

## INSTRUCTIONS FOR FCC 328 FRANCHISING AUTHORITY CERTIFICATION

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.
2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; or (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area; or (d) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.
3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. **An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.**
4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.
5. **The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date.** The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.
6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5; which are explained as follows:
7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.
8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should rule this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

A franchising authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.
9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.
10. Question 6(a): The Commission presumes that cable systems

are subject to competing provider effective competition. (The definition of competing provider effective competition is included in Item 2(b), above.) If the franchising authority believes that this presumption is incorrect with regard to the listed cable system(s), it must submit an attachment containing evidence adequate to satisfy the franchising authority's burden of rebutting the presumption of competing provider effective competition with specific evidence that such effective competition does not exist in the franchise area.

Question 6(b): The franchising authority must indicate whether it has reason to believe that the listed cable system(s) are subject to any of the other three types of effective competition, as defined in Item (a), (c)-(d) above.

For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dial tone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscriber Ship of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is non-broadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

#### **FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT**

Public reporting burden for this collection of information is estimated to average 2 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or on how we can improve the collection and reduce the burden it causes you, please e-mail them to [pra@fcc.gov](mailto:pra@fcc.gov) or send them to the Federal Communications Commission, AMD-PERF, Paperwork Reduction Project (3060-0550), Washington, DC 20554.

Please DO NOT SEND COMPLETED APPLICATIONS TO THIS ADDRESS.

**THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, MAY 22, 1995, 47 U.S.C. 3507.**

For FCC Use Only

**FCC 328**

**CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION**

1. Name of Franchising Authority  
Hawaii Department of Commerce and Consumer

Mailing Address  
335 Merchant Street

City Honolulu	State HI	ZIP Code 96813
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Telephone No. (include area code):  
(808) 586-2620

Person to contact with respect to this form:  
Ji Sook Kim, Cable Television Administrator

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C Section 543(b)?  Yes  No

4. With respect to the franchising authority's regulations referred to in question 3,

a. Does your franchising authority have the legal authority to adopt them?  Yes  No

b. Does your franchising authority have the personnel to administer them?  Yes  No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties?  Yes  No

6a. The Commission presumes that the cable system(s) listed in 2b is (are) subject to competing provider effective competition. Based on definition (b) below, do you have reason to believe that this presumption is incorrect? If so, you must provide an attachment containing evidence adequate to satisfy your burden of rebutting the presumption with specific evidence.  Yes  No

6b. The Commission presumes that the cable system(s) listed in 2b is (are) not subject to any other type of effective competition. Based on definitions (a), (c), and (d) below, do you have reason to believe that this presumption is correct?  Yes  No

2a. Name(s) and address(es) of cable system(s) and associated FCC Community unit identifier(s) within your jurisdiction. (Attach additional sheets if necessary)

Cable System's Name  
Oceanic Time Warner Cable

Mailing Address  
3022 Peleke Street

City Lihue	State HI	ZIP Code 96766
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Cable System's FCC Community Unit Identifier:  
HI-0011, HI-0098

Cable System's Name

Mailing Address

City	State	ZIP Code
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Cable System's FCC Community Unit Identifier:

2b. Name(s) of system(s) and associated community unit identifier(s) you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System

Name of System

2c. Have you served a copy of this form on all parties listed in Item 2?  Yes  No

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area, and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributors exceeds 15 percent of the households in the franchise area; (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in the franchise area; or (d) a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area. 47 C.F.R. § 76.905.)

Signature /s/ Ji Sook Kim
Title Cable Television Administrator
Date 12/4/15

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM  
ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(U.S. CODE TITLE 18, SECTION 1001).**

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Return the original and one copy of this certification form (as indicated in the Instructions for FCC 328), along with any attachments, to:

Federal Communications Commission  
Attn: Media Bureau, Policy Division  
FCC Form 328 Cable Franchising Authority Certification  
445 12th Street, SW  
Washington, DC 20554

**THE CABLE FRANCHISE AREA OF KAUA'I IS NOT SUBJECT TO EFFECTIVE  
COMPETITION**

Pursuant to the Commission's findings in the *Report and Order* released June 3, 2015 in MB Docket No. 15-53 and to Sections 76.905, 76.906 and 76.910 of the Commission's rules,<sup>1</sup> the Hawaii Department of Commerce and Consumer Affairs ("DCCA") hereby submits this Attachment to DCCA's Form 328 demonstrating that the cable franchise area of Kaua'i is not subject to effective competition as defined by the Commission.

