

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

In the Matter of the Application)
of)
AOL TIME WARNER INC.)
By and through)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P. dba Oceanic Cable,)
Hawaiian Cablevision (Lahaina), Hawaiian)
Cablevision (Maui, Lanai, Molokai),)
Sun and Kamehameha Cablevision, and)
Hawaiian Cablevision of)
Hilo)
For Approval of Change of Control/Transfer)
Of Cable Franchises)
_____)

DECISION AND ORDER NO. 261

I. Introduction.

The State has accepted AOL Time Warner Inc.'s application for change of control/transfer of cable franchises held by Time Warner Entertainment Company, L.P. ("TWE"). The application was filed in connection with the proposed merger of Time Warner Inc. and America Online, Inc.

The cable franchises held by TWE covers the islands of Oahu, Maui, Lanai, Molokai, Lanai, and Hawaii, all as more particularly described in Decision and Order Nos. 154, 156, 158, and 243 for Oahu, Decision and Order Nos. 174, 241 and 245 for Maui, Molokai and Lanai, and Decision and Order Nos. 173, 185, 242 and 244 for Hawaii.

Through certain wholly owned subsidiaries Time Warner Inc. owns 74.49% of the general and limited partnership interests in TWE. The MediaOne Group, Inc. owns the remaining limited partnership interest at 25.51%.¹ TWE's cable systems in Hawaii are designated as a part of TWE-Time Warner Cable-Hawaii Division.

America Online, Inc., a Delaware corporation, is a publicly traded company. It has two major lines of businesses with four product groups: the Interactive Online Services business include the Interactive Services Group, Interactive Properties Group, and AOL International Group; and the Enterprise Solutions business include the Netscape Enterprise Group. Of these product groups, the Interactive Services Group that includes AOL service is perhaps the most publicly recognized.²

Pursuant to that certain Agreement and Plan of Merger dated as of January 10, 2000, between America Online, Inc. and Time Warner Inc., both entities will merge into a newly formed publicly traded holding company – AOL Time Warner Inc.³ As a result of the merger, former shareholders of America Online will obtain approximately 55% interest in AOL Time Warner, and former shareholders of Time Warner will obtain the remaining 45% interest in AOL Time Warner. The merger is expected to close in the

¹ The general partners of TWE are American Television & Communications Corporation, which holds a 25.77% interest, and Warner Communications, Inc., which holds a 37.50% interest. In addition to MediaOne Group, Inc., the other limited partners include Time Warner Companies, Inc. (5.61% interest), and TW/TAE Inc. (5.61% interest). Time Warner Companies, Inc., which holds a 92.20% ownership interest in American Television & Communications and 100% ownership interest in Warner Communications, Inc., is a wholly owned subsidiary of Time Warner Inc.

² According to America Online, Inc.'s SEC Form 10-K for fiscal year ended June 30, 1999, the AOL service provides its 17.6 million subscribers with a global, interactive community offering a wide variety of content, features and tools in addition to access to the Internet with search functionality.

³ AOL Time Warner Inc. was incorporated under the laws of the State of Delaware on March 9, 2000. According to its corporate by-laws, the initial board of directors will consist of 16 members. The initial executive management team of AOL Time Warner Inc. will be comprised of Steve Case, chairman; Ted Turner, vice-chairman; Gerald Levin, chief executive officer; and Bob Pittmand and Dick Parsons, co-chief operating officers, and on June 23, 2000, America Online and Time Warner shareholders voted in favor the merger, according to recent news accounts.

fall of 2000 subject to closing conditions and receiving all necessary regulatory approvals.⁴

TWE represents that the merger will not affect its operations. Although AOL Time Warner will become the parent of America Online and Time Warner, the entity or entities holding the cable franchise within various communities will remain in existence and continue to be the franchise holder.⁵ TWE further represents that the merger will not result in any changes in the officers and directors of TWE, and that there will not be any changes to the local management of TWE's Hawaii cable systems. In other words, the proposed merger will not change the organizational structure of TWE and the ownership interests of its general and limited partners.

To that end, TWE represents it will continue to be responsible for all of its cable franchise commitments, and reaffirms its commitment to satisfying all franchise obligations. TWE further represents that the proposed merger will not have any impact on its Hawaii cable system services such as existing service rates and customer service.⁶ It is noted that all representations made by TWE and AOL Time Warner Inc. in connection with the subject transfer application are considered material by the State.

Pursuant to section 440G-7, Hawaii Revised Statutes, public hearings on the subject transfer application were held as follows:

Maui, Lanai, Molokai

- (a) Maui -- May 10, 2000, at 5:30 p.m., Maui Community College, Kahului, and May 18, 2000, at 6:00 pm ; King Kamehameha III School, Lahaina;
- (b) Lanai -- May 12, 2000, at 5:30 p.m., Lanai Senior Center;
- (c) Molokai -- May 16, 2000, at 5:30 p.m., Kaunakakai School;

Oahu

- (d) City and County of Honolulu -- May 31, 2000, at 5:30 pm, Washington Middle School;

⁴ In addition to other regulatory approvals that may be required, the Federal Communications Commission approval of the proposed merger is required as well as approval by the State of Hawaii.

⁵ See Exhibit 2 attached to Form 394 filed by Time Warner and AOL Time Warner Inc., and Summary of application filed by TWE.

⁶ Id.

