

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

In the Matter of the Application	)	
of	)	DOCKET NO. 95-20
	)	
TIME WARNER ENTERTAINMENT COMPANY,	)	
L.P.	)	
	)	
For Transfer and Amendment of the	)	
Cable Franchises Held by Jones	)	
Spacelink of Hawaii, Inc.	)	
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DECISION AND ORDER NO. 185

**I. Introduction**

On November 7, 1995, the State accepted Time Warner Entertainment Company, L.P.'s Application for Transfer and Amendment of the Cable Franchise Held by Jones Spacelink of Hawaii, Inc.

Jones Spacelink of Hawaii, Inc. ("Jones Spacelink"), a wholly owned subsidiary of Jones Intercable, Inc., holds the cable franchise for the Honokaa, Hilo, Volcano, and Pahoa areas of the Island of Hawaii covering census tracts 201, 202, 203, 204, 205, 206, 207.01, 207.02, 208.01, 208.02, 209, 210.01, 210.02, 211, 219, and 221. Jones Spacelink's cable franchise expires on December 31, 1997.

Pursuant to that certain Asset Exchange Agreement ("Exchange Agreement") between Jones Intercable, Inc. and Time Warner Entertainment Company, L.P. ("TWE"), through its division Time Warner Cable Ventures, dated as of September 1, 1995, Jones Intercable agreed to convey to TWE all of its assets of certain Jones Intercable cable systems including Jones Spacelink, and TWE agreed to convey to Jones Intercable all of its assets of certain TWE systems, plus \$4,000,000 reflecting the agreed upon difference in fair market value of the TWE and Jones Intercable

systems.<sup>1</sup> According to Time Warner, the anticipated closing date for the Exchange Agreement is April 12, 1996.

As a condition to closing, Jones Intercable and TWE must obtain the necessary government approvals regarding the transfer of their respective cable systems. The Exchange Agreement states that closing is to "occur on the last calendar day of the month in which occurs the first business day after all conditions set forth in Sections 6.1 and 6.2 have been satisfied or waived, or such date as TWE and Jones may mutually agree, but in no event shall Closing be held later than September 30, 1996." Accordingly, approval of TWE's transfer application shall be contingent upon closing of the Exchange Agreement.

After the closing of the Exchange Agreement, Jones Spacelink's cable systems will become a part of TWE's Cable Division ("East Hawaii System") as a separate operating unit. TWE states that daily operations will be managed by an on-site manager, and that overall management of the East Hawaii System will be the responsibility of TWE's Oceanic Cablevision. Oceanic Cablevision will also provide accounting, technical and administrative duties and support services.

In its application for transfer and amendment of cable franchise TWE sets forth certain representations or commitments.<sup>2</sup> Although all representations made by TWE in connection with its transfer application are considered material by the State, some of the major representations or commitments of TWE are as follows:

1. TWE will support public, educational and government ("PEG") access by (a) contributing three percent (3%) of its annual gross revenues from its East Hawaii System for PEG operating funds, (b) contributing capital funds for PEG facilities and equipment as specified in Decision and Order No. 155, and (c) providing interconnections with other cable systems for PEG access purposes at TWE's actual cost of labor and materials, and will maintain and repair (but not replace) such interconnections at no charge or cost to the State;

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<sup>1</sup>The Jones Intercable cable systems to be acquired by TWE are Jones Spacelink of Hawaii, Inc. (Hilo and Honokaa cable systems) and six (6) cable systems in Wisconsin. The TWE cable systems to be acquired by Jones Intercable include 15 cable systems in Georgia, and four (4) cable systems in South Carolina.

<sup>2</sup>The Director notes that this is the third transfer of a cable communications franchise by TWE within the past year. In connection with those transfers, TWE made similar if not identical representations or commitments as noted herein.

2. TWE will contribute one percent (1%) of its annual gross revenues from its East Hawaii System to the Hawaii Public Broadcasting Authority Revolving Fund;

3. TWE will interconnect its cable facilities with the State's institutional network ("INET") and will maintain and repair the INET fiber optic cabling at no charge or cost to the State;

4. TWE will provide and maintain a fiber interface with the Hawaii Interactive Television System ("HITS") at no charge or cost to the State; and

5. TWE will upgrade the cable distribution systems from the current bandwidth of 300 Mhz<sup>3</sup> (total of 36 analog channels) to a total bandwidth of 750 Mhz or a total channel capacity of 75 analog channels plus digital headroom using fiber to node architecture. The total cost of the planned upgrades is approximately \$14,800,000.00. TWE states that it will not pass through to subscribers the cost for such upgrades via TWE's current cable rates. The engineering design and capital requirements for the East Hawaii System upgrade is anticipated to be similar to that being deployed by Oceanic Cablevision on Oahu.

