

BEFORE THE  
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS  
OF THE STATE OF HAWAII

In the Matter of the Application	)	
of	)	DOCKET NO. 95-08
	)	
TIME WARNER ENTERTAINMENT COMPANY,	)	
L.P.	)	
	)	
For Transfer and Amendment of the	)	
Cable Franchises of American Cable	)	
TV Investors 4, Ltd. for the Sun	)	
Cablevision of Hawaii and	)	
Kamehameha Cablevision Cable	)	
Systems	)	

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DECISION AND ORDER NO.173

**I. Introduction**

On April 4, 1995, Time Warner Entertainment Company, L.P. ("TWE") filed its Application for Transfer and Amendment of the Cable Franchises of American Cable TV Investors 4, Ltd., for the Sun Cablevision of Hawaii and Kamehameha Cablevision Cable Systems.

American Cable TV Investors 4, Ltd. ("ACT 4") dba Sun Cablevision of Hawaii (sometimes hereinafter referred to as "Kona System") provides cable communications service to the island of Hawaii in Census Tract Areas 213 through 217 which include Captain Cook, Waikoloa, Kawaihae-Puako, Honaunau, Kealahou, Holualoa, Kailua-Kona, Kamuela, Keahou, Kalaloa, Mauna Lani, and Mauna Kea. Doing business as Kamehameha Cablevision (sometimes hereinafter referred to as "Kohala System"), ACT 4 also provides cable communication services to the North Kohala area of the island of Hawaii in Census Tract Area 218. Sun Cablevision of Hawaii and Kamehameha Cablevision are not consolidated and each has been granted separate cable franchises for the provision of cable communications services to their respective franchise areas. Sun Cablevision and Kamehameha Cablevision's cable franchises expire on June 30, 1999 and May 29, 2005, respectively.

Pursuant to that certain Asset Purchase Agreement by and between ACT 4 and Time Warner Cable Ventures, a division of TWE, dated as of February 8, 1995, ACT 4 has agreed to sell all of its assets of the Sun Cablevision and Kamehameha Cablevision systems to TWE for a total amount of \$31,300,000.00 in cash subject to certain prorations and adjustments at and after closing.

In its application for transfer and amendment of cable franchises TWE sets forth certain representations or commitments. Although all representations made by TWE in connection with its transfer application are considered material by the State, some of the major representations or commitments of TWE are as follows:

1. TWE will support public, educational and government ("PEG") access by (a) contributing three percent (3%) of its annual gross revenues from its Kona and Kohala Systems for PEG operating funds, (b) contributing capital funds for PEG facilities and equipment, and (c) providing fiber optic interconnections with other cable systems for PEG access purposes at no charge or cost to the State except for TWE's actual cost of labor and materials, and will maintain and repair such interconnections at no charge or cost to the State;

2. TWE will contribute one percent (1%) of its gross revenues from its Kona and Kohala Systems to the Hawaii Public Broadcasting Authority Revolving Fund;

3. TWE is committed to continue to provide fiber optic interconnections between INET sites designated by the Director within its Kona and Kohala Systems service areas at no charge or cost to the State except for TWE's actual cost of labor and materials, and to maintain and repair such interconnections at no charge or cost to the State;

4. TWE will provide and maintain a fiber interface with the Hawaii Interactive Television System ("HITS") at no charge or cost to the State; and

5. TWE will upgrade the existing Kona and Kohala cable distribution systems from the current bandwidth of 330 MHz (40 channel capacity) to a total bandwidth of 750 MHz or a total channel capacity of 75 analog channels plus digital headroom using fiber to node architecture. TWE anticipates that the engineering design and capital requirements for the upgrades will be similar to that being deployed by Oceanic Cablevision on Oahu. The total cost of the planned upgrades is approximately \$9,600,000.00, and that the cost for such upgrades is not contemplated to be passed through to subscribers via TWE's current cable rates as determined under federal benchmark cable rate regulations.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on the transfer application was held at 6:30 p.m. on May 5, 1995, at the conference room of the Office of the Mayor, 75-5706 Kuakini Highway, Suite 103, Kailua-Kona, Hawaii. Notice of the hearing was published in the Hawaii Tribune Herald and West Hawaii Today on April 12 and 19, 1995.

## **II. THE LAW.**

### **A. Federal law**

This transfer of a cable franchise is made under the authority of State law and is consistent with the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").

Section 624 of the Cable Act allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, system configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental use. Section 622 allows the assessment of a franchise fee up to five percent (5%) of annual gross revenues, any portion of which may be used for public, educational and governmental access.

### **B. State law**

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in Sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's approval before the transfer of a cable franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director prior to issuing a cable franchise, which states as follows:

(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the

applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

**C. The Privilege of a Franchise**

The grant of a cable franchise gives the recipient a right to use and occupy public places, highways and easements which are of a limited and scarce nature. Substantial economic benefits may flow to the recipient as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both responsive and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, and enhancing its community's communications capabilities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

**III. STATUTORY CRITERIA.**

**A. Public Need for Proposed Service**

TWE has proposed to provide the same cable programming services now offered by the ACT 4 Sun and Kamehameha systems. ACT 4 currently passes approximately 20,535 homes in the West Hawaii areas and, of these, provides service to approximately 13,651 subscribers. Most of these subscribers are located in areas where television reception is poor without the aid of a cable communications system. If cable services cease to be provided, television reception for the majority of West Hawaii residents would be extremely marginal.

TWE states that it will aid and encourage the development of desirable local programming, and that it voluntarily commits to financially supporting PEG access operations and facilities and equipment, and the Hawaii Public Broadcasting Authority, as well as continuing to provide interconnections of PEG access facilities and governmental buildings and facilities.

TWE also states that approximately 19,000 new homes, 3,900 new condominium/apartment units, and 2,700 new hotel rooms are anticipated in the West Hawaii area during the next fifteen years, and that it will extend its Kona and Kohala systems to new subdivisions and other developments to meet the increasing demands for cable service. Given the poor reception in the area,

cable communications to these new areas should be extended to serve this growing population.

Therefore, there is a public need for continuing and expanding the existing cable communications service.