Hawaii

- (e) Kona – June 6, 2000, at 5:30p.m., Kealakehe Elementary School;
- (f) Hilo – June 9, 2000, at 5:30 pm, Waiakea Intermediate School.

Notices of the public hearings were published on April 17 and 24, 2000 in the Mid-Week and Maui News for Maui County; Mid-Week and Honolulu Advertiser on May and 15, 2000 for City and County of Honolulu; and Mid-Week, Hawaii Tribune Herald and West Hawaii Today on May 15 and 22, 2000 for Hawaii County. Copies of the transfer application were available for review during normal business hours at public libraries in communities within TWE Hawaii franchise areas, its local offices, and at the Cable Television Division, Department of Commerce and Consumer Affairs.

II. THE LAW.

A. Federal law

The 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, as amended (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 access 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 franchise are set forth in sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended.

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's prior approval of a 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 communications franchise, and states in pertinent part:

- (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, . . . 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 that 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 communications capabilities for its communities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

III. DISCUSSION

A. Recent Developments

The subject transfer application is the most recent of several cable franchise transfers reviewed by the State during the past six years. Clustering of cable systems in certain geographic regions by large multi-system owners such as TWE and AT&T (formerly TCI, Inc.) has spurred this flurry of acquisitions or exchange of cable systems. For example, in 1994 Hawaii had seven independent cable companies serving different communities throughout the State.⁷ Today, there are two cable companies – G Force,

⁷ Oceanic served most of the island of Oahu; Chronicle Cablevision served the tri-islands of Maui County, the Ka'u district on the island of Hawaii, and the Hawaii Kai area of the island of Oahu; Jones Spacelink of Hawaii served the Hilo and Honokaa areas of the island of Hawaii; American Cable TV Investors 4, Ltd. dba Sun Cablevision and Kamehameha Cablevision served the areas of Kona and North Kohala, respectively; Daniels Communications Partners Limited Partnership dba Hawaiian

LLC dba Garden Isle Telecommunications serving the island of Kauai, and TWE serving the islands of Oahu, Hawaii, Maui, Lanai and Molokai.

With the race to establish footholds in certain geographic markets, cable companies have also developed advanced technologies and services to attract and maintain subscribers. The advent of fiber to node architecture in rebuilding or upgrading of cable systems provide increased bandwidth capacity for traditional services such as video programming as well as for new interactive and digital services such as Video on Demand, and high speed cable modem Internet access. TWE, through Oceanic Cable, launched its high speed Internet access service known as "Road Runner" to its Oahu residential subscribers in 1998, using Oceanic Cable's infrastructure and cable modems.⁸

On February 1, 1999, Time Warner and AT&T Corp. announced the creation of their joint venture whereby AT&T would provide branded cable telephone service to residential and small business customers over Time Warner Cable's existing cable network in 33 states including Hawaii. AT&T will have a 77.5% ownership interest in the joint venture, and Time Warner will have the remaining 22.5% ownership interest. General market rollout of the joint venture services was anticipated to occur sometime in the year 2000. According to TWE, there has been no further developments regarding this joint venture.

The issue of equal or open access on cable facilities by nonaffiliated Internet service providers has in recent years been in the national spotlight. Several local franchising authorities on the mainland have imposed certain requirements upon cable operators within their communities to open their cable facilities to nonaffiliated Internet access providers, and other local franchising authorities have declined to do so. The Federal Communications Commission has also declined to impose requirements for equal or open access to competing Internet access providers on cable facilities, or for providing high-speed Internet access services unbundled from @Home's proprietary content, an affiliate of TCI, in connection with the recent merger of AT&T Corp. and Tele-Communications, Inc.⁹

Cablevision served the Lahaina area of the island of Maui; Rifkin and Associates dba Garden Isle Cablevision and Intermedia Partners dba Kauai Cablevision served the island of Kauai.

⁸ The "Road Runner" service is under a joint venture owned by Time Warner (8.6% interest), TWE (20% interest), TWE-A/N (26.3% interest), MediaOne (25.1% interest), Microsoft (10% interest), and Compaq (10% interest).

⁹ See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T Corp.,

In addressing the various legal, regulatory, and technical matters regarding the equal or open access issue raised by parties to the AT&T/TCI proceeding, and representations from AT&T and TCI regarding the availability of unaffiliated Internet services to TCI subscribers, the Federal Communications Commission stated:

[W]e conclude nothing about the proposed merger would deny any customer (including AT&T-TCI customers) the ability to access the Internet content or portal of his or her choice. We further conclude that the open access issues would remain equally meritorious (or non-meritorious) if the merger would not occur. Moreover, . . . , multiple methods of providing high speed Internet access appear to be emerging, and the Commission will monitor broadband deployment closely.

Id. at p. 48. See Inquiry Concerning the Deployment of Advanced Telecommunications Capability, Report, CC Docket No. 98-146, FCC 99-5 (rel. February 2, 1999), p. 56 (with respect to the issue of whether Internet service providers should be given rights of access to broadband systems operated by cable operators, the Commission stated "[w]e will ... continue to monitor broadband deployment closely to see whether there are developments that could affect our goal of encouraging deployment of broadband capabilities").