Pursuant to section 440G-7, Hawaii Revised Statutes, a public hearing on the transfer application was held at 6:30 p.m. on December 5, 1995 at Conference Room C, State Office Building, 75 Aupuni Street, Hilo, Hawaii. Notice of the hearing was published in the Hawaii Tribune Herald and West Hawaii Today on November 13 and 20, 1995.

## 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 (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

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<sup>3</sup>Jones Spacelink's Hilo system is presently equipped at a maximum bandwidth of 300 Mhz or capacity of 36 channels, and the Honokaa system is presently equipped at a maximum bandwidth of 330 Mhz or capacity of 40 analog channels.

configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental 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 and other purposes.

#### **B. State law**

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's approval for the transfer of a cable franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director, which states as follows:

(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, the cable advisory committee established by this chapter, or elsewhere, 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 which 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. STATUTORY CRITERIA**

#### **A. Public Need for Proposed Service**

There is a public need for continuing and expanding the existing cable communications service for the East Hawaii area. TWE states that unserved communities within the franchise areas currently include large, sparsely populated subdivisions and undeveloped land parcels primarily within the Puna and North Hilo areas. TWE states that it anticipates the completion of approximately 3,000 new residential units in the East Hawaii area, and that it will extend its cable system to the new subdivisions and other developments to meet increasing demand for cable service.

TWE states that it will aid and encourage the development of desirable local programming, and that it voluntarily commits to financially supporting PEG access operations and facilities and equipment, and the Hawaii Public Broadcasting Authority, as well as continuing to provide interconnections of PEG access facilities and governmental buildings and facilities to the East Hawaii System.

It is noted that the Hamakua area (census tract 220) located between Honokaa and North Hilo is not covered by any cable communications franchise. With the recent decline of the sugar industry and the potential for residential and commercial development, it appears that cable services would be in demand by the residents of the Hamakua area. TWE states that it is amendable to the inclusion of Hamakua within the East Hawaii franchise area, provided that TWE need not provide cable services to the Hamakua area until TWE's upgrade of the East Hawaii cable system is completed. Thus, census tract 220 shall be incorporated into TWE's East Hawaii franchise area, and TWE shall provide cable services to the Hamakua area upon completion of TWE's upgrade of the East Hawaii cable system.

#### **B. Suitability of the Applicant**

In evaluating the suitability of TWE, the State considered, among other things, TWE's existing Hawaii cable division, Oceanic Cablevision ("Oceanic"). Although the East Hawaii System will be owned and financed by TWE, it will operate as a separate operating unit of Oceanic with its own profitability and capital spending measurements and regulatory and service standards. As noted previously, Oceanic will, however, maintain overall management of the East Hawaii System. TWE intends to maintain

the present staff of the East Hawaii System and service offerings. Based upon the foregoing, TWE is a suitable applicant.

**C. Operational Ability of the Applicant**

The Applicant is suitable to operate the East Hawaii System. The history of TWE's Hawaii cable division, Oceanic Cablevision, demonstrates TWE's ability to operate its systems efficiently.

The Director anticipates that the Jones Spacelink systems will benefit from TWE's economies of scale in equipment and programming purchases, engineering expertise, employee training, human resources, and equity financing.

**D. Technical Ability of the Applicant**

Increasing channel capacity continues to be among the State's goals. Consequently, it is imperative that TWE have the technological expertise to accomplish the necessary system upgrades.

TWE states that it will upgrade the East Hawaii System to a total bandwidth of 750 Mhz using fiber technology similar to that currently being deployed on Oahu by Oceanic. TWE also states that the 750 Mhz upgrade will allow the deployment of TWE's Full Service Network (FSN) architecture for the East Hawaii area as services become available and are economically viable. Services envisioned by TWE via the FSN include interactive games, shopping, video-on-demand, and remote printing.

In addition, TWE states that it plans to retain the existing staff to operate the East Hawaii System. Existing technical staff are competent, well-trained, and capable of meeting the daily technical requirements of the East Hawaii System.

Therefore, it appears that TWE has the requisite competence and expertise to execute the technical requirements of the franchise and to incorporate technological developments.