**B. Suitability of the Applicant.**

In evaluating the suitability of TWE, the State considered, among other things, TWE's existing Hawaii cable division, Oceanic Cablevision ("Oceanic"). Although the Kona and Kohala systems (sometimes hereinafter collectively referred to as "West Hawaii System") will be owned and financed by TWE, the West Hawaii System will operate as a separate operating unit of Oceanic. Oceanic and the West Hawaii System will collectively operate as the "Hawaii Division" of TWE.

TWE has represented that overall management of the West Hawaii System will reside in Oceanic's existing management team, and that TWE will not make significant personnel and policy changes to the West Hawaii operation. TWE also represented the West Hawaii System will have its own profitability and capital spending measurements and regulatory and customer service standards. Therefore, based upon the foregoing, TWE is a suitable applicant.

**C. Operational Ability of the Applicant.**

The Applicant is suitable to operate the West Hawaii cable system. The history of TWE's Hawaii cable division, Oceanic Cablevision, demonstrates TWE's ability to operate its systems efficiently.

The Director anticipates that the former Sun and Kamehameha systems will benefit from TWE's economies of scale in equipment and programming purchases, engineering expertise, employee training, human resources, and equity financing.

**D. Technical Ability of the Applicant.**

A clear goal of TWE's franchise transfer is to provide for increases in channel capacity through increased bandwidth of 750 Mhz (75 analog channels plus digital headroom) upgrades of its Kona and Kohala Systems. Increasing channel capacity continues to be among the State's goals; consequently, it is imperative that TWE have the technological expertise to accomplish the necessary system and technology upgrades.

TWE states that it will upgrade the West Hawaii System to a total bandwidth of 750 MHz using fiber technology similar to that currently being deployed on Oahu by Oceanic pursuant to Decision and Order No. 158, dated June 30, 1994. TWE also states that the 750 MHz upgrade will allow the deployment of TWE's Full

Service Network (FSN) architecture for its West Hawaii area as services become available and are economically viable. Services envisioned by TWE via the FSN include interactive games, shopping, video-on-demand, and remote printing.

In addition, TWE indicates that it does not anticipate making any significant personnel changes. Existing technical staff are competent, well-trained, and capable of meeting the daily technical requirements of the West Hawaii cable communications facilities.

Therefore, it appears that TWE has the requisite competence and expertise to execute the technical requirements of the franchise and to incorporate technological developments.

E. Ability to Provide Service at Reasonable Cost and Financial Capability

TWE is committed to offering safe, adequate and reliable services at a reasonable cost. The use of "fiber to node" architecture for its West Hawaii System upgrade should decrease outages, enhance system reliability, and improve picture quality. TWE is also committed to meet or exceed all State and federal customer service standards.

TWE states that it is financing the purchase of the West Hawaii cable systems entirely through TWE working capital. The financial plan presented by TWE is based on several assumptions. It assumes an increased base of subscribers, and increased revenues from premium services and ancillary services. TWE's financial plan further appears to reflect adequate cash flow for operations and capital expenditures over a ten-year period.

It is noted that the proposed 750 MHz system upgrades are anticipated to be financed through a combination of internally generated funds and TWE. Because TWE is a multi-system operator with numerous other cable systems including recent acquisitions that may require system upgrades in the near future as well as unforeseeable circumstances beyond the control of TWE, the Director is concerned about the availability of sufficient capital for TWE to complete the West Hawaii System upgrades in a timely fashion. Therefore, in order to provide adequate assurance that the West Hawaii System upgrades will be completed, the Director may require TWE to deposit an amount equal to the total construction cost of the West Hawaii System upgrades in a Development Fund, in the event circumstances arise that significantly affect TWE's ability to complete the upgrades. The Development Fund requirement shall be extinguished upon the completion of the West Hawaii System upgrade.

## **F. Public Hearing**

Testimony presented on the transfer in person at the public hearing and in writing addressed extension of cable communications service to West Hawaii areas currently not served, and in particular the Kona Paradise subdivision located six miles south of Hookena. Written testimony was also submitted regarding the extension of cable service to the Kona Paradise subdivision, as well as in support for the Hawaii Public Broadcasting Authority, Na Leo'O Hawaii, Inc., the PEG access entity serving the island of Hawaii, and for the continued programming of Hawaii Interactive Television System (HITS) on Sun Cablevision.

According to written testimony, there are approximately 325 lots and 150 homes within the Kona Paradise subdivision. At the public hearing, it was pointed out that the subdivision is approximately six miles beyond the furthest point of service of Sun Cablevision. A representative of TWE stated that TWE will look into extending cable service to homes within that subdivision.

As noted previously, TWE stated that it will extend the Kona and Kohala systems to new subdivisions to meet increasing demands for cable service. The Director, therefore, strongly recommends that TWE extend cable service to homes within the Kona Paradise subdivision in connection with the upgrade of its West Hawaii systems.

## **IV. FRANCHISE AMENDMENTS; OTHER MATTERS**

A. **Control.** The Hawaii Cable Law 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, any change in control of TWE's ownership of the West Hawaii System shall require the prior approval of the Director.

B. **Upgrade.** A key consideration in the State's review of cable system franchises in Hawaii is to assure that they are technically capable of meeting the future needs and desires of the communities they serve. TWE's proposal to upgrade its West Hawaii Systems will result in the former Sun Cablevision system increasing its channel capacity from 40 to 75 analog channels plus digital headroom (i.e., a total bandwidth of 750 MHz) by July 1, 2000. As an incentive to an earlier completion of the upgrade, TWE's franchise term of the Kona System (formerly Sun Cablevision) will be extended for an additional two (2) years if TWE completes the upgrade by July 1, 1998.

The former Kamehameha Cablevision system can also currently carry 40 channels. The Kohala System (formerly Kamehameha Cablevision) will be upgraded to 750 MHz and a total channel capacity of 75 analog channels plus digital headroom by July 1, 2001. If TWE completes the Kohala System upgrade by July 1, 1999, the Kohala System franchise term will be extended for an additional two (2) years.

It is also noted that in connection with TWE's 750 MHz upgrade proposal for the Kona and Kohala Systems, TWE proposes to provide capacity and access for cable subscribers to the State's INET, to the extent that two-way broadband video, voice, and data capabilities are available in the future. Although the manner in which subscriber access will be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through TWE's upgraded Kona and Kohala Systems is advanced by allowing subscriber access to the State's INET.