In a recent case involving the imposition of an open access requirement, the City of Portland and Multnomah County, Oregon, voted to approve the transfer of cable franchises from TCI to AT&T subject to the requirement that AT&T (as the transferee) provide nondiscriminatory access to its cable systems by nonaffiliated Internet access providers. AT&T refused the condition, and brought an action in federal district court for relief. The trial court granted summary judgment in favor of Portland, and AT&T appealed the decision to the Ninth Circuit Court of Appeals. In an opinion issued on June 22, 2000, the appellate court reversed the judgment of the trial court and held that federal law prohibits a franchising authority from regulating cable broadband Internet access, because the transmission of Internet service to subscribers over cable broadband facilities is a telecommunications service under the Communications Act.¹⁰

Memorandum Opinion and Order, CS Docket No. 98-178, FCC 99-24 (rel. February 18, 1999).

¹⁰ AT&T Corporation et al. vs. City of Portland et al., ____ F.3rd ____ (9th Cir. June 22, 2000). Cf. Gulf Power Company et al. vs. Federal Communications Commission, ____ F.3rd ____, (11th Cir. April 11, 2000) (Internet service is neither a cable service nor a telecommunication service).

Shortly thereafter, the Federal Communications Commission announced that it will begin a formal proceeding on the issue of multiple Internet service providers gaining access to a cable company's broadband platform.¹¹ Chairman William E. Kennard stated that the Ninth Circuit Court's categorization of high-speed Internet access over a cable plant as telecommunication and information service "does not necessarily mean that the service is subject to all of the common carrier regulations that apply to telephone companies. The purpose of the new proceeding will be to resolve these issues and bring certainty to the marketplace."¹²

In addition, Time Warner has developed a "Multiple ISP Program", whereby America Online and Time Warner are cooperating in a technical and operational trial at Time Warner's Columbus, Ohio broadband cable systems – involving participation of Road Runner, AOL, and other ISPs.¹³ AT&T also announced recently that it will conduct a six-month trial in Boulder, Colorado, offering access to multiple Internet service providers through its cable facilities in November 2000, and that it will conduct a similar trial in three Massachusetts communities by October 31, 2001 and implement statewide service no later than July 1, 2002.¹⁴

In Hawaii, the open access issue raised in certain testimonies centers around the commitment of America Online and Time Warner to provide nondiscriminatory access to Time Warner cable facilities by nonaffiliated Internet service providers. The Memorandum of Understanding between Time Warner and America Online dated February 29, 2000 ("Memorandum of Understanding"), provides the framework from which consumers will have a choice of multiple Internet service providers through Time Warner's cable systems. The Memorandum of Understanding also provides certain commitments including, but not limited to, "AOL Time Warner will not place any fixed

¹¹ See FCC News Release, FCC Chairman to Launch Proceeding on "Cable Access", June 30, 2000.

¹² Id.

¹³ See Written Responses of America Online and Time Warner dated July 17, 2000 to FCC's request for information of June 23, 2000, at 35. In addition, Time Warner Cable and Juno Online Services Inc. have entered into an agreement whereby Time Warner will market and offer Juno internet service to its cable customers beginning with trials in Columbus, Ohio. Reuters, "Time Warner to Offer Juno Line Access", July 31, 2000. See also Cable Monitor, "Time Warner Quietly Begins Trial of Multiple ISPs", July 24, 2000.

¹⁴ See Multichannel News Online, "AT&T Plans Multiple-ISP Trial", June 7, 2000, and Multichannel News Online, "AT&T Reaches Mass. Compromise", June 27, 2000.

limit on the number of ISPs with which it will enter into commercial arrangements to provide broadband service to consumers”, and “AOL Time Warner will allow ISPs to provide video streaming ... [and] will allow ISPs to connect to its broadband cable systems without purchasing broadband backbone transport from AOL Time Warner.”¹⁵ It is noted, however, that there is no schedule or timetable in the Memorandum of Understanding to implement open access to the cable systems.

High speed Internet service via cable systems using fiber optic infrastructure is a significant step in the advancement of information technology. It is faster than narrowband or dial-up Internet access, and offers greater capacity. The Internet has become an important tool for the private sector as well as for government agencies and educational institutions. For those who have access to the Internet, it can provide instantaneous global links for electronic communications and commerce.

Several testimonies received in connection with the subject transfer opposed the transfer application unless AOL Time Warner is required to open nondiscriminately its broadband cable systems to nonaffiliated Internet service providers. The issue of equal or open access by nonaffiliated Internet service providers, although an important one, is of a scope beyond the subject transfer application. In other words, the subject transfer is applicable only to the franchises held by TWE, but the equal or open access issue transcends to all cable operators and cable systems in the State as well as being subject to applicable federal and State law.

Thus, in light of the Portland decision, the FCC’s new proceeding on the open access issue, the open access trials of Time Warner in Columbus, Ohio and AT&T’s trials in Colorado and Massachusetts, and the commitments set forth in the Memorandum of Understanding, the Director will monitor the deployment of high speed Internet access (broadband and narrowband) closely and reserves the right to take or initiate any action permitted under applicable federal and State law at the appropriate time.¹⁶ Furthermore, TWE shall report the results of Time Warner’s Columbus, Ohio open access trial to the Director. In the event the Columbus, Ohio open access trial is successful, TWE is encouraged to have its Hawaii Division as one of the first divisions to rollout the company’s open access program.

¹⁵ Memorandum of Understanding at paragraphs 4, 6, and 7.

¹⁶ It is noted that high speed Internet access using non-cable facilities is being developed and/or deployed by incumbent and competitive LECs, satellite industry, and wireless cable and fixed mobile wireless telephony providers. See In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc. to AT&T Corp., Memorandum Opinion and Order, at p. 38.

