

September 26, 2011

**VIA HAND DELIVERY**

Mr. Donn Yabusaki  
Administrator  
Cable Television Division  
Department of Commerce & Consumer Affairs  
King Kalakaua Building  
335 Merchant Street, Room 101  
Honolulu, Hawaii 96813

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2011 SEP 26 P 4:41  
CABLE DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

**Re: Application for Renewal of East Hawaii and West Hawaii  
Cable Television Franchises by Time Warner Entertainment  
Company, L.P. dba Oceanic Time Warner Cable  
Department of Commerce and Consumer Affairs  
First Request for Supplemental Information dated 09/02/11**

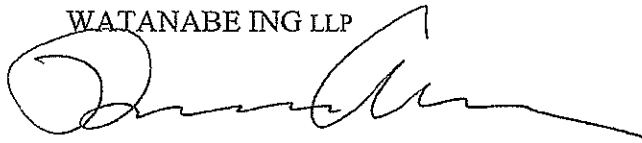
Dear Mr. Yabusaki:

Please find enclosed the original and two (2) copies of Applicant Time Warner Entertainment Company, L.P. dba Oceanic Time Warner Cable's Response to Department of Commerce and Consumer Affairs First Request for Supplemental Information dated September 2, 2011.

Thank you for your attention to this matter, and please contact me with any questions.

Very truly yours,

WATANABE ING LLP



BRIAN A. KANG

Enclosures

cc: Oceanic Time Warner Cable

**APPLICATION FOR RENEWAL OF  
EAST HAWAII AND WEST HAWAII CABLE TELEVISION FRANCHISES  
BY TIME WARNER ENTERTAINMENT COMPANY, L.P. DBA,  
OCEANIC TIME WARNER CABLE**

**APPLICANT TIME WARNER ENTERTAINMENT COMPANY, L.P. DBA  
OCEANIC TIME WARNER CABLE'S RESPONSE TO  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
FIRST REQUEST FOR SUPPLEMENTAL INFORMATION  
DATED SEPTEMBER 2, 2011**

1. Application. II. E. Technology Change and Hawaii Cable System Infrastructure (Pg. 8)

- a. Is Applicant committed to upgrading and maintaining state of the art services for the East and West Hawai'i franchises, on par with services available on Oahu?

**RESPONSE:** Oceanic plans to upgrade and maintain its system for East Hawaii and West Hawaii as described in Section II.H. of the Application for Renewal of Cable Franchise dated July 20, 2011 (the "Application"). These plans are generally consistent with Oceanic's plans for Oahu; however, the implementation of these plans is contingent upon community needs, financial and competitive considerations, and other factors.

- b. Explain in detail how the transition to newer technology now and in the future may or may not affect the future of PEG access channels, including Applicant's specific plans and time table to migrate PEG analog channels to digital channels in the East and West Hawai'i franchise areas.

**RESPONSE:** As noted in Section IV.D.2.c. and IV.H.3. of the Application, Oceanic is continuing to focus on the transition from analog to digital distribution technology in order to recover bandwidth, increase operational efficiency, and permit expanded video and data services for its customers. PEG channels, as with other channels on Oceanic's system, will migrate to digital distribution. At this time, Oceanic expects that the digital migration of the PEG channels for East Hawaii and West Hawaii will follow a schedule that is similar to the Oahu transition; however, the exact timing of the migration is contingent upon community

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needs, financial and competitive considerations, and other factors.

Oceanic also believes that changes in technology, including, but not limited to, the ubiquity of inexpensive (yet high-quality) video recording equipment, as well as established and widely-viewed avenues of expression (such as YouTube, Twitter and other internet services) has substantially altered the rationale and need for traditional PEG channels and programming.

c. It was recently reported that Time Warner Cable CEO Glenn Britt announced at an investors' conference call on July 28, 2011 that Time Warner Cable would cease analog cable television service within 5 years and that it would supplement switched digital video ("SDV") with going all digital.

i. How will TWE transition analog subscribers to all digital within 5 years in the East and West Hawai'i franchises?

**RESPONSE:** As noted in Section IV.D.2.c. of the Application, Oceanic plans to migrate the analog channels to digital in phases, beginning with the lesser-viewed analog channels.

ii. Does TWE use SDV in its East and West Hawai'i franchises? If so, what does CEO Britt's recent announcement mean for SDV?

**RESPONSE:** Oceanic currently uses SDV in its East Hawaii and West Hawaii franchise areas. SDV will continue to be utilized in the transition to digital technology.