The Director has generally accepted TWE's proposal to increase channel capacity in the West Hawaii Systems. In order to provide for future technological advancements and to ensure such advancements be available to the subscribers of TWE's West Hawaii Systems, the Director, after completion of the Kona and Kohala Systems 750 MHz upgrades, may address the need for additional upgrades and may require TWE to complete additional upgrades of its West Hawaii Systems. It is contemplated that any future upgrade which may be required by the Director in excess of 750 MHz will be first discussed and negotiated with TWE. At that time, the Director may also review the upgraded systems capabilities with respect to public, educational, and government access and INET interconnect requirements.

**C. Public, Educational, and Governmental Access.** PEG access is an important issue, particularly on the island of Hawaii where the PEG access programming can help to bridge the island's geographic breadth. The Director has, through the requirements of this Order, sought to meet the needs for access resources expressed by the West Hawaii community to be served by TWE.

The Director intends to establish planning processes on the island of Hawaii which bring together all cable systems and interested parties to create and implement coordinated plans for access activities which make the most effective use of available resources. Specific concerns with respect to lack of equipment and facilities, channel time, and other matters will be addressed in the development of these plans. The Director accepts TWE's proposal to contribute an amount equal to 3% of annual gross revenues from the West Hawaii Systems for PEG access operating funds, and to contribute capital for PEG access facilities and equipment.



**D. Public Broadcasting.** The continued viability of public broadcasting is in the public interest. The Hawaii Public Broadcasting Authority (HPBA) provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts TWE's proposal to contribute an amount equivalent to 1% of West Hawaii System annual gross revenues to the HPBA Revolving Fund for facilities and equipment.

**E. Institutional Network.** TWE is committed to continue to support the State's INET and provide interconnections at its actual cost to the State. TWE has reaffirmed its commitment to provide, at its actual cost to the State, two-way fiber optic institutional network (INET) interconnections required under Decision and Order No. 159 issued to ACT 4. TWE proposes to maintain and repair but not replace the fiber optic lines at no charge or cost to the State, and to replace the same at TWE's actual cost of labor and materials.

The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Due to budgetary and other restraints, the Department of Commerce and Consumer Affairs after July 1, 1995 will not be able to provide the reimbursement for the cable operator's actual cost of labor and materials, as it may had done in the past. Accordingly, payment or reimbursement to TWE for its actual cost of labor and materials for INET interconnections or connections after July 1, 1995, will be the sole responsibility of the requesting agency, department, or other governmental entity.

**F. University of Hawaii, West Hawaii Campus Interconnect.** Pursuant to Section 5.6 of Terms and Conditions of Order No. 159, ACT 4 was required to install, maintain, and activate in two directions an interconnection between its Sun Cablevision system and the main campus facilities of the University of Hawaii, West Hawaii Campus on or before December 31, 1994, at no charge or cost to the State. Prior to December 1994, ACT 4 requested and was granted an extension of time to comply with said Section 5.6.

In connection with the subject transfer, TWE has agreed to fulfill ACT 4's obligation with respect to providing the West Hawaii Campus interconnect at no cost or charge to the State. In addition, TWE has agreed not to pass through the cost of such interconnection to its West Hawaii subscribers.

**G. Interconnection with Hawaii Interactive Television System (HITS).** In its application for transfer and amendment of cable franchises, TWE states that it will provide and maintain fiber interface with the Hawaii Interactive Television System (HITS) at no cost or charge to the State. The fiber interface will interconnect the HITS microwave reception facility in

Kaupulehu and Na Leo'O Hawaii, Inc.'s facilities in Kailua-Kona. TWE has agreed that the cost for the fiber interface will not be passed through to its West Hawaii subscribers.

**H. Consolidation of Kona and Kohala Systems.** The discussions between the State and TWE have been based on the Director's acceptance of the view that TWE's West Hawaii systems should be consolidated. In the past, although ACT 4 has owned and held the cable franchises for the contiguous Sun Cablevision and Kamehameha cable systems since 1987, the two ACT 4 systems have operated subject to independent cable franchise terms and conditions.

TWE proposed to delay consolidation of the two systems to between July 1, 2004 and May 31, 2005. However, there is no valid reason to delay consolidation of the two systems. As TWE will own the former Sun Cablevision and Kamehameha Cablevision cable systems and will be subject to very similar franchise obligations for the systems (as shown in the Terms and Conditions attached hereto), any operational and regulatory separations between the two system do not appear to have value. Accordingly, consolidation of the former Sun Cablevision and Kamehameha Cablevision franchises is appropriate at this time.

**I. Extension of Franchise Term.** In connection with its transfer application, TWE has requested that the franchise terms for the former Sun Cablevision and Kamehameha Cablevision cable systems be extended. Because TWE has made substantial commitments to its West Hawaii service area, an extension of the franchise term for its Kona and Kohala Systems is in the public interest. The franchise term for the Kona System will be extended to June 30, 2005 and shall be further extended to June 30, 2010 upon completion of the 750 MHz upgrade. As an incentive to TWE, the franchise term for the Kona System will be further extended to June 30, 2012 if the Kona System upgrade is completed by June 30, 1998. The franchise term for the Kohala System will be extended to June 30, 2010 upon completion of the 750 MHz upgrade, and it will be further extended to June 30, 2012 if the Kohala System upgrade is completed by June 30, 1999.

## **V. CONCLUSION**

Based on the information presented in the application, and the evaluation of this information, the Director concludes that it is in the public interest to approve this application for transfer and amendment of the Sun Cablevision and Kamehameha cable franchises held by ACT 4, and to consolidate the former Sun Cablevision and Kamehameha Cablevision cable communication franchises. TWE appears to possess the requisite capabilities for issuance of the franchise.

**VI. ORDER**

NOW, THEREFORE, the application for the transfer of American Cable TV Investors 4, Ltd's cable franchise to Time Warner Entertainment Company, L.P. is hereby APPROVED subject to the attached terms and conditions which are incorporated by reference herein. The former Sun Cablevision and Kamehameha Cablevision cable communication franchises are hereby consolidated as provided in this Order and the attached terms and conditions. All terms and conditions pertaining to the operation of the TWE West Hawaii franchise are contained in this Order.