B. Franchise Obligations

In addition to State statutory and administrative requirements, TWE's cable franchise obligations are set forth in Decision and Order Nos. 154, 156, 158, and 243 for Oahu, Decision and Order Nos. 174, 241 and 245 for Maui, Molokai and Lanai, and Decision and Order Nos. 173, 185, 242 and 244 for Hawaii.

TWE makes certain representations regarding its franchise obligations and operation and management of its Hawaii cable systems, to wit:

- (1) TWE will continue to hold all of the cable franchises granted by the State that it currently holds;
- (2) TWE will continue to satisfy all existing franchise obligations;
- (3) TWE will continue to operate its cable systems in Hawaii;
- (4) The AOL- Time Warner merger will have no adverse consequences upon the current terms and conditions of TWE's service and upon TWE's operation of the TWE Hawaii Cable Systems; and
- (5) The AOL-Time Warner merger will not affect local management of the TWE Hawaii Cable Systems.¹⁷

The public need for proposed service, suitability of TWE, operational ability of TWE, technical ability of TWE, and TWE's ability to provide service at reasonable cost and financial capability were reviewed in connection with TWE's acquisition of the former TCI of Hawaii, Inc. cable systems, and discussed in Decision and Order No. 241 issued May 10, 1999.

Franchise obligations relating to system upgrades, INET interconnections or connections, franchise fee contributions, public, educational, and government access, Hawaii Public Television Foundation, and other matters are set forth in the above-referenced Decision and Orders. As such, and to the extent otherwise provided in this Decision and Order, those factors need not be addressed for purposes of the subject transfer application.

C. Unserved Communities

There is a continuing public need for extending cable service within TWE's neighbor island franchise areas. Although TWE has made significant inroads with respect to extending cable services to outlying, rural or remote communities within Maui County and Hawaii County, the State remains concerned for those without cable

¹⁷ See Summary of application. As noted previously, all representations made by TWE and AOL Time Warner Inc. in connection with the subject transfer application are considered material by the State.

service. As noted in Decision and Order No. 241, with advanced technology, informational programming such as educational distant learning and 24 hour news programs on cable systems become more than strictly entertainment, particularly in areas considered rural or remote.

Extension of cable service to all communities within franchised areas remain a high priority of the State. TWE has identified several communities that remain unserved, primarily due to sparse population and distances away from existing cable distribution facilities. Those communities include Honokahau within Lahaina; Keanae, Wailua, Ulupalakua, Makena, and Kahakuloa within Maui; Hawaiian Homes-Kawaihae, Kohala by the Sea, Kohala Estates, Kohala Ranch, Kohala Makai, Anekona, and Makapala within West Hawaii; and Kamaee, Hakalau – Chen Chuck Road, Orchid Land Estates, Hawaiian Acres, Hawaiian Orchid Island Estates, Eden Roc Estates, Tiki Gardens, Ohia Estates, Royal Hawaiian Estates, Leilani Estates, Cymbidium Acres, Orchid Isle Estates, Aloha Estates, Hawaii Island Paradise Acres, Pacific Paradise Development, Vacation Land, Kapoho Beach, Kalapana Sea View Estates, Black Sands Beach, Waawaa, Green Sands, Hawaii Ocean View Ranchos, Hawaii Ocean View Estates, within East Hawaii.

TWE shall work with the Director's staff and shall prepare an annual report regarding the feasibility of extending cable service to all communities that remain unserved in light of TWE's 25 homes per mile extension policy, which report shall be submitted to the Director by December 31st of each year. The Director may require the extension of service to any unserved area in accordance with section 440G-8.1(c), Hawaii Revised Statutes ("The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.")

IV. 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 its Hawaii cable systems shall require the prior approval of the Director.¹⁸

¹⁸ It is noted that as part of its approval of the merger of MediaOne Group, Inc. into AT&T, the Federal Communications Commission required AT&T and MediaOne to either divest their interest in TWE or terminate their involvement in TWE's programming activities, or divest other cable systems, by May 19, 2001. In the Matter of Applications

B. Educational Access Education continues to be a high priority of the State. Distant learning for elementary through post-secondary students via cable television is a significant and valuable resource as well as an instrumental tool in facilitating Hawaii based cooperative activities relating to the use, advancement and development of telecommunications technology in education and research. To that end, in December 1998 a cooperative agreement was reached between O'lelo: The Corporation for Community Television ("Olelo"), the designated access entity on Oahu¹⁹, and the Hawaii Educational Network Consortium ("HENC"), whereby Olelo allocates and provides to HENC an amount equal to 25% of its annual PEG access operating funds.²⁰ Under that agreement, the monies provided to HENC is to fund educational services and programs such as life long learning and non-credit courses, produced and/or provided by Hawaii public and private accredited elementary, secondary, and higher educational institutions.²¹

Continuing development and availability of educational programs and services for all ages is essential to the further growth of the State's economy as well as enhancing cultural enrichment for Hawaii residents. In order to achieve this continuity, it is in the public interest to provide for the allocation by this Decision Order a portion of the PEG access operating funds paid by TWE Oceanic Cable for institutional educational access purposes. Accordingly, an amount equal to 25% of PEG access operating funds calculated to be paid by TWE Oceanic Cable shall be allocated and

for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc. to AT&T Corp, Memorandum Opinion and Order released June 6, 2000, FCC 00-202, CS Docket No. 99-251. Under Hawaii law, the divestiture of AT&T's (MediaOne) interest in TWE will trigger a change in control.

