated timetable for the incorporation of new developments into the HTSC's 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. HTSC, 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. HTSC shall also address in its plans, among other things, the following: impacts to PEG access and schools and libraries, Franchise Required Channels, INET requirements, broadband internet speeds, and other matters related to its Cable System and the Cable Franchise area. Nothing herein shall preclude HTSC from filing confidential, proprietary and/or competitively sensitive information under seal with the DCCA that pertain to these matters.

In the event that HTSC's Technology Upgrade Plan fails to address adequately any of the criteria established above, the Director may require HTSC to amend and/or update its technology upgrade plan. If HTSC fails or refuses to submit an amended and/or updated Technology Upgrade Plan as requested by the Director, HTSC shall provide a statement explaining how 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 HTSC improve its Technology Upgrade Plan to incorporate new technologies to its Cable System more rapidly. If HTSC fails or refuses to submit and/or adhere to an improved technology upgrade plan as requested by the Director, HTSC shall provide a statement explaining why its refusal or failure serves the public interest within fifteen (15) calendar days after receipt of the Director's request.

The Director shall review all statements provided by HTSC regarding how its refusal or failure serves the public interest and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting HTSC's public interest statement. In the event that the Director rejects HTSC's public interest statement, the Director may require HTSC to submit a revised statement or Technology Upgrade Plan.

In the event that HTSC fails to submit a Technology Upgrade Plan by the established deadline and/or the Director determines that HTSC has failed to implement a previously submitted Technology Upgrade Plan, HTSC shall be provided a reasonable time to cure any deficiencies or provide a statement of how such non-compliance serves the public interest.

The failure to remedy the deficiency or deficiencies with a reasonable time, or failure to provide a statement that is accepted by the Director explaining why HTSC's non-compliance serves the public interest, shall subject HTSC, at the option of the Director, to a reduction of the Cable Franchise term, termination of the Cable Franchise, or any other appropriate action taken by the Director that is consistent with this Decision and Order and applicable Law.

2. <u>Future Digital Upgrades to the PEG Access Channels</u>

As part of its technology upgrade plan discussed above, HTSC shall consider and address digital upgrades to the equipment and Facilities of the Oahu PEG Access Organization(s).

I. Access Operating Fee

1. Payment of AOF to the Director or the Director's Designee

During each year of the cable franchise term and subject to further Decision and Order by the Director, HTSC shall pay an AOF to be used for PEG access purposes and/or any other public purpose(s) as determined by the Director.

HTSC shall pay the AOF to the Director or the Director's designee pursuant to the payment schedule set forth below, 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 AOF, and the Director may consider transitioning the payment of the AOF from an annual to a monthly, semiannual, or other periodic collection and payment system.

2. Calculation of AOF

HTSC has committed to supporting PEG access, including the provision of PEG Access Channels and to providing AOF payments on the same basis as the incumbent cable operator's access operating fee payments.

During the term of the Cable Franchise, HTSC shall pay an AOF that is equivalent to three percent (3%) of HTSC's annual Gross Revenues from its Cable Service to the Director or the Director's designee.

The AOF shall be paid to the Director or the Director's designee on a monthly basis. HTSC's Gross Revenues from its Cable Service collected during one (1) month shall be used to calculate the monthly AOF. HTSC shall pay to the Director or the Director's designee the monthly AOF after a lag period of two (2) months, except that the first payment of AOF shall be made on February 29, 2012 for amounts collected from Subscribers in 2011.

3. Access Operating Fee Reports

On March 31, 2012, HTSC shall submit to the Director copies of the February 29, 2012 AOF payment and Gross Revenue statement for 2011. Commencing on January 31, 2013, and on January 31st of each year thereafter, HTSC shall submit to the Director copies of the AOF payments paid to the Oahu PEG Access Organization(s) during the prior calendar year, together with its Gross Revenues statement, and any other supporting information requested by the

Director. HTSC 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 of the AOF, the timing of the payments of the AOF to the Director or the Director's designee, and/or the use of AOF.

5. **Obligation to Pay Upon Transfer**

If the Director approves any subsequent transfer of the Cable System, HTSC shall be required to pay the Director or the Director's designee the outstanding AOF required to be provided in this Decision and Order before the effective date of the transfer.

J. **Capital Fund Payments**

Commencing on January 31, 2012 and on January 31st of each year thereafter, HTSC shall make annual Capital Fund Payments to the Director or the Director's designee, unless otherwise ordered by the Director. The Capital Fund Payments shall take into consideration the need to upgrade and replace the equipment of the PEG Access Organization in light of anticipated changes in technology.

1. **Payments in January 2012 and 2013**

Through the end of the calendar year 2011, HTSC's contributions of capital funds for PEG Access Facilities and Equipment are set at three dollars ($3.00) per Subscriber as of December 31, 2011 and shall be prorated based upon the number of months HTSC operated its Cable Service on a commercial basis in 2011. The first Capital Fund Payment shall be made to the Director or the Director's designee on January 31, 2012. Thereafter, HTSC shall pay Capital Fund Payments of three dollars ($3.00) per Subscriber, which includes the January 31, 2013 and January 31, 2014 payments.

2. **Schedule of Future Payments**

HTSC has proposed that its Capital Fund Payments be the same amount per Subscriber as that negotiated by TWE. HTSC and the Oahu PEG Access Organization(s) shall meet and develop a plan and schedule for the Capital Fund Payments for the PEG Access

Facilities and Equipment for the years 2015 to 2019 and submit said agreed-upon schedule to the Director by April 30, 2014. HTSC and the Oahu PEG Access Organization(s) shall meet and develop a schedule for Capital Fund Payments and submit said agreed-upon schedule to the Director no later than April 30, 2019 for the next five (5) year period of the Cable Franchise term, and on April 30, 2024 for the remainder of the Cable Franchise term.

The Director, in the Director's sole discretion, and taking into account whether the plan serves the overall public interest, may approve, deny, or modify the proposed amount and schedule of Capital Fund Payments, and the timing of those payments may be subject to further Letter Order by the Director.

In the event that HTSC and the Oahu PEG Access Organization(s) are unable to agree and develop a schedule in good faith for Capital Fund Payments, the Director shall have the sole authority to arbitrate and designate a schedule for the parties. If HTSC refuses to accept the designated schedule, the Director shall have the option to reduce the duration of the Cable Franchise term, terminate the Cable Franchise, or take any other appropriate action consistent with this Decision and Order and applicable Law.

In the event that HTSC fails to adhere to a previously submitted schedule for Capital Fund Payments, HTSC 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 HTSC 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 HTSC's overall public interest statement. In the event that the Director rejects HTSC's overall public interest statement, the Director may require HTSC to submit a revised statement.