DATED: Honolulu, Hawaii, June 30, 1995.

  
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KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer  
Affairs

**TERMS AND CONDITIONS OF ORDER NO. 173**

**Section One  
Definitions**

For purposes of these terms and conditions of Order No. 173, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

"Access Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"Access Channel" means any Channel on the System made available for public, educational, or governmental (hereinafter sometimes referred to as "Access" or "PEG") use.

"Access Facilities and Equipment" means (i) channel capacity designated for public, educational, or governmental use; and (ii) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by TWE to the Director or his designee for public, educational, or governmental uses pursuant to paragraph 4.2.

"ACT 4" means American Cable TV Investors 4, Ltd. doing business as Sun Cablevision of Hawaii and Kamehameha Cablevision.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to residential subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee paid by TWE pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the lowest cost tier of cable service offered by TWE to all of its West Hawaii System Subscribers which includes the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. § 521 et seq.)

"Cable Drop" means the cable from the feeder line to the Subscriber's premises.

"Cable Service" means the one-way transmission to Subscribers of video programming or other programming service together with subscriber interaction, if any, which is required for the selection of video programming or other programming services.

"Cable system" and "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3.

"Channel" means a minimum of six megahertz (6 MHz) in the electromagnetic spectrum which is capable of carrying any type of transmission which TWE is authorized to provide to Subscribers.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs of the State of Hawaii or the director's representative.

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

"Educational Access Channel" means any channel on the System which is made available by TWE for use by educational authorities such as the Department of Education of the State of Hawaii, and accredited educational institutions for noncommercial educational purposes.

"Emergency Authority" means the Director of Civil Defense, County of Hawaii, Deputy Director of Civil Defense, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5 of the Terms and Conditions.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by TWE, its affiliates, subsidiaries, parents, and any other person or entity in which TWE has a financial interest or which has a financial interest in TWE arising from or attributable to operation of the West Hawaii Cable System, including but not limited to:

- (a) Revenue from all charges for entertainment and non-entertainment services provided to Subscribers;
- (b) Revenue from all charges for the insertion of commercial advertisements upon the Cable System;
- (c) Revenue from all charges for the leased use of studios or Channels;
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other service; and
- (e) Revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross Revenues shall include, valued at contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by TWE or others described above in consideration of performance by TWE or others described above of any advertising or other service in connection with the West Hawaii Cable System.

"Kamehameha Cablevision or "Kohala System" means the cable system on the island of Hawaii previously owned by ACT 4 which provides cable communications service for Census Tract 218.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court of administrative body.

"Oceanic" means Oceanic Cablevision, a division of Time Warner Entertainment Company, L.P.

**Section Two  
Grant of Franchise**

**2.1 Franchise Term - Kona System**

(a) The term of the franchise for TWE's Kona System shall be the balance of the five-year franchise term granted to ACT 4 under Order No. 159, effective July 1, 1994, plus six (6) years. The term of the franchise shall expire on June 30, 2005 unless terminated as provided herein or by applicable law or unless extended as provided herein.

(b) The term of the franchise shall be extended automatically as follows:

- (1) The term of the franchise shall automatically be extended for an additional five (5) years upon completion of the 750 MHz system upgrade described in Section 3.1 hereof for the Kona System. In this case, the term of the franchise shall expire on June 30, 2010 unless terminated as provided herein or by applicable law.
- (2) The term of the franchise shall be further extended automatically by an additional two (2) years if TWE completes the 750 MHz upgrade to the Kona System by December 30, 1998. In this case, the term of the franchise shall expire on June 30, 2012 unless terminated as provided herein or by applicable law.

**2.2 Franchise Term - Kohala System**

(a) The term of the franchise for TWE's Kohala System shall be the balance of the franchise term granted pursuant to Order No. 116 dated May 29, 1985, which term shall expire on May 29, 2005 unless terminated as provided herein or by applicable law or unless extended as provided herein.

(b) The term of the franchise shall be extended automatically as follows:

- (1) The term of the franchise shall automatically be extended for an additional five (5) years upon completion of the 750 MHz system upgrade described Section 3.2 hereof for the Kohala System. In this case, the term of the franchise shall expire on June 30, 2010 unless terminated as provided herein or by applicable law.

- (2) The term of the franchise shall be further extended automatically by an additional two (2) years if TWE completes the 750 MHz upgrade to the Kohala System by December 30, 1999. In this case, the term of the franchise shall expire on June 30, 2012 unless terminated as provided herein or by applicable law.

### **2.3 Service Area**

This franchise shall cover all areas of the island of Hawaii which ACT 4 was authorized to serve and does not extend or alter the boundaries of ACT 4's existing Service Areas and includes the former Sun Cablevision (Census Tracts 213-217) and Kamehameha Cablevision (Census Tract 218) franchise areas.

### **2.4 Consideration**

(a) In consideration of the award of the franchise granted herein which permits TWE to use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as it may be amended from time to time, pay all monies specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other section herein, the total amount of the franchise fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the Franchise Fee set forth in Section 2.7 hereof, shall not exceed five percent (5%) of TWE West Hawaii System annual Gross Revenues or the maximum amount permitted by the applicable provisions of federal or State law, as said law may be amended throughout the term of this Order.

### **2.5 Ownership of Facilities and Plant**

(a) TWE shall maintain legal and equitable title to all of its present and future West Hawaii System; provided, however, that TWE may lease or permit the use of all or a portion of the West Hawaii System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use will result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.



## **2.6           Antitrust**

(a) Order No. 173 shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) Order No. 173 does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

## **2.7           Franchise Fee**

(a) Commencing July 1, 1995, but effective as of January 1, 1996 and during each and every year of the franchise, TWE shall pay to the Hawaii Public Broadcasting Authority Revolving Fund an amount equivalent to one percent (1%) of TWE West Hawaii System annual Gross Revenues. These payments shall be used for the repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) Except for the payment required to be made under paragraph (c) below, the one percent franchise fee required under this Section 2.7 shall be paid annually on January 31 and shall be based on TWE's West Hawaii System Gross Revenues for the preceding calendar year.