**E. Ability to Provide Service at Reasonable Cost and Financial Capability**

TWE states that it will provide the same cable programming services now offered by Jones Spacelink, and that it is committed to offering safe, adequate and reliable services at a reasonable cost. The use of "fiber to node" architecture for the East Hawaii System upgrade should decrease outages, enhance system reliability, and improve picture quality. TWE is also committed to meet or exceed all State and Federal customer service standards.

It is noted that the proposed 750 Mhz system upgrade is anticipated to be financed through a combination of internally generated funds and TWE. Because TWE is a multi-system operator with numerous other cable systems including recent acquisitions (such as the former Sun Cablevision and Kamehameha Cablevision systems on the island of Hawaii, and the former Hawaiian Cablevision on the island of Maui) that will require system upgrades in the near future as well as unforeseeable circumstances beyond the control of TWE, the Director is concerned about the availability of sufficient capital for TWE to complete the East Hawaii System upgrade and other system upgrades within the State in a timely fashion.

In order to provide assurance that the East Hawaii System upgrade will be completed at the time required, the Director may require TWE to deposit an amount equal to the total construction cost of the East Hawaii System upgrade in a Development Fund, in the event circumstances arise that significantly affect TWE's ability to complete the upgrade. Moreover, in the event the East Hawaii System upgrade is not completed when required hereunder, all interest paid or accrued on the amount deposited into the Development Fund shall belong to the State.

Time Warner, Inc. has recently agreed to acquire Turner Broadcasting System, Inc. via an exchange of stock. Because the impact of the acquisition on TWE's financial capability is uncertain at the present time, the Director reserves the right to request additional information regarding the acquisition, and to modify this Order if necessary.

Time Warner has also recently entered into a Social Contract with the FCC for all of its cable systems across the country.<sup>4</sup> The term of the Social Contract is for five years from November 30, 1995 to November 30, 2000. Under the Social Contract, Time Warner is permitted to, among other things, increase the rate for its cable programming service tier by \$1.00 per month in addition to other permissible increases for external costs and inflation for the basic service tier and cable programming service tier, and establish uniform charges for installation and equipment. Time Warner has indicated that it will apply to the FCC to include the East Hawaii System under the Social Contract upon closing of the Exchange Agreement, and that it will implement increases permitted under the Social Contract in January, 1997.

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<sup>4</sup>See In the Matter of Social Contract for Time Warner, Memorandum Opinion and Order, FCC 95-478 (rel. November 30, 1995).

## F. Public Hearing

Testimony presented on the transfer in person at the public hearing and in writing expressed support for the continued operations for Na Leo O'Hawaii, Inc. ("Na Leo"), a private non-profit organization, interconnection of PEG access facilities with Jones Spacelink's Honokaa system and Chronicle Cablevision's Ka'u system, and for the continued implementation of the State's institutional network ("INET").

Public, educational and government ("PEG") access programming for Hawaii county is currently overseen by Na Leo. Jones Spacelink's existing obligation for public, educational, and government access fees through May 31, 1996 is an amount equal to two percent (2%) of its annual gross revenues or the specified amount (e.g. \$131,000 for year ending May 31, 1996), whichever is greater.<sup>5</sup> Thereafter, Jones Spacelink is required to contribute three percent (3%) of its annual gross revenues for PEG access operations.<sup>6</sup> Capital contributions for facilities and equipment for each year up to and including year ending May 31, 2001 are set forth in section 7.3(a) of Decision and Order No. 155.

As noted previously, TWE is committed to contributing an amount equal to three percent (3%) of its annual gross revenues derived from the East Hawaii System for PEG access operations, as well as maintaining the existing obligation for PEG facilities and equipment. Thus, TWE's commitment in support of PEG access is adequate for the provision of PEG access programming for the East Hawaii area at the present time. The Director, however, reserves the right to revisit at any time during the term of the franchise, issues relating to PEG access and other cable-related community needs and interest.

Under Decision and Order No. 155, Jones Spacelink is required to provide a total of three (3) PEG access channels on its cable system by December 31, 1995 or upon completion of the forty-channel upgrade under section 5.2 of said Decision and Order No. 155. Because TWE has proposed to upgrade the East Hawaii System to a maximum bandwidth of 750 Mhz (75 analog channels), plus digital headroom, the previous requirement for the forty-channel upgrade is moot. Jones Spacelink is currently providing two (2) full-time PEG access channels to Na Leo on its Hilo system. It is noted, however, that Jones Spacelink's

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<sup>5</sup>See section 7.2 (d) of Amended Terms and Conditions attached to Decision and Order No. 155. The Director may reconsider the PEG access fees upon the transfer of the cable communications franchise.