The 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 HTSC, at the option of the Director, to a reduction of the Cable Franchise term, termination of the Cable Franchise, or any other appropriate action taken by the Director and consistent with this Decision and Order and applicable Law.

3. Obligation to Pay Upon a Transfer

If the Director approves any subsequent transfer of the Cable System, HTSC shall be required to pay the Director or the Director's designee the outstanding Capital Fund Payments required to be provided in this Decision and Order before the effective date of the transfer.

4. Capital Fund Payment Uses

The Capital Fund Payments required to be provided by HTSC under this Decision and Order shall be deemed to be capital contributions to the extent permitted under section 542(g)(2)(C) of the Communications Act and shall not be used for any operating expenses of the Director's designee. Currently, Capital Fund Payments are used for the acquisition of PEG Access Facilities and Equipment.

5. Capital Fund Payment Reports

Commencing on January 31, 2012, and on January 31st of each year thereafter, HTSC shall submit to the Director copies of the Capital Fund Payments and any other supporting information requested by the Director. HTSC shall provide a sworn statement as to the accuracy and completeness of these reports.

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

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

1. A minimum of seventy-five percent (75%) of the current number of original hours of access programming on the incumbent Cable Operator's channels is not produced;

2. Such payments are used by the Director's Designee for non-PEG access purposes as determined solely by the Director;

3. The Director's designee fails to comply with any of the provisions in the PEG access contracts with 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.

HTSC's obligation to make such payments shall be reinstated at the sole direction of the Director. Also, in the event the Director permits the incumbent Cable Provider to suspend such payments, the Director will permit HTSC to suspend such payments.

L. Fee for New Cable Operator

HTSC shall pay a fee of FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00), which shall serve as the Annual Fee Payment to DCCA for 2011 pursuant to H.A.R. Section 16-132-3 and be due upon the issuance of this Decision and Order by the Director.

M. Annual Fee Payment to DCCA

HTSC shall pay to the Department an Annual Fee as specified in HRS chapter 440G and HAR chapter 16-132. Commencing in 2012, 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. The Annual Fee shall be paid by HTSC commencing on January 31, 2012, and on January 31st of each year thereafter.

HTSC 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. HTSC shall provide a sworn statement as to the accuracy and completeness of these reports.

N. 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 State enjoys a robust INET system that has been provided for and supported by the incumbent cable operator. The Director recognizes that the maintenance and continued expansion of the State's INET is a significant component of the State's strategy for its communications infrastructure and an important benefit to the public. While it is not the intent of the Director to have HTSC duplicate the existing INET system, it may be crucial to public safety to have redundant connections or backup circuits in certain instances.

HTSC has expressed its commitment to support the growth of the State's INET and also to provide other contributions to consumers. HTSC has committed to provide a number of point-to-point circuits at no cost to the State or DCCA and access to radio facilities, along with additional point-to-point circuits, for which the actual costs of labor and materials will be borne by the State and DCCA, as may be required by the Director. HTSC also proposes to maintain and repair these circuits at no charge or cost to the State, DCCA, the Director's Designee or Subscribers.

HTSC has agreed to an INET contribution that includes two major components. First, HTSC has agreed to provide and maintain at no charge to the State or DCCA various point-to-point GigE Ethernet connections during the Cable Franchise term. Second, HTSC has agreed to provide and maintain further additional GigE connections as requested by the State based on the cost of labor and materials to HTSC or its Affiliates, which ever is performing the work. The State will be responsible for any support structure at customer premises and will provide the necessary space and power required for service. Each of these contributions is subject to the following provisions:

a. <u>INET Contributions During the Cable Franchise Term</u>

HTSC has agreed to provide and maintain at no charge to the State the following connections, which shall be made available to the State during the specified years; provided that State can change the order of deployment taking into account feasibility, changes in technology, and HTSC's market penetration and success and further provided that the connections included in the following list can be substituted for other connections.

1) <u>Years 1 - 2</u>

a) Coconut Island -- (1) 10 Gigabit per second Ethernet connection from Coconut Island to Keller Hall, UH Manoa. During Year 1 of the Cable Franchise term, HTSC shall be responsible for the planning and construction of this connection and for obtaining any required permits and approvals. HTSC shall complete the planning, permitting and preparation for construction of this connection.

HTSC shall bear the costs for any necessary permitting, environmental and construction approvals. During Year 2, construction for the Coconut Island connection shall commence and be completed.

b) (1) 1 Gigabit per second Ethernet (fiber) from Kalanimoku State Office Building to King Kalakaua Building – Year 1; the DCCA and HTSC shall work out mutually acceptable details for this connection.

c) (1) 1 Gigabit per second Ethernet (fiber) from City Financial Tower to Kalanimoku State office Building. Year 1

d) Access and Co-location at Puu Papaa Radio Facility (Windward Oahu)

It is of critical importance for the State to have access to communications infrastructure that would be used to support first responders and those government agencies with law enforcement, homeland security, and disaster response and recovery missions. HTSC has agreed to provide the State access at no charge to its radio facilities at Puu Papaa, Kailua, Oahu so that the State may install its own radio equipment and antennas. This includes the following:

1/ Space to install and service 5 ICSD equipment cabinets of 2-feet wide by 2-feet deep (nominal) by 8-feet high in size (one cabinet will contain DC power system and back up batteries) (101 – 200 sq. feet);

2/ Access to site by the State via access card; HTSC/HTI shall commence access planning and complete construction in Year 1 in order for the State to commence installation and set-up of its equipment;

3/ Access to HTSC/HTI generator, at 240/120 VAC or 208/120 VAC, as available, to provide at least two 240 VAC (or 208) 30-Amp circuits and three 120 VAC 20-Amp circuits; HTSC/HTI to upgrade generator as necessary to accommodate power demands of State equipment and upgrade air conditioning systems to service additional heat loads from State radio equipment and install a sub-meter for measure power use; Year 1 -2;

4/ State agrees to pay for its utility power costs (monthly or quarterly) based upon HTSC/HTI installed power sub-meter;

5/ Access to HTSC/HTI antenna mounting pole for 2 omnidirectional whip antennas and 1 small microwave link antenna; State will have the option at the State's cost to replace or upgrade mounting pole, provided that overall footprint (location and height) are retained;

6/ HTSC/HTI to cover road maintenance costs during franchise term;

7/ HTSC/HTI to provide the State at no charge DSL service from Puu Papaa radio station to Kalanimoku State Office Building basement at 10 Mb/sec or higher rates but at no less than 2 Mb/sec;

8/ Other than monthly/quarterly utility power costs, the State shall not be charged or responsible for a monthly lease rent fee and/or costs during term of this Decision and Order;

9/ State will notify and coordinate with HTSC/HTI regarding equipment and antenna installation activities; and

10/ HTSC and HTI shall require that any future purchasers, assignees, lessees, or successors of the Puu Papaa Radio facility site comply with and be bound by these terms.