(c) The January 31, 1996 payment shall be based on TWE's West Hawaii System Gross Revenues for the period July 1, 1995 through December 31, 1995.

## **Section Three Future System Upgrades**

### **3.1           Kona System 750 MHz System Upgrade**

(a) By July 1, 2000, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the former Sun Cablevision System to a minimum bandwidth of 750 MHz and provide a minimum of 75 available Channels. For purposes of this Order, this upgrade shall be referred to as the "Kona System 750 MHz Upgrade."

(b) TWE shall provide capacity for and access through its cable system for all of its West Hawaii System subscribers to the State's institutional network described in Section 5 hereof (to the extent that two-way broadband video, voice, and data capabilities are available pursuant to the upgrade referred to in this Section 3.1).

(c) No later than July 1, 1996, TWE shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the Kona System 750 MHz Upgrade, and such other

information as the Director deems necessary. If, after one year after receipt of the upgrade plan, the Director does not approve the upgrade plan or require any supplemental information or changes thereto, the upgrade plan as submitted shall be deemed approved.

### **3.2 Kohala System 750 MHz System Upgrade**

(a) By July 1, 2001, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the former Kamehameha Cablevision System to a minimum bandwidth of 750 MHz and provide a minimum of 75 available Channels. For purposes of this Order, this upgrade shall be referred to as the "Kohala System 750 MHz Upgrade."

(b) TWE shall provide capacity for and access through its cable system for all of its West Hawaii System Subscribers to the State's institutional network described in Section 5 hereof (to the extent that two-way broadband video, voice, and data capabilities are available pursuant to the upgrade referred to in this Section 3.2).

(c) No later than July 1, 1997, TWE shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the Kohala System 750 MHz Upgrade, and such other information as the Director deems necessary. If, after one year after receipt of the upgrade plan, the Director does not approve the upgrade plan or require any supplemental information or changes thereto, the upgrade plan as submitted shall be deemed approved.

### **3.3 Pre-Existing INET Facilities**

The State has certain existing institutional network fiber facilities running between Kaupulehu and Kailua-Kona and between Kailua-Kona and Captain Cook, respectively (for purposes of this Section 3.3 referred to as the "pre-existing INET facilities"). If the upgrade for the Kona System required under Section 3.1 hereof necessitates removal of the pre-existing INET facilities, TWE shall replace, at no additional cost or charge to the State, the pre-existing INET facilities with capacity and/or new INET facilities that shall have no less capacity than would be provided if the pre-existing facilities had been utilized. In the event any increased or expanded capacity for such INET facilities is requested by the Director, TWE shall provide the same at TWE's actual cost of labor and materials.

### **3.4 Further System Upgrades**

After completion of the 750 MHz upgrades as provided in Sections 3.1 and 3.2 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require TWE to complete additional system upgrades at such times as determined by the Director. In connection with any such review, the Director may review other matters relating to the Kona System and Kohala System's capabilities including, but not limited to, public, educational, and governmental access requirements under Section 4 hereof, and institutional network and interconnect requirements under Section 5 hereof.

### **3.5 Development Fund**

In the event circumstances arise that significantly affect TWE's ability to complete the Kona System 750 MHz Upgrade and/or the Kohala System 750 System 750 MHz Upgrade as provided in Sections 3.1 and 3.2 hereof, the Director, in the Director's sole discretion, may require TWE to set aside an amount equal to the total cost of construction of the proposed upgrade(s). Within 30 days after receipt of written notification by the Director, TWE shall deposit an amount equal to the total cost of construction of the proposed upgrade(s) in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii ("Development Fund").

All amounts in the Development Fund including interest accrued thereon shall not be commingled with other funds of TWE or any related entity. TWE shall have the authority to draw on the Development Fund for purposes of financing and constructing the upgrades. TWE shall not make any withdrawals from the Development Fund without the prior written approval of the Director or the Director's designee. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the upgrades, except upon written application to and prior written approval by the Director.

This Section 3.5 shall be deleted upon completion of the Kona System 750 MHz Upgrade and the Kohala System 750 MHz Upgrade required under Sections 3.1 and 3.2 hereof.

## **Section Four Public, Educational and Governmental Access**

### **4.1 Access Plan and Implementation**

TWE shall work cooperatively with the access entity or entities which shall be designated by the Director for the management, operation and use of public, educational, and

governmental access facilities and equipment for the County of Hawaii.

TWE shall work cooperatively with the Director's staff, consultants, and others designated by the Director to develop for the Director's approval and to implement a coordinated plan for the use of public, educational, and governmental access facilities and equipment for the County of Hawaii. The plan shall at a minimum consider the following:

- (a) Resources available in the County of Hawaii for access use;
- (b) User needs and interest;
- (c) Models of access facilities and equipment, including the interconnection of the cable systems within the County of Hawaii, the activation of additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;
- (d) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) or any other interconnects; and
- (e) Coordination of access with the Institutional Network as described in Section 5 hereof.

#### **4.2 Access Operating Fee**

(a) During each and every year of the term of the franchise, TWE shall pay to an account designated by the Director or the Director's designee an amount up to three percent (3%) of TWE's annual Gross Revenues from the TWE West Hawaii System. These payments shall be used for public, educational and governmental ("PEG" or "Access") purposes and for other public purposes as shall be designated by the Director. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(b) The amount of the Access Operating Fee may be reconsidered by the Director based on consideration of the financial condition of TWE, the community needs, and other factors the Director deems appropriate.

(c) The estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on the estimated TWE West Hawaii System Gross Revenues for that year. For example, on January 1, 1996 the entire estimated three percent (3%) Access Operating Fee for 1996 shall be paid based on the estimated TWE West Hawaii System Gross Revenues for 1996.

(d) The amount of Access Operating Fees paid during any year shall amount to no less than two and four-tenths percent (2.4%) of TWE's actual TWE West Hawaii System Gross Revenues for the applicable one-year period. If TWE fails to pay the minimum estimated Access Operating Fees required by this paragraph, TWE shall be deemed in violation of this Order.

