

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

In the Matter of)
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.,)
)
Refund of Over-Collected Franchise)
Fees from Oahu Subscribers for the)
for the period January 1, 1995)
through December 31, 2002.)
_____)

DECISION AND ORDER NO. 316

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I. INTRODUCTION

- A. The State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") received from Merina & Company, LLP and Public Knowledge, Inc. (collectively referred to as "**Merina**") a report dated December 19, 2003 ("**Merina Report**") that reviewed the cable television franchise fee calculation, assessment, collection, and payment process performed by Time Warner Entertainment Company, L.P. ("**TWE**") for the cable television franchise area for the island of Oahu for the period January 1, 1995 through December 31, 2002.
- B. The Merina Report was posted on the Department's web page on or about January 15, 2004.
- C. On or about December 6, 2004, the Department issued a "Notice of Findings of Fact and Intent to Issue a Decision and Order," CATV-04-2

("Notice"), to allow interested persons to submit comments on the Merina Report's findings and proposed order. This Notice was posted on the Department's web page on or about December 8, 2004.

- D. The Department did not receive any comments on the Notice.
- E. After carefully considering the files and records herein, the Department hereby issues the following Decision and Order.

II. **FACTS**

- A. On or about December 30, 2003, the Department received the Merina Report from its financial consultant Merina who had been retained by the Department to review the cable television franchise fee calculation, assessment, collection and payment process performed by TWE for the cable television franchise area for the island of Oahu for the period January 1, 1995 through December 31, 2002.
- B. In addition, Merina had been directed by the Department to compare the cable television franchise fee calculation, assessment, collection and payment process with the requirements in Decision and Order Nos. 154 (dated January 27, 1993) and 261 (dated August 11, 2000).
- C. In Decision and Orders Nos. 154 and 261, the franchise fee consists of three elements: (1) an "Access Operating Fee," (2) a Hawaii Public Broadcasting Authority ("HPBA") Fee, and (3) an "Administrative Fee."
- D. In general, the Merina Report concludes that TWE over-collected FOUR HUNDRED THIRTY THOUSAND THREE HUNDRED TWENTY-THREE AND NO/100 DOLLARS (\$430,323.00) in Access Operating Fees/HPBA

Fees, and FIFTY-THREE THOUSAND FOUR HUNDRED THIRTY-SIX AND NO/100 DOLLARS (\$53,436.00) in Administrative Fees from Oahu subscribers during the period January 1, 1995 through December 31, 2002. Thus, the total amount of over-collection by TWE from Oahu cable television subscribers for this period of time was FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$483,759.00).

- E. The Merina Report further found that the over-collected amount was largely a result of TWE's internal accounting practices. TWE itemized franchise fees on a flat fee basis as opposed to charging subscribers a percentage fee. Over time the amount TWE collected in itemized franchise fees differed from the percentage amounts remitted to the designated recipients: 'Olelo Community Television (" 'Olelo"), the designated PEG (public, educational, and governmental) access organization; PBS HAWAII ("PBS"), formerly known as HPBA; and the Department. The Merina Report also determined that this difference was attributable to the timing of the collection of the franchise fees from subscribers and the later remittance to designated recipients, and also to the subscriber bill itemization methodology.
- F. The Merina Report also evaluated whether TWE paid the designated recipients the franchise fee amounts that they were due during the period from January 1, 1995 through December 31, 2002.

G. The Merina Report concluded that there was an under-payment attributed to TWE's bad debt allocation procedure to the designated recipients during the period from January 1, 1995 through December 31, 2002, and there was also an over-payment attributable to the inclusion of advertising revenue in 2001 for the Access Operating Fee and HPBA Fee.

H. After considering the bad debt and advertising adjustments, the Merina Report determined that the cumulative net over-payments or under-payments were:

Over-payment to 'Olelo	(\$ 139,297.00)
Over-payment to PBS Hawaii	(\$ 46,378.00)
Under-payment to Department	\$ 3,718.00

I. On or about May 5, 2004, 'Olelo reimbursed TWE for the over-payment of ONE HUNDRED THIRTY-NINE THOUSAND TWO HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$139,297.00).

J. On or about May 27, 2004, PBS reimbursed TWE for the over-payment of FORTY-SIX THOUSAND THREE HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS (\$46,378.00).

K. TWE owes the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00) for the under-payment of the Administrative Fee.

L. Based on the above, the Department finds that TWE over-collected from Oahu cable television subscribers the amount of FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND

NO/100 DOLLARS (\$483,759.00) during the period January 1, 1995 through December 31, 2002.

- M. The Department further finds that TWE owes the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00).

III. ORDER

NOW, THEREFORE, the Department hereby orders that:

- A. TWE shall refund the over-collected franchise fees in the amount of FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$483,759.00) to Oahu subscribers;
1. This refund shall take the form of a credit on a future monthly cable television bill to Oahu cable television subscribers and be completed no later than one hundred twenty (120) calendar days from the date of this Decision and Order;
 2. TWE shall develop a plan that implements the refund, and submit this refund plan to the Department for approval within thirty (30) calendar days from the date of this Decision and Order. The refund plan should include, but not be limited to, a definition of eligible recipients (subscribers) for the refund, the calculation of the refund amount for each eligible recipient, and a description of how the refund will be implemented; and
 3. TWE shall confirm in writing to the Department that the refund has been completed. Such confirmation shall be submitted no later

than thirty (30) calendar days after the refund is completed, and shall identify any significant difficulties which arose with implementing the refund.

- B. TWE shall pay the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00) within thirty (30) calendar days from the date of this Decision and Order.

Dated: Honolulu, Hawaii, February 2, 2005.

Mark E. Recktenwald

MARK E. RECKTENWALD
Director of Commerce and
Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 316 was served upon the following party at the address show below by mailing the same, postage prepaid, on February 2, 2005:

MR. RUSSELL SAIKI
Time Warner Entertainment Company, L.P. dba
Oceanic Cablevision
200 Akamainui Street
Mililani, HI 96789-3999

Patti K. Kodama

Patti K. Kodama
Secretary