2) Years 3 - 4

a) (1) 100 Megabit per second Ethernet connection from Kalanimoku State Office Building to Hilo State Office Building – Year 3

b) (1) 100 Megabit per second Ethernet connection from Kalanimoku State Office Building to Wailuku State Office Building – Year 3

c) (1) 100 Megabit per second Ethernet connection from Kalanimoku State Office Building to Kona State Office Building – Year 4

d) (1) 100 Megabit per second Ethernet connection from Kalanimoku State Office Building to Lihue State Office Building – Year 4

3) Year 5

a) (2) 10 Gigabit per second Ethernet connection from Kalanimoku to a future alternative data center site on Oahu.

4) Years 6 - 15

a) Taking into account the requirements to provide connectivity from Kalanimoku to the future alternative data center site, up to 4 additional 1 Gigabit per second Ethernet connections between sites on Oahu.

b. INET Connections Provided to the State on a Cost of Labor and Materials Basis to HTSC or its Affiliates

At any time following the first year of the Cable Franchise, the State may request HTSC to provide additional connections to the State on a labor and materials basis. These connections could involve GigE Ethernet transmission connections.

In requesting the provision of such additional connections, the State shall apportion such requests between HTSC and other cable franchisees on Oahu, based on the proportion of the subscribers held by each franchisee and the cost of providing each connection. The State shall request such additional interconnection only to connect locations where HTI does not provide fiber-based telecommunications services to at least one of the end points.

The cost to the State shall include only HTSC's or its Affiliate's costs (depending on which is performing the work) for labor and materials required to construct new infrastructure for the connections. The State shall not incur any reoccurring costs for such connections. The labor and material costs shall be calculated using the costs incurred by HTSC or its Affiliate that constructs or contracts for the construction of the connection. Although HTI may record an accounting charge to HTSC based on the tariff rates for such links, the actual and recorded cost to the State shall be based on the overall cost in labor and materials to HTI/HTCI (not to HTSC), and HTSC's Affiliate.

Upon written request by HTSC, the Director may grant an extension for the installation of these services required under this Section IV.N. for good cause.

2. **Emergency Override System**

a. Power Supply. HTSC's headend and COs shall have uninterruptible power supply systems and backup generators with sufficient fuel supply to operate the Emergency Alert System portions of the network for at least 24 hours.

b. Emergency Alert System. Pursuant to Section 624(g) to the Communications Act, Cable Systems must be capable of providing EAS alerts to their Subscribers. HTSC shall therefore purchase and maintain EAS receivers and all associated equipment necessary to participate in national, State, and county level EAS activations and emergency alerts to Subscribers, at no cost to the State, DCCA, or Subscribers.

HTSC shall establish a direct connection from the Civil Defense location at Diamond Head to its headend. In an emergency situation, the Civil Defense will pre-set a message and send the message via such direct connection to HTSC, which shall then transmit the message to Subscribers in an alert text box that will interrupt every video channel. HTSC shall maintain and update this emergency system in full compliance with the State EAS requirements and FCC rules.

c. Override of System. HTSC shall configure and maintain the Cable System to permit Emergency Authorities to override, simultaneously by remote control, all audio and video signals on all Channels. The Emergency Authorities shall have the sole discretion to determine when to activate the Emergency Override System.

The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

The video display (a message crawl) during emergency voice messages may include State, Civil Defense, or other appropriate official emblems as designated by the Emergency Authorities.

d. Interconnection at No Cost. HTSC shall provide an interconnection to its headend at no cost or charge to the emergency operating centers within its Cable Franchise area.

e. Cooperation with Emergency Authorities HTSC shall cooperate fully with the Emergency Authorities in the planning and implementation of the Emergency Override System, and shall at all times comply with all applicable Laws and regulations, including FCC requirements and standards.

3. Interconnection with the Hawaii Interactive Television System

HTSC shall support and provide carriage of the HITS programming on the Cable System at no cost or charge to the State, DCCA, or Subscribers. HTSC shall provide and maintain a interconnection with the HITS at points to be designated by the Director, at no charge or cost to the State, DCCA, or Subscribers.

4. Non-Franchise Fee/Capital Contribution

The items and services required under this Section IV.N. shall be provided at no charge or cost to the State, DCCA, or Subscribers and shall not be deemed to be Franchise Fees under Section 542 of the Communications Act.

O. Schools and Institutions of Higher Learning

1. Interconnection to Schools and Libraries

Upon specific request of a DOE school, an institution of higher learning, or a library, and subject to HTSC cable service availability, HTSC shall provide one (1) video signal drop, Basic Service Tier video service, one (1) set-top box or similar device, and DSL service all at no cost or charge to the State or Subscribers, or to the DOE school, institution of higher learning, or library who submitted the request. HTSC shall maintain and repair the cable lines up to the termination points of each site at no charge or cost to the DOE schools, institutions of higher learning, or libraries.

2. Maintenance and repair of the Cable Drop

HTSC shall maintain, repair, and, if necessary, replace all infrastructure necessary to provide Cable service at no cost to the State, DCCA, or Subscribers, including the cable from the feeder line to the recipient school, library or institution.

P. Public Broadcasting

DCCA believes that the continued viability of public broadcasting is in the public interest. The HPTF, dba PBS Hawai'i, provides statewide non-commercial broadcasting of Public Broadcasting Service's educational, cultural, and historic programs as well as local programming that educates, informs, and entertains residents, businesses, and visitors.

1. Payment of HPTF Fee to HPTF or the Director's Designee

For the duration of the Cable Franchise term, unless modified by further Decision and Order by the Director, HTSC shall provide funding to HPTF or the Director's designee in an amount equal to one percent (1%) of its Gross Revenues each year.

2. Calculation of the HPTF Fee

The HPTF Fee shall be based on an amount no greater than one percent (1%) of HTSC's Gross Revenues for the applicable preceding calendar year, as directed by the Director. The HPTF Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of Facilities and equipment for public broadcasting.

The HPTF Fee shall be paid on a monthly basis. HTSC's Gross Revenues from the Cable Service collected during one (1) month shall be used to calculate the monthly HPTF Fee. HTSC shall pay to HPTF or the Director's designee the monthly HPTF fee after a lag period of two (2) months, except that the first HPTF payment shall be made on February 29, 2012 for amounts collected from subscribers in 2011.

3. **HPTF Fee Reports**

On March 31, 2012, HTSC shall submit to the Director copies of the February 29, 2012 HPTF Fee payment and Gross Revenue statement for 2011. Commencing on January 31, 2013, and on January 31st of each year thereafter, HTSC shall submit to the Director copies of the HPTF Fee payments paid to the Oahu PEG Access Organization(s) during the prior calendar year, together with its Gross Revenues statement, and any other supporting information requested by the Director. HTSC shall provide a sworn statement as to the accuracy and completeness of these reports.