(e) All payments of the Access Operating Fee shall be reconciled with the actual amount of TWE's West Hawaii System Gross Revenues for the applicable period. Such reconciliation shall take place no later than the end of the third month following the applicable one-year period. At the time of the reconciliation, TWE shall pay to the Director or the Director's designee any balance owed. If TWE is entitled to a refund, the Director shall grant a credit toward future Access Operating Fees, or make a refund if the last payment of Access Operating Fees has been made.

#### **4.3 Access Channels**

(a) By December 31, 1995, TWE shall designate and make available to the Director or the Director's designee a total of four (4) full-time activated Access Channels for West Hawaii public, educational, and governmental access over TWE West Hawaii System.

(b) At such time as the Director requires after the upgrades required under Section 3 hereof are completed, TWE shall designate and make available to the Director or the Director's designee, at least two (2) additional full-time Access Channels for West Hawaii public, educational, and governmental access. The Director, at any time, may require TWE and the access organization designated pursuant to Section 4.6 hereof to prepare an access plan which shall include an assessment of the need for additional Access Channels in excess of that required hereunder, how such additional Access Channels will be made available, and other information the Director may require.

(c) All Access Channels shall be made available by TWE at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on TWE's most widely available service tier.

(e) TWE may use the two (2) additional Access Channels required to be made available under Section 4.4(b) hereof until such time as the Director or the Director's designee gives sixty (60) days prior written notice to TWE that an Access Channel or portion thereof shall be made available. TWE's use of Access Channels after it has received such notice from the Director or

the Director's designee shall be subject to the fallow time provisions in Section 4.4 hereof.

(f) The Director or the Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

(g) The Director or the Director's designee shall not exercise any editorial control over the use by the public of a Public Access Channel.

(h) TWE shall not exercise any editorial control over any Access Channel.

#### **4.4 Fallow Time on Access Channels**

(a) TWE shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system whether or not Activated and whenever such Access Channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least 72 hours in advance.

(b) All non-access programming on Access Channels shall be identified as such by an appropriate announcement made prior to and following each non-access use.

(c) Notwithstanding the foregoing, at such time as 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 90 day period, use of such Channel by TWE shall be suspended for such time as such minimum access use of the Channel is maintained. The provision of this paragraph may be waived by the Director for good cause.

#### **4.5 Facilities and Equipment**

(a) For the years ending June 30, 1996 through June 30, 2001, TWE shall provide to the Director or his designee public, capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
July 1, 1996	\$40,000.00
July 1, 1997	\$30,000.00

July 1, 1998	\$30,000.00
July 1, 1999	\$40,000.00
July 1, 2000	\$30,000.00
July 1, 2001	\$30,000.00

(b) For the remaining years of TWE West Hawaii System franchise after the year ending June 30, 2001, TWE shall provide capital funds for public, educational, and governmental access facilities and equipment in the amount of \$3 per equivalent West Hawaii System basic service or most widely available tier subscriber. The capital funds required in this paragraph (b), shall be paid annually on July 1 and shall be based on TWE's average West Hawaii basic service or most widely available tier subscriber count for the preceding calendar year.

(c) Any PEG capital funds provided pursuant to this Section 4.5 shall not be credited to the Access Operating Fee.

(d) Any transfer of the West Hawaii System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and governmental access required to be provided in this Section 4 before the effective date of the transfer.

(e) The capital funds for the provision of facilities and equipment required to be provided by TWE under this Section 4.6 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(C) of the Cable Act.

#### **4.6 Access Organization**

The Director or the Director's designee may designate one or more entities pursuant to Sections 4.2, 4.3 and 4.5 hereof to fund, control, manage or operate Access Facilities and Equipment. Any designated entity shall have a governing board of directors with fifteen (15) members. Thirteen (13) of the members shall be appointed by the Director and one member shall be appointed each by TWE and Jones Spacelink of Hawaii, Inc.

#### **4.7 Termination of Access Payments**

(a) TWE may suspend making payments under Sections 4.2 and 4.5 hereof 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 is not produced; or
- (2) Such payments are used for non-access purposes.

(b) TWE's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

#### **4.8 Interconnection for Access Purposes**

(a) TWE shall effect the required interconnections with other cable systems on the island of Hawaii on the schedule and in the manner determined in an access plan determined by the Director.

(b) The costs of the interconnections to be constructed shall be allocated among each of the cable franchise areas on the island of Hawaii. For the costs of construction allocated to the areas served by it, TWE shall receive a credit for its actual costs for labor and materials to be applied against its requirement to pay the Access Operating Fee described in Section 4.2 hereof or PEG capital funds described in Section 4.5 hereof. The taking of any credit by TWE shall require the Director's prior approval. TWE shall provide the Director or the Director's designee with such verification of costs as may be requested.

#### **4.10 Reopening of Access Requirements.**

At any time during the term of the franchise, the Director may commence proceedings for the purpose of identifying the future public, educational, and governmental access and other cable-related community needs and interests.

#### **4.11 Reporting Requirements**

By April 30 of each year, TWE shall submit to the Director a report of West Hawaii local origination expenses and a report for access programming expenses for the previous calendar year.

### **Section Five Networks**

#### **5.1 Institutional Networks**

(a) At no charge or cost to the State except for TWE's actual cost of labor and materials, TWE shall within six (6) months of a request by the Director provide fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites between the cable systems, government and public institutions, and public, educational, and governmental access sites within TWE's West



Hawaii Service Area to be determined by the Director, including but not limited to the following:

- . TWE West Hawaii System Facilities
- . County Office Building
- . State Office Building
- . Judiciary Building
- . Police Station
- . UH-West Hawaii

TWE shall repair and maintain, but not replace, the institutional network's fiber optic lines installed under this paragraph up to the terminating point of each network site designated by the Director at no charge or cost to the State. TWE shall replace any such fiber optic lines at no cost or charge to the State except for TWE's actual cost of labor and materials.

(b) Within six (6) months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites determined by the Director after July 1, 1995, at TWE's actual cost of labor and materials; provided that the sites at which TWE shall install the fiber optic lines have the necessary infrastructure and rights of way to receive the fibers. These interconnections shall be implemented in accordance with the use of capacity as provided in Sections 3.1(b) and 3.2(c) hereof.