¹⁹ See Agreement between Olelo and Department of Commerce and Consumer Affairs dated December 24, 1998.

²⁰ Pursuant to Decision and Order No. 154, Olelo currently receives annually an amount equal to three percent (3%) of Oceanic Cable's annual gross revenues as PEG access operating funds.

²¹ HENC is comprised of representatives from public and accredited private educational institutions in Hawaii including the University of Hawaii, Department of Education, and Hawaii Association of Independent Schools. In the event HENC shall no longer be the governing body of such consortium, the Director shall have the right to approve any successor and to make any changes regarding the amount of PEG access funds allocated for educational access as provided in this Decision and Order. The Director also reserves the right at any time to require HENC, its permitted successors to submit written reports in form and substance regarding the use of such funds and other related matters.

provided to a consortium of public and private accredited educational institutions in Hawaii designated by the Director on an annual basis, which funds shall be used to fund noncommercial educational programs and services including, but not limited to, life long learning and non-credit courses, produced and/or provided by Hawaii public and private accredited elementary, secondary and higher educational institutions by way of television broadcast, cablecasting and other types of electronic media such as multimedia design and development, electronic mail, Internet access, and facsimile, as they may relate to such television broadcast or cablecast programming and services.²² The designated peg access entity shall make payment of such portion of PEG access operating funds to a consortium of public and accredited private educational institutions in Hawaii designated by the Director, on February 7, 2001 for calendar year January 1, 2001, and on February 7th for each calendar year thereafter through the remaining franchise term, as more particularly described in the attached amended terms and conditions of Decision and Order No. 154, as amended.

C. Developing Technologies Notwithstanding anything to the contrary, the Director, at any time after completion of TWE's Hawaii cable systems upgrades, may address the communities' need for additional upgrades relative to advanced services such as digital programming and related matters. In connection therewith, the Director may also review public, educational, and government access, INET interconnect or connect requirements, new technologies and services, and any other matter related to the cable system and franchise areas. The Director may impose additional or new terms and conditions, and may extend the term of the franchise for any number of years as the Director deems just and reasonable, taking into consideration including, but not limited to the cost of meeting such new terms and conditions.

D. Financial Information Financial information regarding the condition of the cable company, financial reports, and franchise fee payments are required to be submitted to the Director pursuant to administrative rules and franchise orders. In order to provide for a streamlined and consolidated approach to such financial reporting, the Director reserves the right to require financial information in form and schedule to be submitted by TWE. TWE shall work cooperatively with the Director and the Director's staff on this matter. Until such time as directed by the Director, TWE shall continue to submit the financial information as required by administrative rule and franchise orders.

²² This provision is not intended to and does not impair any contractual rights or obligations of the parties to the Olelo and HENC agreement.

V. CONCLUSION.

Based on the information presented in the application and other information submitted to the State in connection therewith, and the evaluation thereof, the Director concludes that it is in the public interest to approve the application of AOL Time Warner Inc. for transfer (change in control) of the cable franchises held by Time Warner Entertainment Company, L.P.

VI. ORDER.

NOW, THEREFORE, the application for transfer (change in control) of the cable franchises held by Time Warner Entertainment Company, L.P. to AOL Time Warner Inc. is hereby APPROVED, subject however, to the following:

(a) Closing of that certain Agreement and Plan of Merger dated as of January 10, 2000, between America Online, Inc. and Time Warner Inc., provided that there has been no material changes to said Agreement and Plan of Merger subsequent to that reviewed by the State. Time Warner Entertainment Company shall immediately notify the Director in writing of the closing of said Agreement and Plan of Merger and whether any material changes were made thereto prior to or at closing. In the event there are any material changes to said Agreement and Plan of Merger or to the structure and operation of TWE Hawaii cable systems as a result thereof, the Director reserves the right to review such changes and take any and all necessary and appropriate action to protect the public interest.

(b) Federal Communications Commission approval of the subject merger, and to any conditions, obligations, and requirements imposed by the Federal Communications Commission in connection therewith.

(c) Terms and conditions set forth in this Decision and Order and to the amended terms and conditions attached hereto and made a part hereof.

Except to the extent provided herein and the attached amended terms and conditions, this Decision and Order neither replaces nor supersedes any of the before-mentioned cable franchise Decision and Orders issued to Time Warner Entertainment Company.

Notwithstanding any provision to the contrary, in the event the Agreement and Plan of Merger fails to close for whatever reason, this Decision and Order shall be deemed null and void, and all prior Decision and Orders issued to Time Warner Entertainment Company shall continue to be in full force and effect. In such event, Time Warner Entertainment Company shall immediately provide sufficient written

notification to the Director, and the Director shall have the right to take any and all action and to issue such orders as the Director deems necessary or appropriate to serve and protect the public interest with respect to the cable services within the subject franchise areas in accordance with applicable law.

DATED: Honolulu, Hawaii, August 11, 2000.


KATHRYN S. MATAYOSHI
Director of Commerce and Consumer Affairs

**AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 154,
AS AMENDED BY DECISION AND ORDER NOS.156, 158, AND 243
(OCEANIC CABLE)**

All provisions of the above Decision and Orders and terms and conditions attached thereto that are not specifically amended as provided herein shall remain in full force and effect.