PBS Hawai'i or any successor broadcast television Channel(s) operated by the HPTF or its successor, shall not be deemed Access Channel(s) and shall not be counted or included among the Access Channels described in Section IV.F.

Q. **Cable System Facilities and Equipment**

1. **System Design and Functionality**

HTSC shall meet or exceed the following requirements:

a. The Cable System shall use HTI's VDSL2 network, which consists primarily of fiber facilities between central offices and remote terminals or "nodes" with the last mile access provided via copper-based loop facilities.

b. HTSC's video service shall utilize IP-based data packet technology to transport and deliver its switched digital video service over VDSL2 network facilities that already deliver voice and packet data services (e.g., DSL service, private Ethernet service, IP telephony watch, etc.)

c. HTSC shall maintain an active two-way plant for Subscriber interaction for selection and use of video service.

d. The COs shall be supported with twenty-four (24) hour back-up non-interrupting power supplies to minimize power outages, thereby decreasing potential service interruptions.

e. In the event HTSC seeks to utilize a different video distribution technology, such as Fiber to the Premises (FTTP) or Fiber to the Home (FTTH) infrastructure, HTSC shall provide written notification to the Department within ninety (90) days, and the Director may modify any of the terms, conditions and requirements of this Decision and Order to address the needs of Oahu subscribers relative to the upgraded infrastructure.

2. System Functionality

As designed, maintained, and upgraded, all Facilities and equipment of the Cable System shall deliver high quality signals that meet federal law and FCC technical quality standards, regardless of the particular manner in which the signal is transmitted. If HTSC or DCCA receive significant numbers of complaints regarding the quality and reliability of Cable Service signals, the Director reserves the right to initiate the Technology Upgrade Plan review process prior to fifth year following the start of the initial term of this Cable Franchise.

3. Test Results

HTSC shall comply with all FCC Cumulative Leak Index testing requirements applicable to the HTSC system and shall submit annually the results of any and all CLI tests to the Director no later than thirty (30) calendar days after the date of any test.

4. Collateralization of Cable System Facilities and/or Equipment

a. Notification of Collateralization. In the event that the assets of the Cable System will be or have been pledged by HTSC as collateral for additional borrowing or other purposes, HTSC shall notify the Director in writing no later than fifteen (15) calendar days after the closing of the loan or credit facility. HTSC shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount and any other information the Director may reasonably require.

b. Subsequent Notification of Change. During the term of the Cable Franchise, HTSC is not required to seek pre-approval of any change in an existing loan agreement or credit facility that encumbers or pledges the assets of the Cable System;

provided that the Director shall have the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within thirty (30) calendar days after closing, HTSC shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine whether the change(s) to the loan agreement or credit facility affect the continued financial viability of HTSC and/or its Cable Service and Cable System and to require corrective measures if necessary.

c. Prompt Notification of Default. Notwithstanding any other provision to the contrary, in the event that HTSC receives notice indicating that it is in default under any of its loan agreements or credit facility, HTSC shall: (1) promptly notify the Director in writing of such event, (2) describe in sufficient detail the nature of default and HTSC's actions to cure such default, and (3) promptly notify the Director in writing of the final resolution of such default.

R. Subscriber Service

1. Adequate and Reliable Service Required

Adequate and reliable service by a Cable System operator demands responsive and timely customer service. HTSC intends to utilize HTI's existing customer support infrastructure, customer call center, and manpower. The Director remains concerned that the new video programming offerings will place significantly greater demands on HTI's customer service support infrastructure and personnel that in the past had experienced difficulties managing calls from HTI's telephone service customers.

Since 2006, when HTI experienced significant problems in its ability to handle its customer service and billing requirements following the transition from Verizon's mainland systems to its own systems, HTI has reduced customer hold times to more normal levels and has improved its billing/ordering systems. HTSC shall submit the monthly call center service performance reports described in Section 4.d. below to DCCA that detail how HTSC addressed customer service concerns. HTSC shall provide DCCA with the result of the FCC's proposal to revise quality standards in any pending docket addressing such issues, and DCCA shall monitor HTSC's compliance with the FCC Customer Service Standards, any modifications to same, and the requirements contained in this Decision and Order.

HTSC shall acknowledge receipt of a complaint and complaint inquiry within ten (10) business days of receipt. HTSC shall address complaints and use its best efforts to resolve complaints within thirty (30) days of receipt.

Notwithstanding any other provision to the contrary, the Director reserves the right to take any action deemed necessary and appropriate regarding HTSC's customer service obligations under this franchise at any time (including but not limited to directing HTSC to remedy any deficiencies in its customer support services and/or back office services); provided that before any action is taken, the Director shall consult with HTSC about the action.

2. **Federal Customer Service Standards**

HTSC shall meet the federal cable television customer service standards set forth in applicable Law, including but not limited to 47 CFR sections 76.1602 and 76.309.

3. **Customer Service Office**

a. Number of Customer Service Offices. HTSC shall maintain and operate within its Service Area at least two (2) customer service offices or physical sites to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints (including without limitation those regarding service, equipment malfunctions, or billing and collection disputes). HTSC shall maintain an adequate staff or procure adequate support staff to provide such services in a timely, efficient, professional, and courteous manner.

b. Operating Hours. For each customer service office or physical site it maintains, HTSC shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that shall be most convenient for its Subscribers. At a minimum, HTSC shall maintain at least two (2) customer service offices or physical sites in the franchise area open for walk-in business at least nine (9) hours each weekday and at least eight (8) hours on Saturday.

4. **<u>Customer Service Call Centers</u>**

a. Call Center Access Line. HTSC shall maintain a publicly listed local, toll-free or collect call customer service telephone access line that shall be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall be available to respond to Subscriber telephone inquiries during normal business hours. The customer service telephone number may be used for Subscriber repair service matters.

b. Telephone Response Time. HTSC shall comply with federal customer service standards when responding to telephone calls from Subscribers.

c. After Hours Answer Service. After normal business hours, the customer service telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day.

d. Call Center Service Performance Report. In order to monitor HTSC's customer service, HTSC shall submit to the Director on the fifteenth (15^{th}) day of each month a customer service performance report detailing HTSC's customer service performance, including but not limited to the following matters:

1) The average length of time that it takes a human operator to answer a Subscriber telephone call;

2) The number of abandoned telephone calls to customer service telephone numbers;

3) The number and percentage of busy signals received by callers;

4) The percentage of telephone calls answered within thirty (30) seconds when a connection is made;

5) The percentage of telephone calls that are transferred to another HTSC employee or representative in which the transfer time exceeds thirty (30) seconds; and

6) The effectiveness of any new computer equipment in decreasing response time.