1. When requesting such interconnections, the State will be cognizant of TWE's scheduling, manpower, and resource limitations.

2. Upon written request, the Director may grant an extension for the installation of an interconnection requested under this paragraph for good cause.

3. TWE shall repair and maintain, but not replace, the institutional network's fiber optic lines installed under this paragraph (b) up to the termination points of each network site designated by the Director after July 1, 1995 at no charge or cost to the State. TWE shall replace any such fiber optic lines at no cost or charge to the State except for TWE's actual cost of labor and materials.

(c) All interconnections shall be via fiber optic lines and capable of carrying T-1 circuits for data, voice, video, and analog in both directions.

(d) Except to the extent otherwise provided in Section 3.3 hereof, TWE shall maintain and repair, at no charge or cost to the State, institutional network fiber optic lines installed as of the date of this Order (for purposes of this paragraph (d)),

referred to as the "pre-existing INET fiber optic lines"), up to the terminating point of each network site.

(1) TWE is relieved from responsibility for maintenance, repair, or replacement of pre-existing INET fiber optic lines which are installed deficiently or defectively by parties other than TWE or the previous West Hawaii cable franchisees as of the date of this Order, or deficiently or defectively installed by parties other than TWE subsequent to the date of this Order.

(2) Upon request by the Director, TWE shall replace defective or defectively installed pre-existing INET fiber optic lines, or correct the pre-existing INET fiber optic lines, at TWE's actual costs for labor and materials. Upon replacement or correction of the deficient or defective pre-existing INET fiber optic lines, TWE shall be responsible for its maintenance and repair at no charge or cost to the State.

(e) TWE shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(f) Upon written request by TWE, the Director may grant an extension for the installation of the interconnections required hereunder for good cause.

(g) The State shall bear the following actual costs for labor and materials incurred by TWE in providing such interconnections. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the State shall promptly reimburse TWE for the costs of such interconnections, which shall include cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and designation.

With respect to sites designated by the Director after July 1, 1995 and interconnections including any additional interconnection approved by the Director after July 1, 1995, the requesting agency, department or other governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials.

(h) TWE may construct the institutional networks required under this Section 5 in a manner it deems appropriate, consistent with paragraph (c) of this Section. TWE may utilize contractors

to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

## **5.2           Emergency Override System**

(a) On or before June 30, 1996, TWE shall configure and maintain the West Hawaii System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Hawaii Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system.

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

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) TWE shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) TWE shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) TWE shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System.

## **5.3           Interconnection with Hawaii Interactive Television System (HITS)**

TWE shall continue to support and provide carriage of the Hawaii Interactive Television System (HITS) programming on its West Hawaii System in accordance with an access plan approved by the Director.

Within six (6) months after receiving notice from the Director, TWE shall provide and maintain a fiber interface with the Hawaii Interactive Television System (HITS) at no charge or cost to the State. The fiber interface shall interconnect the HITS microwave reception facility in Kaupulehu and the access organization's public, educational, and governmental access facilities in Kailua-Kona.

**5.4 University of Hawaii, West Hawaii Campus Interconnect**

At no charge or cost to the State, on or before December 1, 1995 TWE shall install, maintain, and activate in two directions the interconnection between the former Sun Cablevision System and the main campus facilities of the University of Hawaii, West Hawaii Campus. The interconnection shall be via fiber optic cable and capable of carrying T-1 circuits for data, voice and video in both directions.

**5.5 Non-Capital Contribution**

The items and services required to be provided under Sections 5.3 and 5.4 at no charge or cost to the State shall not be deemed to be capital contributions under Section 622(g)(2)(C) of the Cable Act.

**Section Six  
Programming Services**

**6.1 Mix, Quality, and Level of Service**

TWE shall not alter its current mix, quality, and level of programming services for its West Hawaii System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

**6.2 Broad Categories of Programming**

(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable Law.

(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director.

(c) TWE shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

## **Section Seven Management**

### **7.1        Books and Records**

TWE shall maintain at its local office(s) a complete set of books and records 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 locally within five (5) working days.

### **7.2        Tariff**

TWE will amend its schedule of its rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, as amended, at least 30 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 law.

### **7.3        Reporting of Violations**

(a) Upon acquiring knowledge of any event which is reasonably like to lead to a violation of any condition of this Order, TWE 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, and (3) the action that TWE proposes to take regarding the probable violation.

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

(c) By April 30 of each year, TWE shall submit to the Director a statement to the effect that no violation of this Order has occurred and that TWE has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if TWE has not observed or performed all of the conditions contained in this Order, it shall

specify the nature and period of the violation and what action TWE has taken or proposes to take with respect to the violation.

#### **7.4 Annual Financial Statements**

(a) By April 30 of each year, TWE shall submit financial review statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each such financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its West Hawaii Systems operations on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph (a) above shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations.

#### **7.5 Other Reports**

In addition to the reports required to be submitted under this Order, TWE shall submit to the Director all other reports at the time required by applicable State and federal law, rules and regulations.

#### **7.6 Change in Ownership**

Any change in the general ownership of five percent (5%) or more of TWE shall require the prior approval of the Director.

### **Section Eight Collateralization of System Assets**

#### **8.1 Collateralization of System Assets**

(a) In the event the assets of the West Hawaii System will be or has been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notifying the Director in writing no later than 15 days after the closing of the loan or credit facility. TWE 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 require.

(b) During the term of the franchise, TWE is not required to seek pre-approval of any change in a loan agreement or credit facility which encumbers or pledges the assets of the West Hawaii

System; provided, however, that the Director has the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within 30 days after closing, TWE 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 that the change(s) to the loan agreement or credit facility is not in the interest of the continued financial viability of the system and to require corrective measures if necessary.

## **Section Nine Subscriber Service**

### **9.1        Customer Service Office**

(a) TWE shall maintain and operate within its Service Area at least two customer service offices 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. TWE shall maintain a staff adequate to provide such services in a timely and efficient manner.

(b) For each customer service office, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that will be most convenient for its Subscribers.

### **9.2        Telephone Service**

(a) TWE shall have a publicly listed local customer service telephone number which shall be open at a minimum for telephone business for ten (10) hours each weekday and for six (6) hours on Saturdays as determined by TWE to be most convenient for its Subscribers. This customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, TWE shall have at a minimum an answering service to take calls.