(1) Section One of Terms and Conditions of Decision and Order No. 154, relating to definitions, is amended by amending the definition of the terms "Educational Access Channel" and "Gross Revenue", respectively, in their entirety, and shall read as follows:

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

"Gross Revenue" subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

(2) Section 2.9 of Terms and Conditions of Decision and Order No. 154, relating to Franchise Fee is amended in its entirety and shall read as follows:

2.9 Franchise Fee

(a) Commencing April 1, 1993, during each and every year of the franchise term, TWE shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of Oceanic Cable annual Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and Oceanic's Gross Revenues for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, TWE shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by TWE under this section 2.9, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(3) Section 5.1 of Terms and Conditions of Decision and Order No. 154, relating to Access Operating Fee, is hereby amended in its entirety and shall read as follows:

5.1 Access Operating Fee

(a) During each year of the franchise term until year ending December 31, 2000, TWE shall pay to the Director or the Director's designee an amount equal to three percent (3%) of Oceanic's annual Gross Revenues. These payments shall be used for public, educational, and governmental ("PEG" or "Access") uses and for such other public purposes as shall be designated by the Director. Such payments shall be hereinafter sometimes referred to as the "Access Operating Fee."

The estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on Oceanic's estimated Gross Revenues for that year. For example, on January 1, 1993 the entire estimated three percent Access Operating Fee for 1993 shall be paid based on the estimated Gross Revenues for that year.

The amount of Access Operating Fees paid during any year shall amount to no less than two and four-tenths percent (2.4%) of Oceanic's 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.

All payments of the Access Operating Fee shall be reconciled with the actual amount of Oceanic's 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.

(b) Commencing January 1, 2001, the Access Operating Fee shall be paid on January 31st of each year of the remaining franchise term. For the Access Operating Fee due on January 31, 2001, TWE shall pay to the designated access entity the amount of \$3,700,000.00, for year ending December 31, 2001.

For the Access Operating Fee due on January 31, 2002 and for each year of the remaining franchise term, TWE shall pay an amount equal to the amount paid for the previous calendar year multiplied by the percentage change of the United States' Department of Labor seasonally adjusted Consumer Price Index for all Urban Consumers (CPIU) for All Items (1982-1984=100) from the then current period and the latest available annual figure for the calendar year preceding that in which the payment accrues, or an amount equal to three percent (3%) of Oceanic's Gross Revenues for the applicable preceding calendar year, whichever is less.

For example, the calculation for calendar year 2002 for the percentage change of the seasonally adjusted CPIU is as follows:

Assume: CPI for current period (December 2001 = 187)
 Less CPI for previous period (December 2000 = 170)
 Change in CPI = 17
 Change in CPI divided by previous period CPI (17 ÷ 170)
 Equals 10%

 Payment made in 2001 = \$3,700,000.00
 Payment for 2002 = payment for prior year (\$3,700,000.00)
 x 110%

In the event the CPIU is discontinued or replaced by the United States Bureau of Labor Statistics, the Director will adopt a new index which shall be applied for payments.

(c) Commencing January 1, 2001 and for each year of the remaining franchise term, the designated access entity shall pay an amount equal to twenty-five percent (25%) of the annual Access Operating Fee received pursuant to paragraph (b) above to a consortium of public and private accredited educational institutions in the State designated by the Director, on February 7th of each year. The initial payment shall be on February 7, 2001. The amount paid pursuant to this paragraph (c) shall not be used in any manner for the purpose of calculating the payment to the designated access entity in paragraph (b) above.

(d) Effective January 1, 2001 and continuing through the remaining franchise term, the sum of the difference between the annual Access Operating Fee calculated and paid pursuant to paragraphs (b) and (c) above and an amount equal to three percent (3%) of Oceanic's Gross Revenues for the applicable preceding calendar year, shall be deposited by TWE into an account to be determined by the Director. The funds shall be used for two-way fiber INET connections or interconnections and equipment within TWE's Hawaii franchise areas (currently the islands of Oahu, Maui, Molokai, Lanai, and Hawaii) as determined by the Director or the administrator of the Cable Television Division of the Department. No disbursements shall be made from the account unless expressly authorized by the Director or by the administrator of the Cable Television Division of the Department.

Commencing on January 31, 2002 and for each year of the remaining franchise term, TWE shall submit to the director a written verified statement of the reserve account on January 31st of each year.

(e) In connection with the Access Operating Fee required to be paid by TWE under this section 5.1, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation as may be requested by the Director.

(f) In connection with the payment required to be made by the designated access entity to the consortium of public and private accredited educational institutions designated by the Director under paragraph (c) above, the designated public access entity shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(g) Notwithstanding any provision to the contrary, the Director may reconsider the amount of Access Operating Fee at any time. With respect to capital funds for facilities and equipment for PEG access use, the designated access entity may submit a written request for capital funds for the period January 1, 2004 through the remaining franchise term to the Director for review and approval. The written request for capital funds may be submitted prior to January 1, 2003 but not before January 1, 2002.

(4) Paragraph (a) of section 5.2 of Terms and Conditions of Decision and Order No. 154, relating to Access Channels, is amended by amending said paragraph (a) in its entirety, and shall read as follows:

(a) TWE shall designate and provide for activation to the Director or the Director's designee at least five (5) full-time Activated Channels, two (2) of which shall be Educational Access Channels or as otherwise designated by the Director. Activated Channels made available to the Director or the Director's designee under this paragraph shall be hereinafter sometimes referred to as "Access Channels." All Access Channels shall be made available by TWE at no cost to the State.