The report shall be submitted by HTSC in a form acceptable to the Director, and shall be subject to provisions of the Hawaii Uniform Information Practices Act in HRS chapter 92F.

5. Installation and Repair Service

a. Installation Service Hours. HTSC shall provide installation services at least eight (8) hours each weekday and on Saturdays, except for legal holidays. The specific hours of service shall be determined by HTSC to be most convenient for its Subscribers.

b. Repair Service Hours. HTSC shall provide repair service at least eight (8) hours each weekday and on Saturdays. At all other times, HTSC shall have, at a minimum, an answering service to take calls and a technician on call to respond to after hour emergencies.

6. Billing

a. Billing Security. HTSC intends to bill its Subscribers in advance for the monthly service charge for its Cable Service. As a condition to the approval of the Application, HTSC shall provide a guarantee, executed by its parent company, HTCI, pursuant to which HTCI guarantees HTSC's obligation to reimburse the unused portion of the amounts prepaid by HTSC's Cable Service Subscribers in case HTSC, for whatever reason, terminates the provision of video services, and HTCI will provide such reimbursement if HTSC fails or is otherwise unable to do so. This reimbursement obligation extends both to prepaid amounts by HTSC Subscribers for the provision of Cable Services and for amounts prepaid for any equipment rental fees. DCCA shall reasonably consider any request by HTSC in the future to remove such guarantee as circumstances change (e.g., the development of HTSC's Cable Service business, continued strengthening of HTSC's financial position, or in the event HTSC desires to provide an alternative form of assurance).

b. Subscriber Bill Information. Subscriber bills shall be clear, concise, and understandable. Bills shall be fully itemized, with itemizations including but not limited to the Basic

Service Tier and other programming tier charges (i.e., standard and premium Channels), equipment charges, and any other charges requested by the Director. The bills shall also clearly delineate all activity during the billing period (including optional charges, rebates, credits, and Franchise Fee itemizations) and any other information requested by the Director.

1) Late fees may not be imposed upon consumers for delinquent payments related to Cable Services until sixty (60) calendar days after an invoice's due date.

2) HTSC shall provide Subscribers with prior notice of the imposition of a late fee for delinquent payment. HTSC shall adhere to the following procedures for charging late fees on Subscribers' billing statements:

   a) Billing Period 1: Subscriber's bill for Billing Period 1 is generated.

   b) Billing Period 2: If the Subscriber has not paid his/her bill for Billing Period 1 by the date that HTSC prints the bill for Billing Period 2, the Billing Period 2 bill shall include a notice to the Subscriber stating that a late fee will be charged if the Billing Period 1 bill is not paid in full by the date that the Billing Period 3 bill is generated. This notice shall also specify the amount of the late fee.

   c) Billing Period 3: If HTSC has not received the Subscriber's payment for Billing Period 1 by the date that HTSC prints the Subscriber's payment for Billing 3, HTSC may include the Billing Period 1 late fee assessment on the Subscriber's bill for Billing Period 3.

c. Billing Disputes. In the case of a billing dispute, HTSC shall respond to a written complaint from a Subscriber within thirty (30) calendar days.

d. Refunds. Refund checks to Subscribers, if applicable, shall be issued promptly, but no later than either:

1) The Subscriber's next billing cycle following resolution of the request or thirty (30) calendar days, whichever is earlier, or

2) The return of the equipment supplied by HTSC if service is terminated.

e. Credits. Credits for service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

7. Customer Satisfaction Survey

HTSC shall submit to the Director by December 31st of each year of this Cable Franchise term, the results of an annual customer satisfaction survey, conducted by an independent marketing company (at no cost to the State, DCCA, or Subscribers). HTSC shall submit its first customer satisfaction survey by the following December 31st after the first full year of commercial service to the public, or by December 31, 2012, whichever is sooner. The results of the annual customer satisfaction survey shall be reported in a form acceptable to the Director. Prior to conducting the survey, HTSC shall submit the proposed questionnaire/survey form to the Director for review and approval.

8. Compliance

a. Review of Customer Service Operations. The Director may require HTSC to perform further analysis of its customer service operations and to make such information available to the Director. Based upon such review, the Director may require HTSC to improve its customer service operations.

b. Notification of Violation. The Director, or the Director's designee, reserves the right to take any action deemed necessary and appropriate regarding HTSC's customer service franchise obligations at any time; provided that before any action is taken, the Director or the Director's designee shall consult with HTSC about the action. In the event of a violation, the Director or the Director's designee shall provide HTSC thirty (30) days' written notice of its intent to enforce these standards. In the event that HTSC repeatedly violates a customer service standard and does not cure the violation in a reasonable period of time, the Director or the Director's designee shall have the authority to impose fines and/or other sanctions in accordance with this Decision and Order.

S. Reports and Audits

1. Financial Information Provided by HTSC

Information regarding the financial condition of HTSC, results of operations, and Franchise Fee payments shall be submitted to the Director and/or the Director's designee pursuant this Decision and Order and applicable Law. In order to provide a streamlined and consolidated approach to such financial reporting, the Director reserves the right to require financial information to be submitted by HTSC to be in the form and schedule approved by the Director. HTSC shall work cooperatively with the Director and the Director's staff on this matter. The Director also reserves the right to require financial information to be submitted by HTSC concerning its Affiliate HTI, HTCI, and all principals and beneficial owners of HTSC (including Holdco).

2. Tariff

Within seven (7) calendar days of the initiation of its Cable Service to the public, HTSC shall provide DCCA its schedule of service rates and information as required under this Decision and Order and applicable Law. If HTSC amends its service rates and other information, HTSC shall amend its schedule of service rates and other information as required at least thirty (30) calendar days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director, to the extent permitted by applicable Law.

3. Reporting of Violations

Upon acquiring knowledge of any event which has or is reasonably likely to lead to a violation of any term or condition of this Decision and Order, HTSC shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur or has occurred, and (3) the action that HTSC proposes to take regarding the probable violation.

Upon acquiring knowledge of the existence of a violation of any condition of this Decision and Order, HTSC shall promptly inform the Director in writing specifying: (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that HTSC proposes to take with respect to the violation.

By April 30th of each year, HTSC shall submit to the Director a statement to the effect that no violation of this Decision and Order has occurred and that HTSC has observed or performed every condition contained in this Decision and Order. In the event a violation has occurred and is continuing or if HTSC has not observed or performed all of the terms and conditions contained in this Decision and Order, it shall specify the nature and period of the violation and what action(s) HTSC has taken or proposes to take with respect to the violation(s).

4. **Notification of Proceedings by Regulatory Agencies**

HTSC shall report any disciplinary or corrective administrative proceedings by regulatory agencies (e.g., the FCC or the HPUC) to DCCA within ten (10) calendar days of notification.

