

CABLE TELEVISION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)
)
) **DECISION AND ORDER NO. 319**
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
)
For the Extension of its Cable Television)
Franchise for the Island of Kauai.)
_____)

DECISION AND ORDER NO. 319

I. INTRODUCTION

- A. By letter dated December 11, 2003, Time Warner Entertainment Company, L.P. ("**TWE**") informed the Department of Commerce and Consumer Affairs ("**Department**") that it completed its 750 MHz system upgrade of the Kauai County cable system. TWE requested a determination by the Department that: (1) the franchise term for the Kauai System should be extended to December 31, 2016; and (2) TWE is entitled to the termination and removal of the Development Fund requirements found in Section 3.3 of the Terms and Conditions of Decision and Order No. 291 ("**Terms and Conditions**").
- B. The Department issued a "Notice of Findings of Fact and Proposed Decision and Order" ("**Notice**"), CATV-04-1, on April 19, 2004, to allow interested persons to submit comments on TWE's request to extend its

franchise within thirty (30) calendar days. The Notice was posted on the Department's web page on or about April 19, 2004.

- C. The Department received comments from Ho'ike: Kauai Community Television ("**Ho'ike**") on the Notice. In a letter dated April 22, 2004, Mr. J Robertson, Managing Director of Ho'ike, expressed support for the extension of the franchise term for Kauai's cable television system to December 31, 2016. Mr. Robertson wrote that TWE was an "exceptionally cooperative partner" in the PEG access process and had provided assistance and support in delivering community access services to the island of Kauai.
- D. After carefully considering the comments and information submitted, the Department hereby issues the following Decision and Order.

II. FINDINGS OF FACTS

- A. On or about July 12, 2002, the Department issued Decision and Order No. 291 ("**D&O 291**") and the attached Terms and Conditions, which were incorporated into and made a part of D&O 291. D&O 291 approved the transfer and amendment of cable franchises held by G Force, LLC ("**G Force**"), known as Garden Island Cablevision and Kauai Cablevision ("**G Force Systems**") to TWE.
- B. D&O 291 consolidated the franchises and service areas of the G Force Systems into a single franchise area for the island and county of Kauai.
- C. Pursuant to Section 3.1(a) of the Terms and Conditions of D&O 291, TWE was required to construct, reconstruct, rebuild, reconfigure, and/or

upgrade its cable system to a minimum bandwidth of 750 Mhz plus digital capability with a minimum capability of 75 activated channels ("**750 Mhz Upgrade**") by December 31, 2003.

- D. In connection with the transfer of the G Force Systems, the franchise term for TWE's Kauai cable system was initially extended to December 31, 2012 in Section 2.1(a) of the Terms and Conditions of D&O 291.
- E. In addition, Section 2.1(b) of the Terms and Conditions of D&O 291, extended the term of the franchise for an additional four (4) years, to December 31, 2016, provided that TWE satisfactorily completed the 750 Mhz Upgrade by December 31, 2003.
- F. Section 3.3 of the Terms and Conditions of D&O 291 set forth the Development Fund parameters that the Department could require in the event circumstances arose that significantly affected TWE's ability to complete the 750 Mhz Upgrade.
- G. TWE proceeded to implement the technical and engineering improvements to comply with the 750 Mhz Upgrade requirements.
- H. In the December 11, 2003 letter referred to above, TWE's attorneys informed the Department that TWE had completed the 750 Mhz Upgrade for its Kauai cable system prior to December 31, 2003, and that subscribers had access to digital services and high speed Internet services (i.e., broadband Internet access). TWE also stated that there were seventy-seven (77) activated channels.

- I. In December 2003, the Department contacted subscribers on the island of Kauai (from a list provided by TWE) to confirm completion of TWE's standard service, digital service, and high speed Internet service as a result of the upgraded system. All of the contacted subscribers confirmed that they were receiving such service from TWE.

III. CONCLUSION

- A. Based upon the foregoing, the Department concludes that D&O 291 and the attached Terms and Conditions of D&O 291, set forth requirements for the extension of TWE's franchise period for its Kauai cable system.
- B. The Department further concludes that TWE completed the 750 Mhz Upgrade requirements established by D&O 291 and the attached Terms and Conditions by December 31, 2003 and that TWE is accordingly entitled to an extension of its Kauai cable franchise as provided in D&O 291.

IV. ORDER

Based upon the above, TWE's request to extend the franchise term for Kauai cable television system is hereby APPROVED. Accordingly,

- A. Pursuant to D&O 291 and Section 2.1(b) of the Terms and Conditions of D&O 291, the franchise term for TWE's Kauai cable television system is extended an additional four (4) years to December 31, 2016, unless terminated as provided in D&O 291, or as provided in sections 3.1(d) or 10 of the Terms and Conditions of D&O 291, or by applicable law;

- B. Section 3.3 of the Terms and Conditions of D&O 291 regarding the Development Fund is terminated; and
- C. Except as otherwise provided herein, the remaining provisions of Decision and Order No. 291 shall continue to apply and remain in full force and effect.

Dated: Honolulu, Hawaii, April 20, 2005.

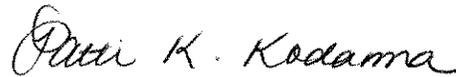
Mark E. Recktenwald
MARK E. RECKTENWALD
Director of Commerce and Consumer
Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 319 was served upon the following person(s) at the address shown below by mailing the same, postage prepaid, on this 20th day of April, 2005.

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