

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

In the Matter of)	DECISION AND ORDER NO. 322
)	
)	
TIME WARNER ENTERTAINMENT)	
COMPANY, L.P.)	
)	
Capital Payments for Public, Educational,)	
and Governmental Access Facilities and)	
Equipment in the County of Hawaii, for the)	
period 2005 through 2007.)	
)	

DECISION AND ORDER NO. 322

I. INTRODUCTION

A. East Hawaii Franchise

1. In Decision and Order No. 185 ("**D&O 185**"), the franchise term for the East Hawaii franchise held by Time Warner Entertainment Company, L.P. ("**TWE**"), doing business as Hawaiian Cablevision of Hilo, was extended to December 31, 2011 upon TWE's satisfactory completion of the 750 Mhz upgrade to the Hilo cable system.
2. By Decision and Order No. 241 ("**D&O 241**"), the cable franchise held by TCI of Hawaii Inc. ("**TCI**") was transferred to TWE. TCI's franchise included the service area for the Ka'u district on the island of Hawaii.
3. By Decision and Order No. 242 ("**D&O 242**"), the Ka'u cable system became part of TWE's franchise for the East Hawaii area of the

island of Hawaii and was consolidated and incorporated into TWE's East Hawaii cable system.

4. Section 4.5(b) of Terms and Conditions of D&O 185, as amended by D&O 242, directs TWE, doing business as Hawaiian Cablevision of Hilo, in consultation with the designated access organization, to submit a schedule for the payment of capital for PEG access facilities and equipment for each year from January 1, 2002 through the remaining years of the East Hawaii cable franchise, which the Director of Commerce and Consumer Affairs ("**Director**") in his sole discretion may approve, deny, or modify.
5. Pursuant to D&O 185, as amended, TWE's cable franchise for the East Hawaii system expires on December 31, 2011.

B. West Hawaii Franchise

1. By Decision and Order No. 173 ("**D&O 173**"), the Department of Commerce and Consumer Affairs ("**Department**") approved the transfer and amendment of cable franchises held by American Cable TV Investors 4, Ltd. to TWE.
2. The cable systems transferred to TWE were Sun Cablevision of Hawaii ("**Sun Cablevision**") and Kamehameha Cablevision Cable System ("**Kamehameha Cablevision**"). Sun Cablevision provided cable service to the areas of Captain Cook, Waikoloa, Kawaihae-Puako, Honaunau, Kealahou, Holualoa, Kailua-Kona, Kamuela, Keahou, Kalalua, Mauna Lani and Mauna Kea. Kamehameha

Cablevision provided cable communications service to North Kohala.

3. D&O 173 consolidated the former Sun Cablevision and Kamehameha Cablevision franchises, which are collectively referred to as the West Hawaii System.
4. Section 4.5(b) of the Terms and Conditions of D&O 173, as amended by Decision and Order No. 244 ("**D&O 244**"), directed TWE, in consultation with the designated access organization, to submit a schedule for the payment of capital for PEG access facilities and equipment for each year from January 1, 2002 through the remaining years of the West Hawaii franchise, which the Director in his sole discretion may approve, deny, or modify.
5. Pursuant to Decision and Order No. 318, TWE's cable franchise for the West Hawaii system expires on December 31, 2011.

C. Capital Payments to Designated Access Organization for Hawaii County

1. On December 31, 1996, Na Leo 'O Hawaii ("**Na Leo**") and the Department entered into a written agreement for Na Leo to manage and operate the public, educational, and governmental ("**PEG**") access finances, facilities, and channels on the island of Hawaii.
2. The Department and Na Leo subsequently entered into a new Agreement dated June 17, 1999 ("**1999 Agreement**") for Na Leo to continue with the management and operation of PEG access

finances, facilities and channels as Hawaii County's designated PEG access entity. Through various Supplemental Agreements, the term of the 1999 Agreement has been extended to August 31, 2005.