5. **Annual Audited Financial Statements**

By April 30th of each calendar year, HTSC shall submit to the Director, Holdco's audited consolidated and consolidating financial statements which such consolidating financial statements will disclose separate financial information for HTSC (i.e., Balance Sheet and Income Statement), for the preceding calendar year, required by the Director pursuant to HAR chapter 16-131 (including but not limited to HAR section 16-131-44). In the event the Department determines that Holdco's financial statements do not contain sufficient detail to allow the DCCA to analyze HTSC's financial condition on a stand-alone basis, then HTSC shall cooperate with the DCCA to provide supplemental financial information that will provide the DCCA with such sufficient detail. HTSC acknowledges its obligation to comply with HAR chapter 16-131 (including but not limited to HAR section 16-131-44).

The financial statements required to be furnished under this Decision and Order shall be accompanied by a statement showing the basis for computing and the amounts paid by HTSC, or any subsidiary of its parent company, Affiliates, subsidiaries, general partners, or any Person for management fees and fees in the nature of general and administrative allocations.

6. **Feasibility of Cable Service to Unserved Communities**

The incumbent Cable System operator in Oahu maintains a line extension policy of twenty-five (25) homes per mile, but the availability of HTSC's Cable Service is subject to the loop limits inherent in the underlying DSL technology being utilized to provide the service. HTSC shall work with the Director's staff and shall prepare an annual report regarding the feasibility of extending HTSC's Cable Service to all communities that remain unserved, subject to technological, economic, and competitive market factors. This report shall be submitted to the Director by December 31st of each year.

7. **Other Reports**

In addition to the reports required to be submitted under this Decision and Order, HTSC shall timely submit to the Director all other reports: (a) required by applicable Law or (b) reasonably requested by the Director.

8. **Inspection of Books and Records**

HTSC shall maintain at its local office(s) a complete set of books and records for its operations in Hawai'i including, but not limited to, Subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State.

All books and records not maintained and available for review at the local office(s) shall, upon request, be made available to the Director locally within five (5) business days.

The Director reserves the right to require financial information to be submitted by HTSC and Holdco, and all principals and beneficial owners of HTSC, including Holdco.

9. **Audit or Financial Review**

The Director shall have the sole discretion to require HTSC to submit to an audit and/or other verification such as performance of agreed-upon procedures by the Director's accountant or auditor for purposes of, among other things, validating HTSC's annual Gross Revenues, the collection and payment of Franchise Fees (including but not limited to the Franchise Fee process), the cross-subsidization between Cable Service and non-Cable Service, and other matters deemed necessary by the Director.

The total cost of the audit or financial review shall be solely paid by HTSC, and HTSC shall cooperate fully with the conduct of the audit or financial review.

T. <u>Director's Authority</u>

The Director has the power and jurisdiction to supervise and regulate every cable operator within the State so far as may be necessary to carry out the purposes of applicable Law (including but not limited to HRS chapter 440G), and to do all things which are necessary and convenient in the exercise of this power and jurisdiction.

Therefore, the Director, from time to time, may adopt or issue such rules, Decisions and Orders, or other directives governing cable franchises as DCCA finds necessary or appropriate in the exercise of DCCA's police power; provided that any action taken by the Director shall comply with applicable Law. HTSC shall comply with all rules, Decisions and Orders, and other directives adopted or issued by the Director.

The Director, from time to time, may require that HTSC undergo a performance and/or compliance review or audit. HTSC shall timely comply with the recommendations of the compliance reviews or audits and remedy any deficiencies. The Director may also require HTSC to develop specific performance measures which if not met, would subject HTSC to fines and compliance in accordance with this Decision and Order, and in the event that HTSC fails to pay such fines or further comply, this Cable Franchise may be subject to the termination and revocation provisions in this Decision and Order.

The total cost of the compliance audit or review shall be solely paid by HTSC, and HTSC shall cooperate fully with the conduct of the audit or compliance review. The Director shall select the consultant to perform the franchise compliance review or audit.

In granting this Cable Franchise, DCCA has relied, in part, on the representations of both fact and intention on the part of HTSC. If, during the term of this Cable Franchise, these representations prove to be incorrect (as determined solely by DCCA), DCCA may, in its sole discretion, invoke the termination and revocation provisions in this Decision and Order.

In addition, the Director, at any time during the term of the Cable Franchise and in the Director's sole discretion, may commence formal or informal proceedings for the purpose of addressing developing technology, future PEG access, and cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate consistent with this Decision and Order and applicable Law.

V. TERM OF THE CABLE FRANCHISE

A. Initial Term

The initial term of this Cable Franchise shall be fifteen (15) years from the effective date of this Decision and Order, unless terminated or revoked earlier as provided in this Decision and Order or by applicable Law.

B. Periodic Reviews

During the term of this Cable Franchise, HTSC shall be subject to periodic reviews by the Director to assess HTSC's technology upgrades as provided in this Decision and Order.

C. Renewals

Prior to the expiration of the initial fifteen (15) year Cable Franchise term, HTSC may request that its Cable Franchise be extended. Under current applicable Law, the periods of renewal shall be not less than five (5) nor more than twenty (20) years each. Any such request to renew shall be in writing and in the format required by the Director. The Director shall require full disclosure from HTSC in its request to renew, including but not limited to HTSC's proposed plans and schedule of expenditures for or in support of the use of PEG Access Facilities and Equipment during the renewal period. The Director shall have the sole discretion to grant or deny the request to renew.

VI. TERMINATION AND REVOCATION

The termination and revocation provisions set forth in this Decision and Order shall be in addition to (and not in derogation of) any other rights or remedies the Director may have with respect to this Decision and Order.

A. Termination

1. If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of this Decision and Order invalid, or (2) requires or allows HTSC either to perform any act which is inconsistent with any provision of this Decision and Order, or cease performing any act required by any provision of this Decision and Order, then at the sole discretion of the Director, this cable franchise shall terminate six (6) months from the date of such event.

2. The provisions of this section may be suspended for such period of time as HTSC may elect to voluntarily perform its obligations under

this Decision and Order; provided that HTSC provides prior written notice to the Director of such voluntary performance.

3. In the event that HTSC fails to timely comply with the recommendations of the periodic franchise compliance reviews or audits and remedy any deficiencies, the Director may terminate this Cable Franchise.

B. Revocation

1. If HTSC abandons its Cable Franchise or refuses to perform any of the terms, conditions, or requirements under this Decision and Order, the Director reserves the right to immediately revoke HTSC's Cable Franchise. HTSC shall be deemed to have abandoned its Cable Franchise if it willfully refuses to operate the Cable System as required under this Decision and Order, when there is no event beyond HTSC's control that prevents the operation of the Cable System, and where its operation would not endanger the health or safety of the public or property. The provisions of this section may be suspended for such period of time as HTSC may elect to voluntarily perform its obligations under this Decision and Order; provided that HTSC provides prior written notice to the Director of such voluntary performance.