2. Application. II. F. Franchise Compliance Review (Pg. 11)

Applicant has from time to time missed deadlines for the submission of required reports to DCCA, and DCCA has to remind Applicant to submit timely reports. State the specific steps Applicant will take to ensure that

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all reports required by HRS, HARs, and Decision and Orders are submitted on a timely basis.

**RESPONSE:** Oceanic plans to continue to utilize a master calendaring system that contains all required deadlines, as well as internal deadlines and ticklers well in advance of the official deadlines, to ensure that all required reports are prepared and submitted on a timely basis.

3. Application. IV. D. 2. b. Equitable Extension of Service policy (Pg. 41)

- a. Applicant has stated that its current policy for extension of service to underserved and underdeveloped areas will remain the same (i.e., extension of service to all areas where a minimum of 25 homes per mile of strand or conduit is developed). Provide either the number of homes, or the percentage of homes, on Hawai'i Island that are not served due to Applicant's 25 homes per mile line extension policy.

**RESPONSE:** As of the last available data in 2010, approximately 4 percent.

- b. The DCCA has received periodic inquiries from consumers concerning the high cost of construction fees to connect outlying residential subdivisions on Hawai'i Island to Applicant's cable system. What efforts, if any, is Applicant willing to offer to assist consumers in undeveloped and unserved areas/subdivisions to help pay for construction costs to connect up these residents?

**RESPONSE:** Despite the varied topography and distances involved in providing service to residents of the Island of Hawaii, Oceanic has spent considerable resources over the current franchise period in upgrading and expanding its service to Big Island residents. The cost of connections for remote residential subdivisions on the island of Hawaii can be substantial due to numerous factors, including, but not limited to, significant distances, lack of infrastructure, and topography. Given these factors, Oceanic provides what it believes is a reasonable and fair estimate of the cost of

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providing service to remote communities. Oceanic may consider assisting consumers in remote communities on a case-by-case basis; however, given the number of variables involved in determining cost of service to remote communities, Oceanic does not believe it is fair or appropriate to commit to specific measures until Oceanic has an opportunity to review and analyze the relevant factors and challenges involved in providing service to specific remote communities. See Haw. Rev. Stat. § 440G-8.1(c) (providing that "The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.")

4. Application. IV. I. Customer Service Operations (Pg. 49)

- a. Provide the specific process Applicant will follow regarding resolution of complaints and inquiries referred by the DCCA.

**RESPONSE:** Complaints and inquiries referred by the DCCA are logged into a central database and are assigned to appropriate personnel for follow up and appropriate action. Oceanic's goal is to report back to the DCCA on the status of complaints and inquiries regarding its cable service within two weeks of receipt. Certain complaints and inquiries may require additional time to resolve depending upon the nature and complexity of the complaint or request.

- b. Once a complaint escalates, state the procedures the Applicant will follow to resolve the issue and timeframe objectives for resolution.

**RESPONSE:** If a complaint regarding Applicant's cable service escalates, Applicant's Hawaii Division Vice President of Operations or his designee will confer with the DCCA on plan for resolving and/or responding to the complaint and a time frame for resolution and/or response.

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5. Capital Fund Payments to Access Organization (TWE Response to DCCA Request for Clarification of Application, dated July 27, 2011, 3.b., page 2)
- a. Pursuant to an agreement on or about May 2002 between TWE and Na Leo 'O Hawai'i ("Na Leo"), the current PEG access organization in both the East and West Hawai'i franchises, TWE's capital contributions to Na Leo were set at \$125,000 per year, and TWE has continued to pay this amount in accordance with a subsequent 2007 agreement with Na Leo. In its response to the Request for Clarification of Application, Applicant proposed that the capital fund payment be limited to a combined maximum payment of \$120,000. Please provide Applicant's specific reasons as to why the level of capital payments the designated access organization should be less than the current level of payments.

**RESPONSE:** Oceanic's proposal is consistent with applicable law, evolving technology, the current competitive and economic environment, and the community's needs.

Any capital costs provided to the designated PEG entity must be consistent with the requirements of federal and state law, and must take into consideration the fairness to Oceanic, its customers, and the overall public interest. The Cable Communications Policy Act of 1984 provides that support for PEG capital costs be "adequate". 47 U.S.C. § 541(a)(4)(B). In addition, Hawaii law provides that terms and conditions upon which cable service is provided must be "fair both to the public and the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area." Haw. Rev. Stat. § 440G-8.1(c) (emphasis added). The Hawaii Administrative Rules require that Oceanic provide "at least the minimal equipment and facilities necessary for the production of programming" for PEG. Haw. Admin. R. § 16-131-32.

Given the foregoing, fairness both to the public and Oceanic must be taken into account when determining an adequate level of funding for capital costs for at least the minimal

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equipment and facilities necessary for the production of PEG programming.