As discussed in detail below, in response to Question 6a in the Form 328, the franchise area of Kaua'i is not subject to effective competition because the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor (MVPD) – Oceanic Time Warner Cable ("OTWC") – does *not* exceed 15 percent of the households in Kaua'i.<sup>2</sup> In response to Question 6b in the Form 328, the franchise area of Kaua'i is not otherwise subject to effective competition because: more than 30 percent of the households in the Kaua'i franchise area subscribe to the cable service of a cable system; the franchising authority does not operate a MVPD on Kaua'i; and the local exchange carrier on Kaua'i – Hawaiian Telcom, Inc. – does not offer video programming to subscribers on Kaua'i.<sup>3</sup>

**i. The number of households subscribing to multichannel video programming other than the largest MVPD does not exceed 15 percent of the households in Kaua'i.**

Pursuant to Section 76.905(b)(2) of the Commission's rules, a cable system is subject to effective competition if "[t]he franchise area is: (i) Served by at least two unaffiliated [MVPDs]

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<sup>1</sup> See *Amendment to the Commission's Rules Concerning Effective Competition* et al., MB Docket No. 15-53, Report and Order, FCC 15-62 (June 3, 2015); 47 C.F.R. §§ 76.905, 76.906, 76.910.

<sup>2</sup> See 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> See *id.* §§ 76.905(b)(1), (3), & (4).

each of which offers comparable programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to multichannel video programming other than the largest [MVPD] exceeds 15 percent of the households in the franchise area.”<sup>4</sup> The franchise area of Kaua’i is not subject to effective competition under this provision because the number of households subscribing to multichannel video programming from a provider other than the largest MVPD, OTWC, does not exceed 15 percent of the households in Kaua’i.

OTWC is subject to competition from two Direct-to-Home (“DTH”) satellite providers: DIRECTV and DISH Network. According to data compiled by the Satellite Broadcasting and Communications Association (“SBCA”), as of May 31, 2015, the two DTH providers serve a total of 2,122 residential subscribers on Kaua’i. (A copy of the SBCA report is attached as Appendix 1.) According to the most current available data compiled by the U.S. Census Bureau, there are 22,390 households on Kaua’i. (A copy of the census report is attached as Appendix 2.) Therefore, only 9.47 percent of all households (2,122/22,390) subscribe to multichannel video programming from a provider other than the largest MVPD – substantially fewer than the 15 percent necessary to create a presumption of effective competition.

**ii. More than 30 percent of the households in the Kaua’i franchise area subscribe to the cable service of a cable system.**

Pursuant to Section 76.905(b)(1) of the Commission’s rules, a cable system is subject to effective competition if “[f]ewer than 30 percent of the households in its franchise area subscribe to the cable service of a cable system.”<sup>5</sup> The franchise area of Kaua’i is not subject to effective competition under this provision because more than 30 percent of the households in the Kaua’i

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<sup>4</sup> 47 C.F.R. § 76.905(b)(2).

<sup>5</sup> *Id.* § 76.905(b)(1).

franchise area subscribe to the cable service of a cable system. Based on confidential subscriber information provided by OTWC to DCCA and the number of households on Kauai of 22,390, as described above, well over 50 percent of households in the Kaua'i franchise area subscribe to the cable service of a cable system.

**iii. The franchising authority for Kaua'i does not operate a MVPD on Kaua'i.**

Pursuant to Section 76.905(b)(3) of the Commission's rules, a cable system is subject to effective competition if a MVPD, "operated by the franchising authority for that franchise area, offers video programming to at least 50 percent of the households in the franchise area."<sup>6</sup> The franchise area of Kaua'i is not subject to effective competition under this provision because the franchising authority for Kaua'i (DCCA) does not operate a MVPD on Kaua'i.

**iv. The local exchange carrier for Kaua'i does not offer video programming to subscribers on Kaua'i.**

Pursuant to Section 76.905(b)(4) of the Commission's rules, a cable system is subject to effective competition if "[a] local exchange carrier or its affiliate (or any [MVPD] using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area."<sup>7</sup> The franchise area of Kaua'i is not subject to effective competition under this provision because the local exchange carrier for Kaua'i, Hawaiian Telcom, Inc., does not offer video programming to subscribers on Kaua'i.

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<sup>6</sup> 47 C.F.R. § 76.905(b)(3).

<sup>7</sup> *Id.* § 76.905(b)(4).

**ECTR – Effective Competition Tracking Report**



Provided by  
Satellite Broadcasting and Communications Association

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Pursuant to Section 76.907(c) of the FCC Rules, and your effective competition tracking request dated June 22, 2015 please find the following Direct-to-Home (DTH) satellite subscriber numbers per zip code (and/or zip+4 where necessary). The provision and use of this Effective Competition Tracking Report is governed by and subject to the terms and conditions of the Agreement for Provision and Use of Confidential Data, between your company and SBCA.

Report Date: June 24, 2015

Franchise Area: Kauai, HI

ZIP Codes      DTH Count

96703	90
96705	69
96714	45
96716	102
96722	74
96741	186
96746	645
96747	17
96751	4

96752	110
96754	193
96756	151
96765	36
96766	338
96769	4
96796	58
Total	2122

Data is current through 5/31/2015

Report Prepared by:  
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Manager, Program Manager  
202-349-3630  
mesteves@sbca.org

Methodology: Direct-To-Home (DTH) subscriber data reflects aggregated DIRECTV and DISH Network residential subscriber totals. The following data collection procedures are applied by Members in the normal course of business: a) single accounts with multiple receivers are only counted once; b) commercial and test accounts are not included; c) each occupied unit served in a multiple dwelling unit building has been counted as a separate residential subscriber; d) zip codes are taken from service locations (not billing addresses, where different); e) inactive accounts are routinely removed; f) invalid (undeliverable) addresses have been corrected where known; g) courtesy or complimentary accounts are included; and h) zip code information for Members’ subscribers is periodically updated to reflect changes to zip codes by the United States Postal Service.