2. If HTSC does not launch or provide its Cable Service to revenue-generating Subscribers within nine (9) months from the effective date of this Order, HTSC shall provide a written report to the Department explaining the reasons for the delay. If HTSC does not launch or provide its Cable Service to a revenue generating Subscriber within twelve (12) months from the effective date of this Order, HTSC shall provide a written report to the Department explaining the reasons for the delay, and the Director may revoke HTSC's Cable Franchise or may issue orders or directives that the Director deems necessary or appropriate. It is within the Director's sole discretion to determine whether to revoke HTSC's Cable Franchise or to issue other necessary or appropriate Decisions and Orders.

3. In the event that HTSC fails to timely comply with the recommendations of the periodic franchise compliance reviews or audits and remedy any deficiencies, the Director may modify or revoke HTSC's Cable Franchise.

4. HTSC's Cable Franchise may also be revoked as provided in HRS chapter 440G.

C. New Cable Franchise Application Not Prevented

In the event that HTSC's Cable Franchise is terminated or revoked pursuant to this Decision and Order, nothing herein shall prevent HTSC from applying for a new Cable Franchise.

VII. FINES FOR FAILURE TO PERFORM

For each violation of this Decision and Order, the Director may fine HTSC an amount not less than FIFTY AND NO/100 DOLLARS ($50.00) nor more than TWENTY-FIVE THOUSAND AND NO/100 DOLLARS ($25,000.00) per violation; provided that each day's continuation of a violation may be treated as a separate violation. In addition, a violation of any of the terms of this Decision and Order may permit the Director to invoke the modification provisions of this Decision and Order.

VIII. FRANCHISE FEES

A. Payment of Franchise Fees

1. In consideration of the award of the Cable Franchise granted herein which permits HTSC to operate a Cable System and use and occupy Public Places and Public Highways to operate a Cable System, HTSC shall pay all fees required by HRS chapter 440G, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

2. Notwithstanding any other provision to the contrary, the State is entitled to Franchise Fees that in total do not exceed five percent (5%) of the Cable System's annual Gross Revenues paid in a calendar year, or the maximum amount permitted under applicable Law. Currently, the State has determined that PEG access is important and has required that the Cable System operator provide Channels and financial support for PEG access. Accordingly, the State has determined that "Franchise Fees" include without limitation DCCA's Annual Fee specified in HRS chapter 440G and HAR chapter 16-132, the Access Operating Fee, and the HPTF Fee; provided that this term does <u>not</u> include the Capital Fund Payments or capital contributions to the Oahu PEG Access Organization(s) and/or the Director's designee, and does <u>not</u> include contributions of network capacity to the State's INET.

3. HTSC shall be responsible for ensuring accurate collection and payment of the Franchise Fees, and shall be responsible for any and all underpayments of Franchise Fees to the Director or the

Director's designee(s) during HTSC's operation of the Cable System.

4. HTSC shall, pursuant to 47 U.S.C. section 522, pay Franchise Fees on the Gross Revenues from its Cable Services, irrespective of whether the Cable Services are received by Hawai'i Subscribers using HTSC's Hawai'i-based infrastructure or through any other means.

5. HTSC shall implement a procedure that reflects Franchise Fee assessments as a percentage of a Subscriber's monthly billing for Cable Service and other services, which shall be effective as of the first billing date for Subscribers.

6. HTSC plans to market its Cable Service as part of a bundled package of services including non-video programming services as wireline telephone service, long distance calling, and high-speed Internet service. Customers will be offered a choice as to the combination of services they can subscribe to and will be charged a single discounted fee for the bundled package of services. DCCA does not object to HTSC's strategy of bundling services, so long as consumers have the option of purchasing individual Cable Services on an unbundled basis.

B. Discount for Senior Citizens

Under 47 U.S.C. section 543(e)(1), Cable System operators may offer discounts for Cable Service to senior citizens. HTSC is encouraged to develop and implement discounts for bulk Subscribers serving senior citizens, such as retirement communities and long-term care facilities located on Oahu.

C. Reconciliation by HTSC

1. Quarterly Cash Flow worksheets

In order to effectively monitor HTSC's financial position in the collection and disbursement of Franchise Fees, HTSC shall provide the Director with a cash flow analysis worksheet to be submitted quarterly on January 31, April 30, July 31, and October 31 of each year of the Cable Franchise, beginning thirty (30) days after the end of the quarter during which HTSC launches its Cable Service until December 31, 2012. The Director reserves the right to require HTSC to submit the Franchise Fee cash flow analysis worksheet in the form and schedule approved by the Director. HTSC shall work cooperatively with the Director and the Director's staff on this matter.

Commencing January 1, 2014, HTSC shall reconcile the collection and payment of Franchise Fees no later than March 31st of each year, and shall provide DCCA with its calculations and supporting documentation. The reconciliation by HTSC shall be subject to an audit or financial review as required by the Director.

2. **Over/under Payment of Franchise Fees**

If there is an overpayment of Franchise Fees to the Director or the Director's designee(s), HTSC either may request a repayment of the overpaid amounts from the Director or the Director's designee(s), or may credit the amount overpaid to subsequent payment(s) to the Director or the Director's designee(s), as authorized by the Director in writing. Credit(s) to subsequent payment(s) of the overpaid amount shall be made in a timely manner and fully disclosed to the Director or the Director's designee(s).

If there is an underpayment of Franchise Fees to the Director or the Director's designee(s), HTSC shall pay the Director or the Director's designee(s) the amount underpaid, as authorized by the Director in writing. Payment(s) of the underpaid amount shall be made in a timely manner and fully disclosed to the Director or the Director's designee.

3. **Over/under Collection of Franchise Fees from Subscribers**

If there is an over collection of Franchise Fees from Subscribers, HTSC shall credit Subscribers the amount over collected, as authorized by Director in writing. Refunds to Subscribers of over collected amounts, which may be in the form of a credit, shall be made in a timely manner with full disclosure to Subscribers on Subscribers' billing statements.

If there is an under collection of Franchise Fees from Subscribers, HTSC may charge Subscribers the amount under collected, as authorized by Director in writing. Additional charges to Subscribers of the under collected amount shall be made in a timely manner with full disclosure to Subscribers.

IX. OTHER PROVISIONS

A. Familiarity and Compliance with Applicable Law

HTSC, its officers, directors, agents, employees, and subcontractors shall be familiar with and comply with all applicable Laws that may, in any manner, affect the Cable System. If HTSC discovers that any provision in the applicable Laws is contrary to or inconsistent with any of the terms, conditions, or requirements of this Cable Franchise, HTSC shall promptly report it to the Director in writing.

