

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
INTERNATIONAL FAMILY) NAL/Acct. No. 200532080001
ENTERTAINMENT, INC.) FRN No. 0010343986
OCEANIC-TIME WARNER CABLE OF) File No. EB-03-IH-0745
HAWAII)
Operator of a Cable Television System in Oahu,)
Hawaii)
CHARTER COMMUNICATIONS, INC.) File No. EB-04-IH-0232
Operator of a Cable Television System in Spring,)
Texas)

ORDER

Adopted: October 20, 2004

Released: October 21, 2004

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau has been investigating whether Oceanic-Time Warner Cable of Hawaii ("Oceanic"), operator of a cable television system in Oahu, Hawaii, and Charter Communications, Inc. ("Charter"), operator of a cable television system in Spring, Texas, aired commercial matter during children's programming, in willful and/or repeated violation of Section 76.225 of the Commission's rules.1 The children's programming in question was provided to Oceanic and Charter, as well as to other cable operators and DBS providers nationwide, over the ABC Family Channel by International Family Entertainment, Inc., a wholly-owned subsidiary of ABC Family Worldwide, Inc.

2. The Bureau and the above-captioned parties have negotiated the terms of a Consent Decree, a copy of which is attached hereto and incorporated by reference. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the captioned investigations involving Oceanic and Charter.

3 Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended,2 that the attached Consent Decree IS ADOPTED.

1 47 C.F.R. § 76.225

2 47 U.S.C. § 154(i).

4. IT IS FURTHER ORDERED that the above-captioned investigations ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, International Family Entertainment, Inc., Oceanic-Time Warner Cable of Hawaii, and Charter Communications, Inc. hereby enter into this Consent Decree for the purpose of resolving and terminating certain investigations currently being conducted by the Commission relating to possible violations of the Children's Programming Commercial Limits by Oceanic-Time Warner Cable of Hawaii and Charter Communications, Inc., and potential future investigations regarding similar possible violations by other Operators which also air ABC Family Channel.

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) "ABC Family Channel" means the cable and satellite television network currently known as "ABC Family" and/or "ABC Family Channel."
- (b) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (c) "Adopting Order" means an order of the Bureau adopting this Consent Decree, without any modifications adverse to IFE, Oceanic, Charter or other Operators.
- (d) "Air" means to send electronically any visual images and/or audible sounds to subscribers of a cable or direct broadcast satellite ("DBS") service system.
- (e) "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."
- (f) "Audit Period" means the period from July 1, 2003, through July 12, 2004.
- (g) "Bureau" means the FCC's Enforcement Bureau.
- (h) "Cable Operator" has the definition contained in 47 U.S.C. § 522(5).
- (i) "Charter" means Charter Communications, Inc., a Cable Operator in Spring, Texas.
- (j) "Children's Programming Commercial Limits" means the requirements contained in 47 U.S.C. § 303a and 47 C.F.R. §§ 25.701(e) and 76.225.
- (k) "Commercial Matter" and "Children's Programming" have the respective definitions contained in 47 C.F.R. §§ 25.701(e) and 76.225.
- (l) "Commission" or "FCC" means the Federal Communications Commission.
- (m) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (n) "Final Order" means that, with respect to the Adopting Order: (1) no request for stay or similar request is pending, no stay is in effect, the Adopting Order has not been vacated, reversed, set aside, annulled or suspended, and any deadline for filing such request that may be designated by statute or regulation has passed; (2) no timely petition for rehearing or

reconsideration of the Adopting Order, or protest of any kind, is pending before the FCC and the time for filing any such petition or protest is passed; (3) the FCC does not have the Adopting Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (4) the Adopting Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed.

- (o) “IFE” means International Family Entertainment, Inc., the contracting entity for ABC Family Channel and a wholly-owned subsidiary of ABC Family Worldwide, Inc.
- (p) “Inquiries” means the Bureau’s investigations of alleged violations of the Children’s Programming Commercial Limits by Oceanic and Charter that resulted in letters of inquiry being sent by the Bureau to Oceanic and Charter on June 16 and June 21, 2004, respectively.
- (q) “Oceanic” means Oceanic-Time Warner Cable of Hawaii, a Cable Operator in Oahu, Hawaii.
- (r) “Operator” means a provider of DBS service, as that term is defined in 47 U.S.C. § 335(b)(5)(A), or a Cable Operator.
- (s) “Parties” means the Bureau, IFE, Oceanic, and Charter collectively, and “Party” refers to the Bureau, IFE, Oceanic, and Charter, individually.