(b) Within 30 days of a request by the Director, TWE shall submit to the Director all available information with respect to the adequacy of its telephone response capability including the following matters:

- (1) The average length of time which it takes a human operator to answer a Subscriber telephone call during peak times;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers during peak times;

- (3) The number of busy signals received by callers during peak times; and
- (4) The effectiveness of any new computer equipment in decreasing response time.

(c) After reviewing such information, the Director may require TWE to perform further analysis of its telephone service and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its telephone service.

### **9.3 Installation and Repair Service**

(a) TWE shall at a minimum provide installation service for eight hours each weekday and Saturdays, except for legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

(b) TWE shall at a minimum provide repair service eight (8) hours each week day and Saturday. At all other times, TWE shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

### **9.4 Compliance**

Notwithstanding any other provision to the contrary, TWE shall comply with all applicable customer service standards prescribed by the State and Federal Communications Commission.

## **Section 10 Modification**

### **10.1 Petition for Modification**

(a) No provision of Order No. 173 shall preclude TWE from petitioning the Director for a modification of any provision of Order No. 173 for any reason including, but not limited to, the following: (1) the emergence of increased competition to the cable services offered by TWE; or (2) underutilization of access facilities and equipment. The Director may, in the Director's sole discretion, issue an appropriate modification of Order No. 173.

(b) In determining any modification of Order No. 173, the Director shall take into account the geographic, topographic, and economic characteristics of the West Hawaii Service Area, the economics of providing cable service to subscribers and any other matters necessary to ensure that the terms and conditions upon which cable service is provided are fair both to the public and TWE.



## **Section Eleven Termination**

### **11.1 Cumulative Termination Rights**

The termination provisions herein shall be in addition to and not in derogation of any other rights of remedies which the Director may have with respect to the subject matter of this Order No. 173.

### **11.2 Six Month Termination**

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of Section 3 (Future System Upgrades), Section 4 (Public, Educational and Governmental Access), or Section 5 (Networks) of these terms and conditions invalid or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six months from the date of such event.

(b) Notwithstanding the above paragraph (a), in no event shall the franchise be terminated under said paragraph prior to the end of the fifth franchise year.

(c) The termination provisions of above paragraph (a) shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided that TWE provides prior written notice to the Director of such voluntary performance.

### **11.3 New Franchise Application Not Excluded**

In the event that TWE's franchise is terminated pursuant to Section 11.2 hereof, nothing herein shall prevent TWE from applying for a new franchise.

## **Section Twelve Miscellaneous Provisions**

### **12.1 Headings**

The headings or titles of paragraphs and sections contained in these terms and conditions are to facilitate reference only and shall not in any affect the construction or interpretation hereof.

**12.2**            **Successors**

All of the provisions of Order No. 173 and these terms and conditions shall apply to TWE and its permitted successors and assigns.

**12.3**            **Notices**

All required notices to the Director under Order No. 173 shall be made in writing and shall be submitted to the Cable Television Administrator, Pauahi Tower Suite 770, 1001 Bishop Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

**12.4**            **Leased Commercial Access**

Consistent with the Cable Act, on or before September 30, 1995, TWE shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of West Hawaii System Channels for commercial use.

**12.5**            **Laws**

TWE, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the West Hawaii Systems. If TWE discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, TWE shall promptly report it to the Director in writing. TWE, its employees, and agents, shall comply with all applicable federal, state, and local laws, rules and regulations issued pursuant thereto and shall indemnify the State against any loss, liability or damage occasioned by reason of a violation of this Section by TWE and its officers, employees and agents.

**12.6**            **Performance**

The failure of the Director or the State at any time to require performance by TWE of any obligation or condition of this Order shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

**12.7**            **Hold Harmless**

TWE shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the franchise or exercising its rights or performing its duties under this franchise.

**12.8**            **Waiver**

The Director reserves the right to waive any condition of this Order for good cause.

**12.9**            **Authority**

The State, from time to time, may adopt or issue such rules, orders or other directives governing TWE as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing TWE as the Director shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or State law, as said law may be amended throughout the term of this Order. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

**12.10**           **Test Results**

As soon as available, but in no event more than 30 days after the date of the test, TWE shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.


**12.11**           **Audit**

The Director may require that TWE submit to an audit by the Director's accountants. If an audit of TWE results in disclosure of unpaid fees or payments required by this Order, by statute or by rules, the Director may require TWE to pay the cost of the audit.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
DECISION AND ORDER NO. 173 in Docket No. 95-08 was served upon  
the following parties at the address shown below by mailing the  
same, postage prepaid, on this 30th day of June, 1995.

JOHN T. KOMEIJI, ESQ.  
BETH K. FUJIMOTO, ESQ.  
Watanabe, Ing & Kawashima  
745 Fort Street  
5th & 6th Floors  
Honolulu, Hawaii 96813

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Patti K. Kodama  
Secretary

"Order" or "Order No. 173" means Decision and Order No. 173 issued by the Director of Commerce and Consumer Affairs in Docket No. 95-08 and dated June 30, 1995, including all terms and conditions and exhibits.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

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

"Public Highways" shall have the meaning set forth in Hawaii Revised Statutes section 264-1, as may be amended from time to time.

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

"Service Area" means those areas of the island of Hawaii, State of Hawaii for which ACT 4 or its predecessors in interest were issued cable franchises, and specifically Census Tract Nos. 213, 214, 215, 216, 217, and 218, as more particularly described therein;

"State" means the State of Hawaii including its political subdivision.

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

"Sun Cablevision" or "Kona System" means the cable system on the island of Hawaii previously owned by ACT 4 which provides cable communications service for Census Tracts 213 through 217.

"TWE" means Time Warner Entertainment Company, L.P.

"TWE West Hawaii Systems" or "West Hawaii Systems" means the Kona and Kohala Systems which provide cable communications service in the Service Area described in this Order (Census Tracts 213 through 218).

"Time Warner Entertainment Company, L.P." means Time Warner Entertainment Company, L.P., a Delaware limited partnership.