B. Subcontracting and Assignment

Accepted as expressly provided in this Decision and Order, HTSC shall not subcontract or assign any of HTSC's duties, obligations, or interests under this Cable Franchise without the prior written approval of the Director.

C. Change in Ownership or Control

HRS chapter 440G states that no change of control of a Cable System may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the Cable System, regardless of the means by which that Person holds that control, is known to the State, meets the threshold requirements for holding a Cable Franchise, and is responsible and accountable to the State. Therefore, the Director's prior written consent shall be required for any direct or indirect change in the control, or sale, assignment or transfer of controlling ownership of HTSC, its Cable System or Cable Franchise. In addition, in light of the relationship between HTSC and HTI and the reliance HTSC places on HTI, any change in the control, or sale, assignment or transfer of controlling ownership of HTI shall require HTSC to: (1) inform the Director, and (2) submit a Cable Franchise transfer application to the Director for approval, as provided by applicable Law. HTSC shall also inform DCCA of any material changes in general ownership that may affect any of the terms and conditions of this Decision and Order.

D. Successors and Assignees

All of the terms, conditions, and requirements of this Decision and Order that apply to HTSC shall also apply to its permitted successors and assignees.

E. Modification

1. Modification by the Director

If HTSC fails to comply with any of the terms, conditions, or requirements of this Franchise Order and fails to remedy such non-compliance within a reasonable time after receiving notice by the Director, the Director may, upon the Director's own initiative and in the Director's sole discretion, taking into consideration the best interests of the public, modify any of the terms, conditions, and requirements of this Decision and Order. If HTSC declines to accept the modification, the Director shall have the authority to terminate or shorten the term of the Cable Franchise, or take any other appropriate action consistent with the terms of this Decision and Order and applicable Law. In addition, a violation of any of the terms, conditions, or requirements of this Franchise Order, regardless of whether cured by HTSC, may permit the Director to invoke the enforcement provisions of this Decision and Order.

2. Requests to Modify by HTSC

HTSC may, at any time, request the Director to modify any of the terms, conditions, and requirements of this Decision and Order during the term of this Cable Franchise. The Director shall have the sole discretion to consider HTSC's request and issue a modification of this Decision and Order. The Director shall take into account any appropriate factor(s) provided under applicable Law as may be amended and ensure that the terms and conditions upon which Cable Service is provided are fair to both the public and HTSC. In addition, nothing in this Cable Franchise shall restrict HTSC from exercising any rights or seeking any remedies that are or may become available to it under applicable Law.

F. Independent Contractor

In the provision of Cable Service and all other services under this Cable Franchise, HTSC shall be considered an independent contractor.

HTSC (and HTSC's employees, agents, subcontractor(s), and Affiliates) shall not, under any circumstance, be considered employees of the State, and shall not be entitled to claim or receive any benefits provided to State employees.

G. Indemnification and Defense

Notwithstanding any other provision to the contrary, HTSC shall defend, indemnify, and hold harmless the State and DCCA from and against all liability, loss, damage, cost, and expense (including all attorneys' fees and court costs) based upon or arising out of:

1. Any provision or requirement of this Cable Franchise;

2. Any acts or omissions to act that result from the negligence, bad faith, or willful misconduct of HTSC, its directors, its officers, its agents, and/or its employees; and/or

3. Any acts or omissions to act by HTSC's Affiliates or subcontractors under this Cable Franchise.

The provisions of this section shall remain in full force and effect notwithstanding the termination or revocation of this Cable Franchise.

H. Antitrust

This Decision and Order shall not be construed as exempting HTSC or any Affiliated or controlling entities from any antitrust law.

I. Headings

The headings or titles contained in this Decision and Order are for reference purposes only, and shall not in any way affect the construction or interpretation of the terms, conditions, or requirements of this Decision and Order.

J. Waiver

The Director reserves the right to waive any term, condition, or requirement of this Decision and Order for good cause determined by the Director.

The waiver by the Director or the State of any breach of any term, condition, or requirement of this Decision and Order shall not be taken or held to be a waiver of any succeeding breach of such term, condition, or requirement, or as a waiver of the term, condition, or requirement itself.

The failure of the Director to insist upon the strict compliance with any term, condition, or requirement of this Cable Franchise shall not constitute or be deemed to constitute a waiver or relinquishment of the Director's right to enforce the same in accordance with this Cable Franchise.

K. Governing Law

Except as otherwise provided under federal law, the validity of this Cable Franchise and any of its terms, conditions, or requirements, as well as the rights and duties of the State, DCCA, and HTSC, shall be governed by the laws of the State of Hawaii.

Any action at law or in equity to enforce or interpret the provisions of this Cable Franchise shall be brought in a State court of competent jurisdiction in Honolulu, Hawaii, unless federal law requires the filing of a certain cause of action in another forum.

L. Notices

Any written notice required to be given to any party under this cable franchise shall, at a minimum, be delivered personally or sent by United States first class mail, postage prepaid.

Notice to the Director shall be sent to:

Cable Television Administrator
State of Hawaii
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 101
Honolulu, Hawaii 96813

Notice to HTSC shall be sent to:

Senior Vice President and General Counsel
1177 Bishop Street
Honolulu, Hawaii 96813

M. Severability

In the event any provision of this Cable Franchise is declared invalid or unenforceable by a court, the invalid or unenforceable provision shall be severed and the remaining provisions of this Cable Franchise shall remain in full force and effect.

N. Non-Exclusivity

During the term of this Decision and Order, in the event that any new cable operator receives a cable franchise to provide Cable Service or to operate a Cable System in HTSC's Service Area, the material terms, conditions, and requirements of such additional Cable Franchise shall be reasonably comparable to the terms and conditions of this Decision and Order, taking into account any applicable legal limitations on DCCA's authority; provided that this provision shall not require an identical Cable Franchise for the new Cable System operator as long as the regulatory and financial burdens on each Cable System operator are generally equivalent, taking into account any difference in the number of Subscribers served, the number of PEG Access Channels and aggregate support provided, the level of fees and taxes imposed, the term of the Cable Franchise, and all other circumstances affecting the Cable System operators' respective burdens.

Dated: Honolulu, Hawaii, June 24, 2011.

KEALI`I S. LOPEZ
Director of Commerce and Consumer Affairs

Acknowledged and agreed to by:

Hawaiian Telcom Services Company, Inc.

Francis K. Mukai

Name: Francis K. Mukai

Title: Vice President

Date: June 24, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 352 was served upon the following person at the address shown below by mailing the same, postage prepaid, on this 24th day of June, 2011.

Francis K. Mukai, Esq.
Vice President & Associate General Counsel
Hawaiian Telcom Services Company, Inc.
P. O. Box 2200
Honolulu, Hawaii 96841

Patti K. Kodama

Patti K. Kodama
Secretary