I. BACKGROUND

3. During the fourth calendar quarter of 2003, the Commission’s field offices conducted routine audits of certain Cable Operators and television broadcast licensees of the compliance by such entities with, respectively, the Children’s Programming Commercial Limits and the similar broadcast limits found in 47 C.F.R. § 73.670. Those audits identified, among other things, potential violations of the Children’s Programming Commercial Limits by Oceanic and Charter regarding programming on ABC Family aired on November 3 and 8, 2003, respectively. On June 16, 2004, the Bureau sent a letter of inquiry to Oceanic directing Oceanic to provide information regarding the potential violation on November 3, 2003. On June 21, 2004, the Bureau sent a letter of inquiry to Charter directing Charter to provide information regarding the potential violation on November 8, 2003.

4. During the course of their preparation of their respective responses to these Bureau letters of inquiry, Oceanic and Charter requested IFE to provide certain information, which resulted in IFE’s discovery that, in the ABC Family Channel programming on the dates in question, commercials had aired for products associated with such programs. Accordingly, on its own volition, IFE conducted extensive internal and external audits of Commercial Matter that aired during Children’s Programming on ABC Family Channel during the Audit Period. IFE determined that its audits revealed that, during the more than one year-long period of time comprising the Audit Period, there were 31 half-hour episodes in which commercials for products associated with such programs were inadvertently aired. According to IFE, its audits revealed that such commercials were inserted into such programs due primarily to problems with its computer system transition and design and human error. IFE has further determined that its

audits revealed that the commercials in such half-hour programs had not been sold with the understanding that they would air in such related programs and that, even though the commercials aired in related programs due to the errors noted above, IFE did not benefit economically from such placements. According to IFE, its audits revealed that this programming was aired as part of a single national programming channel by Oceanic and Charter on their respective cable systems in Oahu, Hawaii, and Spring, Texas, and by other Operators, including Oceanic and Charter and their affiliates, that aired ABC Family, collectively serving more than approximately 86,900,000 households across the country. IFE has voluntarily and timely reported the results of its audits to the Bureau.

5. The Parties acknowledge that a consent decree to address the results of IFE's audits is in the public interest. The Parties agree that any forfeiture proceeding that might result from a formal Bureau investigation into Oceanic, Charter, or any other Operators' compliance with the Children's Programming Commercial Limits during Children's Programming aired on ABC Family Channel will be time-consuming and will require substantial expenditure of public and private resources. In order to conserve such resources, to resolve the Inquiries, and to promote compliance with the Children's Programming Commercial Limits, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

II. AGREEMENT

6. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau by incorporation of such provisions by reference in an Adopting Order.

7. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order and shall remain in effect for two (2) years after the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other orders of the Bureau and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission or the Bureau pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. IFE, Oceanic, and Charter each acknowledges that the Commission has jurisdiction to enforce the Children's Programming Commercial Limits against Operator carriage of network programming. Nothing herein constitutes a waiver of any legal rights to challenge, outside of the context of this proceeding, the underlying validity of the Children's Programming Commercial Limits, including whether the rules are consistent with the Children's Television Act.

9. As part of the Adopting Order, the Bureau shall terminate the Inquiries. From and after the Effective Date, in the absence of the discovery of material new information not previously disclosed to the Bureau by IFE, the Bureau shall not, either on its own motion or in response to any petition, third-party objection, complaint, or other information, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other actions, formal or informal, against IFE, Oceanic, Charter, or any other Operator for alleged violations of the Children's Programming Commercial Limits with respect to Commercial Matter that aired during

Children's Programming on ABC Family Channel prior to the Effective Date. The Bureau shall not use the underlying facts or conduct relating to any of the foregoing for any purpose relating to IFE, Oceanic, Charter, or any other Operator that carried ABC Family prior to the Effective Date, and shall treat all such matters as null and void for all purposes.

