

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

In the Matter of)	DECISION AND ORDER NO. 321
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)	
TIME WARNER ENTERTAINMENT)	
COMPANY, L.P.)	
)	
Capital Payments for Public, Educational,)	
and Governmental Access Facilities and)	
Equipment in the County of Maui, for the)	
period 2005 through 2013.)	
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DECISION AND ORDER NO. 321

I. INTRODUCTION

A. Maui County Franchise

1. On or about May 10, 1999, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") issued Decision and Order No. 241 ("**D&O 241**"), which approved the transfer and amendment of the cable franchise held by TCI of Hawaii, Inc. to Time Warner Entertainment Company, L.P. ("**TWE**"). The transferred cable franchise covered service areas on Maui (excluding Lahaina), Molokai and Lanai (hereinafter referred to as "**Maui County**").
2. Section 4.5 ("**Facilities and Equipment**") of the Terms and Conditions of D&O 241, specified TWE's franchise obligations relating to capital contributions for public, educational, and

governmental ("**PEG**") access equipment and facilities for Maui County and set forth a schedule for capital contributions by TWE for each year commencing December 31, 1999 to December 31, 2004.

3. Section 4.5(b) of the Terms and Conditions of D&O 241 directed TWE, in consultation with the designated access entity to submit to the Director of Commerce and Consumer Affairs ("**Director**") by April 30, 2004, a schedule for the payment of capital funds for PEG access facilities and equipment for each year from December 31, 2005 through the remaining term of the Maui County franchise. The Director could then could approve, deny or modify the proposed payment schedule for Maui County.
4. On March 28, 2005, Decision and Order No. 317 ("**D&O 317**") extended the Maui County (excluding Lahaina) franchise an additional four (4) additional years, from December 2009 to December 31, 2013, unless otherwise terminated in accordance with the franchise or applicable law.

B. Lahaina Franchise

1. On or about October 2, 1995, the Department issued Decision and Order No. 174 ("**D&O 174**"), which approved the transfer and amendment of the cable franchise for the Lahaina service area held by Daniels Communications Partners Limited Partnership to TWE.
2. On or about May 10, 1999, the Department issued Decision and Order No. 245 ("**D&O 245**"), which amended D&O 174 to extend

the term of the Lahaina franchise for an additional three (3) years, from December 31, 2010 to December 31, 2013, unless terminated as provided in D&O 174 or by applicable law.

3. D&O 245 amended paragraphs (a) and (b) of Section 4.5 of the Terms and Conditions of D&O 174 and set forth a revised schedule of capital fund payments for PEG access facilities and equipment, to be paid to the Director or the Director's designee for the Lahaina franchise, which included payments for the years ending December 31, 2000 through December 31, 2005.
4. D&O 245 also directed TWE, in consultation with the designated access entity or organization, to submit to the Director a schedule for the payment of capital for PEG access facilities and equipment for the Lahaina franchise for each year from December 31, 2006 through the remaining years of the franchise term, which the Director in his sole discretion may approve, deny or modify. The written request for capital funds was to be submitted to the Department by April 30, 2004.

C. Capital Payments to Designated Access Organization

1. On February 23, 1998, the Department and Akaku: Maui Community Television ("Akaku") entered into a written contract for Akaku to manage and operate the PEG access finances, facilities and channels on the tri-islands of Maui County.

2. The Department and Akaku entered into a new Agreement dated May 26, 1999 for Akaku to continue with the management and operation of PEG access finances, facilities and channels as the Maui County and Lahaina's designated access organization. Through various Supplemental Agreements, the term of the 1998 Agreement has been extended to August 31, 2005.
3. Pursuant to D&Os 241 and 245, on or about April 16, 2004 and subsequently, on June 29, 2004, TWE and Akaku met to discuss TWE's proposed annual PEG capital payment schedule for Maui County. After further negotiations, TWE and Akaku, however, reached an impasse and could not agree on the amount of the annual capital payment that TWE would pay to Akaku for the Maui PEG capital fund.
4. By letter dated December 1, 2004, the Director suggested that the parties enter into mediation to resolve their differences. The Director also stated that in the event mediation was not successful, the parties would then be afforded a full, fair opportunity to present their respective positions through written submissions to the Department.
5. The parties agreed to mediate the issue regarding the capital contributions issue for the Maui County and Lahaina cable franchises.