(5) Section 5.4 of Terms and Conditions of Decision and Order No. 154, relating to Facilities and Equipment is amended by deleting paragraph (c) thereof in its entirety.

(6) Section 5.10 of Terms and Conditions of Decision and Order No. 154, relating to Reopening of Access Requirements is hereby deleted in its entirety.

**AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 173,
AS AMENDED BY DECISION AND ORDER NO. 244
(TWE West Hawaii System)**

All provisions of the above Decision and Orders and terms and conditions attached thereto that are not specifically amended as provided herein shall remain in full force and effect.

(1) Section One of Terms and Conditions of Decision and Order No. 173, relating to definitions, is amended by amending the definition of the terms "Educational Access Channel" and "Gross Revenue", respectively, in their entirety, and shall read as follows:

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

"Gross Revenue" subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

(2) Section 2.7 of Terms and Conditions of Decision and Order No. 173, relating to Franchise Fee is amended in its entirety and shall read as follows:

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 term, TWE shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of TWE West Hawaii System annual Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and TWE's West Hawaii System Gross Revenues for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, TWE shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by TWE under this section 2.7, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(3) Section 4.2 of Decision and Order No. 173, relating to Access Operating Fee is amended in its entirety and shall read as follows:

4.2 Access Operating Fee

(a) During each and every year of the term of the franchise until December 31, 2000, TWE shall pay to the Director or the Director's designee an amount equal to three percent (3%) of TWE's annual Gross Revenues from TWE West Hawaii System. These payments shall be used for public, educational, and governmental ("PEG" or "Access") uses and for such other public purposes as shall be designated by the Director. Such payments shall be hereinafter sometimes referred to as the "Access Operating Fee."

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 that year.

The amount of Access Operating Fees paid during any year shall amount to no less than two and four-tenths percent (2.4%) of 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.

All payments of the Access Operating Fee shall be reconciled with the actual amount of TWE 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.

(b) Commencing January 1, 2001, the Access Operating Fee shall be paid on January 31st of each year for the remaining franchise term. Beginning with the payment due on January 31, 2001, TWE's West Hawaii System Gross Revenues for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(c) In connection with the Access Operating Fee required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Director may reconsider the amount of Access Operating Fee at any time.

(4) Paragraphs (a) and (b) of section 4.3 of Decision and Order No. 173, relating to Access Channels are amended in their entirety and shall read as follows:

(a) By December 31, 1995, TWE shall designate and make available to the Director or the Director's designee a total of three (3) full time activated Access Channels for West Hawaii public, educational, and government 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 activated Educational Access Channels or as otherwise designated by the Director.

**AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 174,
AS AMENDED BY DECISION AND ORDER NO. 245
(TWE Hawaiian Cablevision - Lahaina)**

All provisions of the above Decision and Orders and terms and conditions attached thereto that are not specifically amended as provided herein shall remain in full force and effect.

(1) Section One of Terms and Conditions of Decision and Order No. 174, relating to definitions, is amended by amending the definition of the terms "Educational Access Channel" and "Gross Revenue", respectively, in their entirety, and shall read as follows:

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

"Gross Revenue" subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

(2) Section 2.6 of Terms and Conditions of Decision and Order No. 174, relating to Franchise Fee is amended in its entirety and shall read as follows:

2.6 Franchise Fee

(a) Commencing October 1, 1995, but effective as of January 1, 1996 and for each and every year of the franchise term, TWE shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of the Lahaina System annual Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and the Lahaina System Gross Revenues for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, TWE shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by TWE under this section 2.6, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(3) Section 4.2 of Terms and Conditions of Decision and Order No. 174, relating to Access Operating Fee is amended in its entirety and shall read as follows:

4.2 Access Operating Fee

(a) During each and every year of the term of the franchise until December 31, 2000, TWE shall pay to the Director or the Director's designee an amount equal to three percent (3%) of TWE's annual Gross Revenues from the Lahaina System. These payments shall be used for public, educational, and governmental ("PEG" or "Access") uses and for such other public purposes as shall be designated by the Director. Such payments shall be hereinafter sometimes referred to as the "Access Operating Fee."

The estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on the estimated Lahaina 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 that year.

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 Lahaina 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.

All payments of the Access Operating Fee shall be reconciled with the actual amount of TWE's Lahaina 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.

(b) Commencing January 1, 2001, the Access Operating Fee shall be paid on January 31st of each year for the remaining franchise term. Beginning with the payment due on January 31, 2001, TWE's Lahaina System Gross Revenues for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(c) In connection with the Access Operating Fee required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Director may reconsider the amount of Access Operating Fee at any time.

(4) Paragraph (b) of section 4.3 of Decision and Order No. 174 relating to Access Channels is amended in its entirety and shall read as follows:

(b) At such time as the Director may require, TWE shall designate and make available to the Director or the Director's designee, at least two (2) additional full-time activated Educational Access Channels or as otherwise designated by the Director.

**AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 185,
AS AMENDED BY DECISION AND ORDER NO. 242
(TWE East Hawaii System)**

All provisions of the above Decision and Orders and terms and conditions attached thereto that are not specifically amended as provided herein shall remain in full force and effect.