10. IFE represents that it has adopted, is currently in the process of implementing, and agrees to abide by a compliance plan (the "Compliance Plan") for the purpose of preventing the airing of Commercial Matter violative of the Children's Programming Commercial Limits. A summary of that plan is set forth in the Attachment hereto. IFE agrees, to the extent it has not already done so, to implement this Compliance Plan no later than thirty (30) days after the Effective Date and to keep such Compliance Plan in effect, where applicable, for two (2) years after the Effective Date. With the exception of Paragraphs 4 and 5 of the Compliance Plan, which IFE may not change without the Bureau's prior written consent, IFE reserves the right to revise the Plan from time to time, provided that the Bureau shall be given not less than thirty (30) days advance written notice of any material revisions to the plan.

11. The Parties agree that retaining the audit results in cable systems' public inspection files is consistent with the Commission's rules. Accordingly, Oceanic and Charter agree to timely place and retain for at least one year the audit results made available by IFE pursuant to the Compliance Plan in the public inspection files maintained by their cable systems, including any cable systems operated by any of their parent, affiliated or subsidiary companies, in a manner otherwise in accordance with 47 C.F.R. §76.1703.

12. Within five (5) business days after the Adopting Order becomes a Final Order, without any modifications to this Consent Decree adverse to IFE, Oceanic, Charter or any other Operator that carried ABC Family prior to the Effective Date, IFE shall make a voluntary contribution to the United States Treasury in the amount of Five Hundred Thousand Dollars (\$500,000). The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. With the exception, pursuant to Paragraph 9 hereof, of any action taken as the result of the Bureau's discovery of material new information not previously disclosed to it, the Bureau agrees not to seek any further voluntary or involuntary contributions or payments from IFE, Oceanic, Charter, or any other Operator to the United States Treasury for alleged violations of the Children's Programming Commercial Limits with respect to Commercial Matter that aired during Children's Programming on ABC Family Channel prior to the Effective Date.

13. IFE, Oceanic and Charter each waives any and all rights it may have, individually or together, to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided no modifications are made to the Consent Decree adverse to IFE, Oceanic, Charter or any other Operator that carried ABC Family Channel prior to the Effective Date. If the Bureau, the Commission, or the United States acting on its behalf, brings a judicial action to enforce the

terms of the Adopting Order or this Consent Decree, or both, IFE, Oceanic or Charter will not contest the validity of this Consent Decree or of the Adopting Order. If IFE, Oceanic or Charter brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, neither the Bureau, the Commission nor the United States will contest the validity of this Consent Decree or of the Adopting Order. IFE, Oceanic and Charter retain the right to challenge the Bureau or the Commission's interpretation of this Consent Decree or interpretation of any terms contained therein. Any collection action by the Commission or any other governmental entity to obtain the payment of the voluntary contribution to the United States Treasury provided for in Paragraph 12 of this Consent Decree shall be maintained solely against IFE. Nothing herein shall restrict IFE, Oceanic or Charter from challenging on any basis, any future enforcement action relating to the Children's Programming Commercial Limits, other than actions to enforce the Adopting Order or this Consent Decree.

14. The Parties agree that this Consent Decree and IFE's voluntary contribution are for settlement purposes only and do not constitute, including for the purpose of completing any existing Commission form or otherwise, an admission, denial, adverse finding, adverse final action, adverse adjudication on the merits or waiver of rights except as otherwise expressly set forth herein, including without limitation the rights reserved in Paragraph 8 hereof, or a factual or legal determination regarding any compliance or noncompliance by IFE, Oceanic, Charter or any other Operator that carried ABC Family Channel prior to the Effective Date, with the Children's Programming Commercial Limits.

15. In the event that this Consent Decree is rendered invalid in any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. IFE, Oceanic and Charter each hereby agrees to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

17. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. This Consent Decree may be executed in counterparts.

(This area intentionally left blank)

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

By: _____
David H. Solomon, Chief
Date: _____

INTERNATIONAL FAMILY ENTERTAINMENT, INC.

By: _____
Jewell Engstrom, Vice President
Date: _____

OCEANIC-TIME WARNER CABLE OF HAWAII

By: _____
Nate Smith, President
Date: _____

CHARTER COMMUNICATIONS, INC.