6. On or about January 11, 2005, Akaku received the 2004 capital fund payments for the Maui County and Lahaina franchises from TWE. The 2004 capital fund payments for both franchises totaled \$105,000.00.
7. In a letter dated April 18, 2005 addressed to the Department and copied to Akaku's Board President, the attorney for TWE wrote that TWE and Akaku had resolved their dispute relating to TWE's capital fund contributions for Akaku's facilities and equipment for the remaining terms of the Maui County and Lahaina cable franchises.
8. The Department subsequently confirmed the agreement between Akaku and TWE with Akaku's Board President that TWE would pay \$3.00 per cable subscriber.
9. In its April 18, 2005 letter, TWE reported that the parties agreed that TWE's annual contribution should be equal to \$3.00 per cable subscriber in the Maui County and Lahaina cable franchises. TWE estimated that there were then approximately 50,000 or more cable subscribers in the combined count for the Maui County and Lahaina franchises.
10. TWE wrote that for the 2005 payment, the Maui County cable franchise capital payment should be based upon the number of cable subscribers in that franchise area as of December 31, 2004. For the Lahaina cable franchise, the capital payment for 2005 was fixed at \$16,900.00 pursuant to D&O 245.

11. In addition for 2005, TWE expressed that it would be willing to provide Akaku with the 2005 capital payments within a reasonable time period after the issuance of a Decision and Order by the Department approving the parties' agreement.
12. TWE further stated that commencing 2006 and until the end of the franchise, TWE would base the amount on \$3.00 per cable subscriber in the Maui County and Lahaina cable franchises and make the annual capital payment on January 31st of each year, based upon the number of cable subscribers in the Maui County and Lahaina franchises as of December 31 of the previous year.¹

D. After reviewing the joint request of TWE and Akaku for approval of the proposed payment schedule, the Department believes that it is in the best interest of cable subscribers to approve the capital fund payments as described therein.

II. **ORDER**

NOW, THEREFORE, the Director hereby orders that:

- A. For public, educational and governmental access facilities and equipment, TWE shall make capital fund payments equal to \$3.00 per cable subscriber in the Maui County and Lahaina cable franchises to the designated PEG access entity in Maui County and Lahaina. TWE's

¹ Under the formula of \$3.00 per cable subscriber, the parties anticipated that TWE's annual capital contribution to Akaku would be approximately \$150,000 per year. In TWE's June 2005 report to the Department, dated July 13, 2005, the number of cable subscribers in the Lahaina franchise was 12,212, and the number of cable subscribers in the Maui County franchise (excluding Lahaina) was 38,460, for a total count of 50,672 cable subscribers.

capital contributions based upon \$3.00 per cable subscriber shall begin in 2005 and be in effect for the remainder of the franchise terms.

- B. For the Maui County franchise, the capital payment for 2005 will be based upon the number of cable subscribers in that franchise area as of December 31, 2004. For the Lahaina franchise, the capital payment for 2005 is set at \$16,900.00 pursuant to D&O 245.
- C. For the 2005 capital payments, TWE shall provide to the designated PEG access entity in Maui County and Lahaina, its capital payments within a reasonable time after the signing of this Decision and Order, but no later than December 31, 2005.
- D. Commencing in 2006 and until the end of the franchises in 2013, TWE shall make its annual capital fund payment on January 31st of that year based upon the subscriber count in the Maui County and Lahaina franchises as of December 31st of the prior year.
- E. Except as otherwise provided in this Decision and Order, the remaining terms and conditions of D&O 174, 241, 245, and 261 shall continue to remain in full force and effect.

Dated: Honolulu, Hawaii, August 4, 2005

Mark E. Recktenwald

MARK E. RECKTENWALD
Director of Commerce and Consumer Affairs

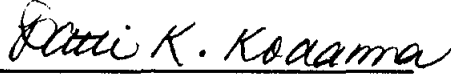
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 321 was served upon the following person(s) at the address shown below by mailing the same, postage prepaid, on this 4th day of August, 2005.

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