Oceanic believes its proposal for capital funding to Na Leo is both fair and adequate under the legal standards that the DCCA is required to apply in this proceeding.

The Community Ascertainment and Related Activities report dated October 20, 2010 ("Community Ascertainment Report") did not indicate any need to repair or replace Na Leo's equipment in the near future, nor the need for any significant upgrades. Moreover, Oceanic notes that Na Leo can and should continue to use all of its existing analog equipment for as long as it is functional, as upgrading to digital and high definition technology is not necessary for continued broadcasting of Na Leo programming over Oceanic's system given Oceanic's ability to convert analog programming to digital. Even where Na Leo chooses to upgrade to digital technology (because of the unavailability of analog parts and/or equipment), Na Leo's needs do not require professional equipment, and advances in technology have made high quality and relatively inexpensive production equipment widely available.

Evolving technology has also made it far easier and cheaper for individuals to acquire their own equipment to produce high quality video programming, and there are many more avenues (i.e. YouTube and other internet services) for producers to widely disseminate their programming to individuals not only in Hawaii, but throughout the world. As noted by Na Leo in its 2009 Annual Activity Report to the DCCA, "[m]ore and more clients are purchasing their own equipment, but need Na Leo training in order to use it. Consequently, program production is now primarily oriented more to their own uses, particularly the Internet, than the local Community." Na Leo O Hawaii, Inc. Year End Annual Report for 2009 Executive Summary, March 3, 2010 (available at:

[http://hawaii.gov/dcca/catv/peg\\_access\\_center/2009\\_NaLeo](http://hawaii.gov/dcca/catv/peg_access_center/2009_NaLeo)

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Annual Activity and Year End Reports.pdf) Accordingly, consistent with Na Leo's observations and experience, Oceanic anticipates that the use of PEG equipment and facilities on the Big Island and elsewhere will continue to markedly decline for the foreseeable future, thus requiring less in capital funding to maintain adequate PEG equipment and facilities. Oceanic further notes that PEG capital funding must be used for PEG purposes, which are limited to use of Oceanic's channel capacity. Accordingly, the use of PEG equipment for internet streaming does not qualify for PEG capital funding.

In addition, as the DCCA has previously recognized, viewership of PEG channels, while not dispositive, is a factor in utilizing valuable channel capacity. See Decision and Order No. 320 (June 5, 2005) at 8. Consistent with the DCCA's findings, Oceanic believes that viewership and demand are relevant factors in determining whether an allocation of resources is fair to both the public and Oceanic, and it does not serve the overall public interest to utilize valuable resources if there is limited subscriber demand for certain programming. Oceanic's data indicates that Na Leo's channels are consistently some of the least viewed channels in the Hilo and Kona franchise areas.

Evaluating fairness to the public and Oceanic in the context of the economic characteristics of the service area and the economics of providing cable service to subscribers in the service area also requires consideration of the existing economic and competitive environment. Oceanic is engaged in a highly-competitive and challenging economic situation. There is an industry-wide decline in cable basic subscribers, while increases nationally in satellite service (DBS) subscribers. On the Big Island, for example, DBS providers (such as DirecTV and DISH Network) have a penetration level of nearly 18 percent. As the DCCA is aware, DBS providers do not pay franchise fees nor make capital contributions to support PEG. In addition to DBS providers, Oceanic faces significant competition from online



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streaming service providers such as Netflix, Hulu and other services that now stream content directly to televisions within the home.

In conjunction with this competitive environment, there are increasing requests by government to assist with other services consistent with state policy. The Hawaii Broadband Initiative, for example, envisions "ubiquitous ultra high speed gigabit services at affordable prices to all of Hawaii's citizens," and collaboration with the private sector to assist in achieving this goal. Collaboration with the state in this effort will require significant and sustained investment by the private sector in the midst of an extremely challenging economic climate. Fairness requires that the level of capital funding for PEG be considered in light of other state priorities and the state's economic situation as a whole.

Finally, recognizing the competitive environment, the DCCA has previously encouraged PEGs to pursue funding from other sources besides franchise fees and capital funding. See Department of Commerce and Consumer Affairs' Plan for Public, Education, and Government Access at 10 (January, 2004). As the DCCA recognized, "[t]he development of new delivery systems and technologies will be a significant consideration in future regulatory policy." Id. Na Leo, as with all PEGs, should be required to actively pursue and develop other sources of funding consistent with state policy.

Given the foregoing, as well as all other reasons as may be set forth by Oceanic, the proposed \$120,000 per year in capital funding to Na Leo is fair and serves the overall public interest.