<sup>6</sup>See Section 7.2(e) of Terms and Conditions attached to Decision and Order No. 155.

Honokaa system is a stand alone cable system and that it is not interconnected with the Hilo system. Thus, PEG access programming is not available on the Honokaa system.

TWE states that it will provide three (3) PEG access channels on its East Hawaii System. However, TWE does not have any definite plans to interconnect the Honokaa system with the Hilo system. TWE states that it is looking at options such as interconnecting the Honokaa system with its West Hawaii system.<sup>7</sup> Interconnection of Jones Spacelink's cable systems within the East Hawaii area is essential to providing Honokaa subscribers programming similar to that provided to their neighbors within the Hilo area. Accordingly, in connection with preparing the detail plans for the 750 Mhz upgrade of the East Hawaii System, TWE shall include a full analysis including cost estimates and plans for the interconnection of the Honokaa system with the West Hawaii system or with the Hilo system.

#### **IV. FRANCHISE AMENDMENTS; 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 that 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 the East Hawaii System shall require the prior approval of the Director.

B. **Upgrade.** A key consideration in the State's review of cable system franchises in Hawaii is to assure that they are technically capable of meeting the future needs and desires of the communities they serve. TWE's proposal to upgrade the Hilo system will provide increased channel capacity from 36 to 75 analog channels plus digital headroom (i.e., a total bandwidth of 750 Mhz) by December 31, 2000. The Honokaa system has a maximum bandwidth of 330 Mhz or capacity of 40 analog channels. TWE states that it will upgrade the Honokaa system to a maximum bandwidth of 750 Mhz or capacity of 75 analog channels, plus digital headroom in conjunction with the Hilo system upgrade.

It is noted that in connection with TWE's 750 Mhz upgrade proposal for the East Hawaii System, TWE shall provide capacity and access for cable subscribers to the State's INET, to the extent that two-way broadband video, voice, and data capabilities

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<sup>7</sup>It is noted that TWE is providing fiber optic interconnection of its Kamehameha system at North Kohala with its Kailua-Kona system.

are available in the future. Although the manner in which subscriber access will be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through TWE's upgraded East Hawaii System is advanced by allowing subscriber access to the State's INET.

The Director, in general, accepts TWE's proposal to increase channel capacity of the East Hawaii System. However, in order to allow for future technological advancements and to ensure such advancements will be available to the subscribers of TWE's East Hawaii System, the Director, after completion of the 750 Mhz upgrades, may address the need for additional upgrades and may require TWE to complete additional upgrades of the East Hawaii System. It is contemplated that any future upgrade in excess of 750 Mhz will be first discussed and negotiated with TWE. At such time, the Director may also review the upgraded system's capabilities with respect to public, educational, and government access and INET interconnect requirements.

In addition, it appears that the benefits to be derived from the upgraded system would not be available to subscribers until TWE completes its 750 Mhz upgrades. TWE has indicated that additional cable services could be made available to subscribers prior to completion of the upgrades, depending upon the configuration and technical capability of the existing cable systems. Accordingly, on or before October 1, 1996, TWE shall submit to the Director a report including, but not limited to, technical and financial requirements, number and types of additional cable services, timetables for the launch of such services, and any other information required by the Director. Upon review, the Director, in the Director's sole discretion, may require TWE to provide such additional cable services. TWE shall provide such additional cable services as directed by the Director.

**C. Public, Educational, and Governmental Access.** As in most areas of the State, PEG access is an important issue on the island of Hawaii where the PEG access programming can help to bridge the island's geographic breadth and cultural diversity. The Director has, through the requirements of this Order, sought to meet the needs for access resources expressed by the community to be served by TWE in light of current economic and financial crises confronting the State and private sectors.

The Director accepts TWE's proposal to contribute an amount equal to three percent (3%) of annual gross revenues from the East Hawaii System for PEG access operating funds, and to provide three (3) full-time PEG access channels on the East Hawaii System. Contributions of capital for PEG facilities and equipment through May 31, 2001 shall remain at existing levels. Capital contributions after calendar year 2001 shall be

determined as set forth in section 4.5 of the attached terms and conditions.

The Director intends to establish planning processes on the island of Hawaii which bring together all cable systems and interested parties to create and implement coordinated plans for access activities which make the most effective use of available resources. Specific concerns with respect to channel time and other matters will be addressed in the development of these plans. The Director notes that funding for PEG access via cable companies' contributions was not intended to be permanent, and thus PEG access entities and organizations are strongly encouraged to develop short and long term alternative funding strategies.