(1) Section One of Terms and Conditions of Decision and Order No. 185, relating to definitions, is amended by amending the definition of the terms "Educational Access Channel" and "Gross Revenue", respectively, in their entirety, and shall read as follows:

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

"Gross Revenue" subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

(2) Section 2.6 of Terms and Conditions of Decision and Order No. 185, relating to Franchise Fee is amended in its entirety and shall read as follows:

2.6 Franchise Fee

(a) Effective as of the closing date of that certain Asset Exchange Agreement between Jones Intercable, Inc. and TWE dated as of September 1, 1995, and for each and every year of the franchise term, TWE shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of TWE East Hawaii System annual Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and TWE's East Hawaii System Revenues for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, TWE shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by TWE under this section 2.6, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(3) Section 4.2 of Terms and Conditions of Decision and Order No. 185, relating to Access Operating Fee is amended in its entirety and shall read as follows:

4.2 Access Operating Fee

(a) For the period after May 31, 1996 and for each and every year of the term of the franchise until December 31, 2000, TWE shall pay to the Director or the Director's designee an amount equal to three percent (3%) of TWE's annual Gross Revenues from the East Hawaii System. These payments shall be used for public, educational, and governmental ("PEG" or "Access") uses and for such other public purposes as shall be

designated by the Director. Such payments shall be hereinafter sometimes referred to as the "Access Operating Fee."

The estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on the estimated East Hawaii System Gross Revenues for that year. For example, on January 1, 1997 the entire estimated three percent (3%) Access Operating Fee for 1997 shall be paid based on the estimated TWE West Hawaii System Gross Revenues for that year.

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 East 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.

All payments of the Access Operating Fee shall be reconciled with the actual amount of TWE's East 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.

(b) Commencing January 1, 2001, the Access Operating Fee shall be paid on January 31st of each year for the remaining franchise term. Beginning with the payment due on January 31, 2001, TWE's East Hawaii System Gross Revenues for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(c) In connection with the Access Operating Fee required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Director may reconsider the amount of Access Operating Fee at any time.

(4) Paragraph (b) of section 4.3 of Decision and Order No. 185 relating to Access Channels is amended in its entirety and shall read as follows:

(b) At such time as the Director may require after the upgrades 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 activated Educational Access Channels or as otherwise designated by the Director.

**AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 241
(TWE Hawaiian Cablevision – Maui, Lanai, Molokai)**

All provisions of the above Decision and Order and terms and conditions attached thereto that are not specifically amended as provided herein shall remain in full force and effect.

(1) Section One of Terms and Conditions of Decision and Order No. 241, relating to definitions, is amended by amending the definition of the terms “Educational Access Channel” and “Gross Revenue”, respectively, in their entirety, and shall read as follows:

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

“Gross Revenue” subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. “Gross Revenue” shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

(2) Section 2.6 of Terms and Conditions of Decision and Order No. 241, relating to Franchise Fee is amended in its entirety and shall read as follows:

2.6 Franchise Fee

(a) For each and every year of the franchise, TWE shall pay to the Hawaii Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of TWE East Hawaii System annual

Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and TWE's Gross Revenues from the System for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, TWE shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by TWE under this section 2.6, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(3) Section 4.2 of Terms and Conditions of Decision and Order No. 241, relating to Access Operating Fee is amended in its entirety and shall read as follows:

4.2 Access Operating Fee

(a) During each and every year of the term of the franchise until December 31, 2000, TWE shall pay to an account designated by the Director or the Director's designee an amount equal to three percent (3%) of TWE's annual Gross Revenues from the System. These payments shall be used for public, educational, and governmental ("PEG" or "Access") uses and for such other public purposes as shall be designated by the Director. Such payments shall be hereinafter sometimes referred to as the "Access Operating Fee."

For the year ending December 31, 1999, TCI shall be responsible for the payment due on February 15, 2000 covering the period January 1, 1999 up to the closing date of that certain Asset Exchange Agreement dated as of November 25, 1998, as more particularly described in Order 241, and TWE shall be responsible for the payment due February 15, 2000 covering the period remaining for the 1999 calendar year. In the event TCI does not pay its full amount when due, TWE shall be responsible for making said payment within 10 days after receipt of Director's notice. The

payments due under this paragraph shall be based on actual System Gross Revenues for year ending December 31, 1999.

(b) Commencing January 1, 2001, the Access Operating Fee shall be paid on January 31st of each year for the remaining franchise term. Beginning with the payment due on January 31, 2001, the System's Gross Revenues for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(c) In connection with the Access Operating Fee required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Director may reconsider the amount of Access Operating Fee at any time.

(4) Paragraph (b) of section 4.3 of Decision and Order No. 241 relating to Access Channels is amended in its entirety and shall read as follows:

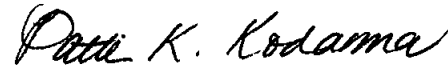
(b) At the Direction of the Director, TWE shall designate and reserve for the activation to the Director or the Director's designee, at least (2) additional full-time Educational Access Channels or as otherwise designated by the Director, as the respective systems' 750 Mhz upgrades progress. In other words, as additional channels become available on a node-by-node basis in connection with the systems' upgrades, TWE shall reserve two of the newly available channels for Educational Access purposes for activation at the request of the Director.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 261 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on August 11, 2000.

JOHN T. KOMEIJI, ESQ.
BETH K. FUJIMOTO, ESQ.
Watanabe, Ing & Kawashima
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813

For Applicant Time Warner Entertainment Company, L.P. and
AOL Time Warner Inc.



Patti K. Kodama
Patti K. Kodama
Secretary