- b. Does Applicant believe that \$120,000 is a reasonable level to "meet specific community needs and interests taking into account the costs to do so." Please explain your answer.

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**RESPONSE:** Yes. Please see response to Request No. 5.a. above. In addition, Oceanic notes that the Community Ascertainment Report, which studied "future cable-related community needs and interests" did not indicate a basis for any significant increase in PEG capital funding.

- c. In its Response on page 3, Applicant "notes that the cost of video equipment has substantially declined over the past several years, and is expected to continue to decline for the foreseeable future."
- i. Does Applicant acknowledge that Na Leo, or the designated access organization, must replace analog equipment with digital equipment over the course of the next few years to keep up with TWE's migration from analog channels to digital channels?

**RESPONSE:** No. The designated PEG access organization does not need to replace existing analog equipment with digital equipment "to keep up" with Oceanic's migration from analog channels to digital channels.

Oceanic acknowledges that the availability of analog replacement parts and equipment is limited due to changes in technology (as virtually all video equipment now manufactured is digital); however, Na Leo and all other public access organizations may continue to use all analog equipment to produce and transmit programming to Oceanic. Oceanic, for many years, has converted analog signals to digital signals and will continue to do so for the PEG channels as long as necessary. There is no demand, and Oceanic has no current plans, to broadcast Na Leo or any other PEG channel in high definition.

- ii. Is Applicant proposing that its capital fund payments to the designated access organization to go down in the foreseeable future because digital equipment costs are expected to decline?

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**RESPONSE:** Given the standards and factors noted in response to Request No. 5.a. above (which include, but are not limited to, the declining cost of digital equipment and the declining use of existing Na Leo equipment), Oceanic expects that it is fair, reasonable and appropriate that capital fund payments to the designated access organization decrease in the future.

6. The Community Ascertainment Report, October 20, 2010, noted that participants at the Kona forum would like a direct connection from Na Leo's Kona facility to TWE's Kona headend so that they could upload programs directly and be able to cablecast from Kona. State Applicant's position on TWE providing a direct connection at no cost from Na Leo's Kona facility to TWE's Kona headend.

**RESPONSE:** Oceanic will conduct a technical analysis to determine the feasibility of this proposal.

- a. To what extent could such a connection be provided using TWE's existing infrastructure and what remaining portion would require new construction?

**RESPONSE:** Procurement, installation and ongoing maintenance for termination equipment on both ends of fiber between Na Leo's Kona facility to Oceanic's Kona headend would be necessary to transport any programming.

- b. What would be TWE's anticipated actual costs of completing this new construction?"

**RESPONSE:** At this time, Oceanic estimates that the actual cost of the termination equipment would be approximately \$150,000. In addition, there would be a monthly recurring charge of approximately \$2,500 for maintenance and bandwidth.

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7. Currently, TWE provides a connection between Na Leo's facility in Kona to its facility in Hilo. State Applicant's position on providing a high-speed connection between Na Leo's Hilo and Kona facilities, at no cost or reduced cost to Na Leo.

**RESPONSE:** Oceanic will conduct a technical analysis to determine the feasibility of this proposal.

- a. To what extent could such a connection be provided using TWE's existing infrastructure and what remaining portion would require new construction?

**RESPONSE:** Procurement, installation and ongoing maintenance for termination equipment on both ends of fiber between Na Leo's Kona facility to its facility in Hilo, would be necessary to transport any programming.

- b. What would be TWE's anticipated actual costs of completing this new construction?"

**RESPONSE:** At this time, Oceanic estimates that the actual cost of the termination equipment would be approximately \$150,000. In addition, there would be a monthly recurring charge of approximately \$2,500 for maintenance and bandwidth.

8. The Community Ascertainment Report also noted participant interest in TWE installing bi-directional connections from public libraries and other selected sites in Kona, Hilo, Ka'u and Waimea, for live cablecasting of community events and meetings. State Applicant's position on providing such connections at no cost to Na Leo or the State.

**RESPONSE:** Oceanic does not provide bi-directional connections for such purposes, and it facilitates the collection of public access programming on all islands, including Oahu, by providing one-way connections at specified community sites.

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- a. To what extent could such a connection be provided using TWE's existing infrastructure and what remaining portion would require new construction?

**RESPONSE:** Oceanic would be required to complete new construction for such connections.

- b. What would be TWE's anticipated actual costs of completing this new construction?"

**RESPONSE:** Oceanic believes that the anticipated costs of completing the new construction for such a proposal would not be feasible taking into account the geographic, topographic, and economic characteristics of the service area and the economics of such a proposed service.