3. By letter dated April 16, 2002, pursuant to D&O Nos. 242 and 244, TWE informed the Department that an agreement had been reached between TWE and Na Leo, the designated access entity for Hawaii County, that TWE's annual contribution to the Hawaii County capital fund be equal to \$3 per customer (based upon the prior year-end count) for the years 2002, 2003 and 2004. TWE also reported that both TWE and Na Leo agreed to revisit the PEG capital needs and requirements for Hawaii County immediately after January 31, 2004 for the remaining years of the franchises.
4. By letter dated May 28, 2002, Juergen Denecke, General Manager of Na Leo requested that for the years 2002, 2003 and 2004, TWE's capital contributions to the Hawaii County capital fund be set at \$125,000.00 per annum.
5. The Department, in a letter dated July 1, 2002, confirmed the agreement of the parties and directed that payment of \$125,000.00 for the year 2002 be made immediately and that the annual payments for the years 2003 and 2004 be made on January 31st of each year. In addition the Department instructed TWE and the PEG access entity for the island of Hawaii to submit to the Director

by April 30, 2004, a PEG capital contribution plan for the years 2005, 2006 and 2007.

6. On May 18, 2004, TWE wrote the Department setting forth its agreement with Na Leo as to the schedule of capital payments for PEG access facilities and equipment for 2005, 2006 and 2007. TWE requested that based upon the discussions between the parties and the written concurrence of Na Leo dated April 20, 2004, the Director approve its proposed annual contribution of \$125,000.00 to the Hawaii County PEG capital fund.
7. After careful consideration, the Department determined that the proposed capital fund payments were in the best interest of cable subscribers, and by letter dated May 25, 2004, the Department accepted TWE's proposal for yearly contributions of \$125,000.00 to Na Leo's capital fund for the years 2005, 2006 and 2007.
8. On January 31, 2005, TWE paid to Na Leo the sum of \$125,000.00 for the Hawaii County capital fund 2005 contribution.

II. **ORDER**

NOW, THEREFORE, the Director hereby orders that:

- A. The existing agreement between Na Leo and TWE for TWE's annual contributions to Hawaii County PEG capital fund, as set forth in a letter dated May 18, 2004, is affirmed;
- B. In accordance with D&O 173, as amended by D&O 242, TWE in consultation with the designated access entity or organization for Hawaii

County shall submit to the Director by April 30, 2007, a schedule for the payment of capital for public, educational, and governmental access facilities and equipment for each year from January 1, 2008 through the remaining years of the franchise term for TWE's West Hawaii cable franchise area. The Director may, in the Director's sole discretion, approve, deny, or modify the payment schedule.

- C. In accordance with D&O 185, as amended by D&O 244, TWE in consultation with the designated access entity or organization for Hawaii County shall submit to the Director by April 30, 2007, a schedule for payment of capital for public, educational, and governmental access facilities and equipment for each year from January 1, 2008 through the remaining years of the franchise term for TWE's East Hawaii cable franchise area. The Director may, in the Director's sole discretion, approve, deny, or modify the payment schedule.
- D. Except as otherwise provided in this Decision and Order, the remaining terms and conditions of Decision and Order Nos. 173, 185, 242, and 244 not specifically amended herein shall remain in full force and effect.

DATED: Honolulu, Hawaii August 4, 2005.



MARK E. RECKTENWALD
Director of Commerce and Consumer Affairs

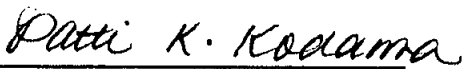
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 322 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.

JOHN T. KOMEIJI, ESQ.
Watanabe, Ing, Kawashima, & Komeiji
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, HI 96813

BRIAN A. KANG, ESQ.
Watanabe, Ing, Kawashima, & Komeiji
First Hawaii Center, 23rd Floor
999 Bishop Street
Honolulu, HI 96813

*(Attorneys for Applicant Time Warner Entertainment
Company, L.P.)*


Patti K. Kodama
Patti K. Kodama
Secretary