By: _____
Thomas J. Hearity, Senior Vice President and Associate
General Counsel
Date: _____

ATTACHMENT**COMPLIANCE PLAN OF
INTERNATIONAL FAMILY ENTERTAINMENT, INC.**

IFE has adopted, and is implementing, a Compliance Plan for the purpose of preventing the airing of Commercial Matter that is violative of the Children's Programming Commercial Limits. This Compliance Plan consists of the following five components:

1. IFE will conduct formal training on the Children's Programming Commercial Limits for all ABC Family Channel employees in the traffic department who materially participate in scheduling commercials during Children's Programming. Such training will be provided to all such employees no later than thirty (30) days after the Effective Date of this Consent Decree, and on an annual basis thereafter while this Compliance Plan remains in effect. Training also will be provided to all such new employees promptly after they commence their duties. Such training shall include instruction relating to not only the fixed time limits on Commercial Matter during Children's Programming, but also to program-length commercial issues arising from tie-ins between program content and characters, and host-selling.

2. IFE will assign responsibilities for ensuring compliance with the Children's Programming Commercial Limits to additional personnel. Before Children's Programming airs on ABC Family Channel, standards and practices personnel will review the scheduling of each commercial within each children's program to ensure compliance with the Children's Programming Commercial Limits. In addition, the office of ABC Family Channel's Executive Director of Traffic Services will be responsible for regularly reviewing the daily Children's Programming schedule, including a listing of all commercials scheduled during such programming. Finally, ABC Family Channel personnel responsible for scheduling commercials during Children's Programming aired on ABC Family Channel will be required to initial a task list each day confirming that they have performed quality control checks intended to ensure compliance with the Children's Programming Commercial Limits.

3. IFE has made modifications to the computer system it uses to schedule Commercial Matter designed to minimize the potential for human error in the commercial scheduling process and to ensure compliance with the Children's Programming Commercial Limits. In the future, as it deems appropriate, IFE will seek to make further improvements to the computer system, including upgrades to the existing system or the possible migration to a new computer system.

4. For two years after the Effective Date, IFE will conduct random audits, at least once every six (6) months, of Commercial Matter that airs during Children's Programming. Each audit will consist of reviewing, in the official program logs of ABC Family Channel, all Commercial Matter that aired during Children's Programming on ABC Family Channel during a randomly selected three-week period during the preceding six (6) months. Within thirty (30) days of the completion of each such audit, IFE will report in writing to the Bureau the results of the audit, including any violations of the Children's Programming Commercial Limits discovered during the audited period and the remedial steps taken to ensure future compliance with the Children's Programming Commercial Limits. The results of such audits will be made

available within thirty (30) days of their completion to all Operators that air ABC Family Channel, on an Internet web site maintained for and accessible to Cable Operators affiliated with ABC Family Channel. IFE will, within thirty (30) days of the Effective Date of this Consent Decree, notify all Operators that air the ABC Family Channel, via e-mail if available, of the address and existence of such an Internet web site, that it is maintained for and is accessible to Operators affiliated with ABC Family Channel and that the results of each audit will be made available on such web site. IFE will also deliver hard copies of such audit results via first-class U.S. mail to Oceanic at the following address: Oceanic-Time Warner Cable of Hawaii, c/o Time Warner Cable, 290 Harbor Drive, Stamford, Connecticut 06904, Attn: Lorraine Aglora, Law Department; and to Charter at the following address: Charter Communications, Vice President Programming, 6399 S. Fiddler's Green Circle, 6th Floor, Greenwood Village, Colorado 80111.

5. For the two-year period that this Compliance Plan remains in effect, in the event that IFE's audits reveal that the amount of Commercial Matter that aired during an ABC Family Channel program exceeded the Children's Programming Commercial Limits, for each such instance, IFE will reduce the amount of Commercial Matter to be aired during a single subsequent airing of the same or similar ABC Family Channel program during the same or a comparable time period in an amount equal to the amount of time of such excess Commercial Matter. Such subsequent airing will occur within sixty (60) days of submission of the audit results to the Bureau reporting the discovery of such excess Commercial Matter. For the two-year period that this Compliance Plan remains in effect, in the event IFE's audits reveal the airing of an ABC Family Channel program associated with a product in which a commercial for that product had aired during such program, for each such instance, IFE will subsequently air the same or similar ABC Family Channel program during the same or a comparable time period without any Commercial Matter. Such subsequent airing will occur within sixty (60) days of submission of the audit results to the Bureau reporting the discovery of the airing of the ABC Family Channel program associated with a product in which a commercial for that product had aired. In the event of the reduction or elimination of Commercial Matter from its programming pursuant to this Paragraph 5, IFE will not authorize any Operator to insert Commercial Matter in excess of that allowed pursuant to the agreement between such Operator and IFE and the Children's Programming Commercial Limits, had such reduction or elimination not been made.