Search

State &amp; County QuickFacts

Thank you for your feedback! The new delivers the following improvements: Search by zip code, improved table display, browse more data feature, download data, and more.

## Kauai County, Hawaii

People QuickFacts	Kauai County	Hawaii
Population, 2014 estimate	70,475	1,419,561
Population, 2010 (April 1) estimates base	67,090	1,360,301
Population, percent change - April 1, 2010 to July 1, 2014	5.0%	4.4%
Population, 2010	67,091	1,360,301
Persons under 5 years, percent, 2014	6.4%	6.4%
Persons under 18 years, percent, 2014	22.3%	21.7%
Persons 65 years and over, percent, 2014	17.4%	16.1%
Female persons, percent, 2014	49.9%	49.4%
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White alone, percent, 2014 (a)	33.7%	26.7%
Black or African American alone, percent, 2014 (a)	0.7%	2.5%
American Indian and Alaska Native alone, percent, 2014 (a)	0.6%	0.4%
Asian alone, percent, 2014 (a)	31.3%	37.5%
Native Hawaiian and Other Pacific Islander alone, percent, 2014 (a)	9.1%	10.0%
Two or More Races, percent, 2014	24.6%	23.0%
Hispanic or Latino, percent, 2014 (b)	10.8%	10.1%
White alone, not Hispanic or Latino, percent, 2014	30.1%	23.0%
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Living in same house 1 year & over, percent, 2009-2013	87.5%	84.9%
Foreign born persons, percent, 2009-2013	15.1%	17.9%
Language other than English spoken at home, pct age 5+, 2009-2013	20.9%	25.4%
High school graduate or higher, percent of persons age 25+, 2009-2013	90.1%	90.4%
Bachelor's degree or higher, percent of persons age 25+, 2009-2013	25.1%	30.1%
Veterans, 2009-2013	4,680	112,625
Mean travel time to work (minutes), workers age 16+, 2009-2013	21.4	26.0
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Housing units, 2014	30,346	530,106
Homeownership rate, 2009-2013	62.6%	57.6%
Housing units in multi-unit structures, percent, 2009-2013	25.1%	38.1%
Median value of owner-occupied housing units, 2009-2013	\$484,500	\$503,100
Households, 2009-2013	22,390	449,771
Persons per household, 2009-2013	2.99	2.96
Per capita money income in past 12 months (2013 dollars), 2009-2013	\$26,658	\$29,305
Median household income, 2009-2013	\$62,052	\$67,402
Persons below poverty level, percent, 2009-2013	11.2%	11.2%
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Business QuickFacts	Kauai County	Hawaii
Private nonfarm establishments, 2013	1,986	31,622 <sup>2</sup>
Private nonfarm employment, 2013	25,186	502,530 <sup>2</sup>
Private nonfarm employment, percent change, 2012-2013	1.1%	2.1% <sup>2</sup>
Nonemployer establishments, 2013	6,621	98,490
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Total number of firms, 2007	8,316	120,374
Black-owned firms, percent, 2007	F	0.9%
American Indian- and Alaska Native-owned firms, percent, 2007	3.0%	1.3%
Asian-owned firms, percent, 2007	35.5%	47.2%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	10.2%	9.5%
Hispanic-owned firms, percent, 2007	5.0%	3.6%
Women-owned firms, percent, 2007	31.8%	31.0%
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Manufacturers shipments, 2007 (\$1000)	0 <sup>1</sup>	8,799,266
Merchant wholesaler sales, 2007 (\$1000)	209,395	8,894,672
Retail sales, 2007 (\$1000)	1,052,671	17,611,851
Retail sales per capita, 2007	\$16,730	\$13,793
Accommodation and food services sales, 2007 (\$1000)	591,483	8,042,210

Building permits, 2014

192 3,066

<b>Geography QuickFacts</b>	<b>Kauai County</b>	<b>Hawaii</b>
Land area in square miles, 2010	619.96	6,422.63
Persons per square mile, 2010	108.2	211.8
FIPS Code	007	15
Metropolitan or Micropolitan Statistical Area	Kapaa, HI Micro Area	

1: Counties with 500 employees or less are excluded.  
2: Includes data not distributed by county.

(a) Includes persons reporting only one race.  
(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information  
F: Fewer than 25 firms  
FN: Footnote on this item for this area in place of data  
NA: Not available  
S: Suppressed; does not meet publication standards  
X: Not applicable  
Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits  
Last Revised: Wednesday, 14-Oct-2015 15:54:42 EDT

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