Interconnection for PEG access purposes among the cable companies serving the island of Hawaii is important in providing PEG access programming to all cable subscribers island-wide. Presently, PEG access programming is available via Na Leo to subscribers of TWE West Hawaii system and Jones Spacelink's Hilo system. Subscribers of Jones Spacelink's Honokaa system and Chronicle Cablevision's Ka'u cable system are presently without PEG access programming due to the lack of interconnection or equipment. It is imperative that TWE, Chronicle Cablevision and Na Leo work cooperatively in facilitating interconnection of PEG access facilities with the East Hawaii System (Hilo and Honokaa systems) and Chronicle Cablevision's Ka'u cable system. TWE shall be required to work cooperatively with Chronicle Cablevision, Na Leo, and others as designated by the Director in developing an Access Plan for the County of Hawaii. The Access Plan shall be submitted to the Director for approval on or before November 30, 1996.

**C. Public Broadcasting.** The continued viability of public broadcasting is in the public interest. The Hawaii Public Broadcasting Authority (HPBA) provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts TWE's proposal to contribute an amount equal to one percent (1%) of its East Hawaii System's annual gross revenues to the HPBA Revolving Fund. Notwithstanding any provision to the contrary, Jones Spacelink shall be responsible for the payment covering January 1, 1996 up to the closing date of the Exchange Agreement, which payment is due on June 1, 1996 as set forth in section 2.3 of Amended Terms and Conditions of Decision and Order No. 155, attached to Decision and Order No. 161. In the event Jones Spacelink does not pay the full amount due by June 1, 1996, TWE shall be responsible for making said payment to the HPBA Revolving Fund within 10 days after receipt of the Director's notice.

**E. Institutional Network.** TWE states that it is committed to continue to support the State's INET and provide

interconnections at actual cost, and in some instances at no cost to the State. TWE has also reaffirmed its commitment to provide two-way fiber optic institutional network (INET) interconnections to its cable system as required by the Director. TWE will maintain and repair but not replace the fiber optic lines at no charge or cost to the State, and will replace the same at TWE's actual cost of labor and materials. Sites previously approved for connection to the State's INET are Jones Spacelink, County Office Building, State Office Building, Judiciary Building, Police Station, and UH-Hilo. In addition to the sites identified in section 5.1(c) of the attached terms and conditions, TWE shall interconnect its cable system with Hilo Hospital using fiber optic cabling at no charge or cost to the State.<sup>8</sup>

The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Due to budgetary and other restraints, the Department of Commerce and Consumer Affairs is no longer able to provide reimbursement for the cable operator's actual cost of labor and materials, as it may had done in the past. Accordingly, payment or reimbursement to TWE for its actual cost of labor and materials for INET interconnections or connections as provided in section 5.1(d) of the attached terms and conditions will be the sole responsibility of the requesting agency, department, or other governmental entity.

Although reimbursement of actual cost and materials for connection of specific government agencies or entities to the State's INET is no longer available, there is a continuing need for future connections by various government agencies. Na Leo has identified at least eight (8) government sites that would like to be a part of the State's INET: Hawaii Community College, main Fire Station, Waiakea High School, Hilo High School, DOE Annex, Civil Defense Office, Federal Building, and Hilo Public Library. In connection with TWE's 750 Mhz upgrade for the East Hawaii System, TWE has agreed to provide two-way fiber optic interconnections of the eight (8) sites to its system at no charge or cost to the State. TWE will maintain and repair but not replace the fiber optic lines at no charge or cost to the State, and will replace the same at TWE's actual cost of labor and materials.

With respect to the eight (8) sites identified above, TWE is concerned about obtaining access to conduits necessary to interconnect such sites to its system. Accordingly, in the event

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<sup>8</sup>Jones Spacelink agreed to interconnect its cable system with Hilo Hospital using fiber optic cables at no charge or cost to the State. As part of this transfer, TWE is required to assume Jones Spacelink's prior commitments.

TWE's access to conduits for interconnecting any of the eight (8) sites is not obtainable, TWE shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director TWE shall work cooperatively with the affected government agency or agencies and others designated by the Director, and shall develop and submit a plan for any such interconnection including, but not limited to, construction timetable and costs within 60 days after receipt of the Director's request. In order to defray the cost of such construction for the requesting state agency or agencies, TWE agrees, at no cost to subscribers, to contribute an amount to be determined by TWE and the Director.

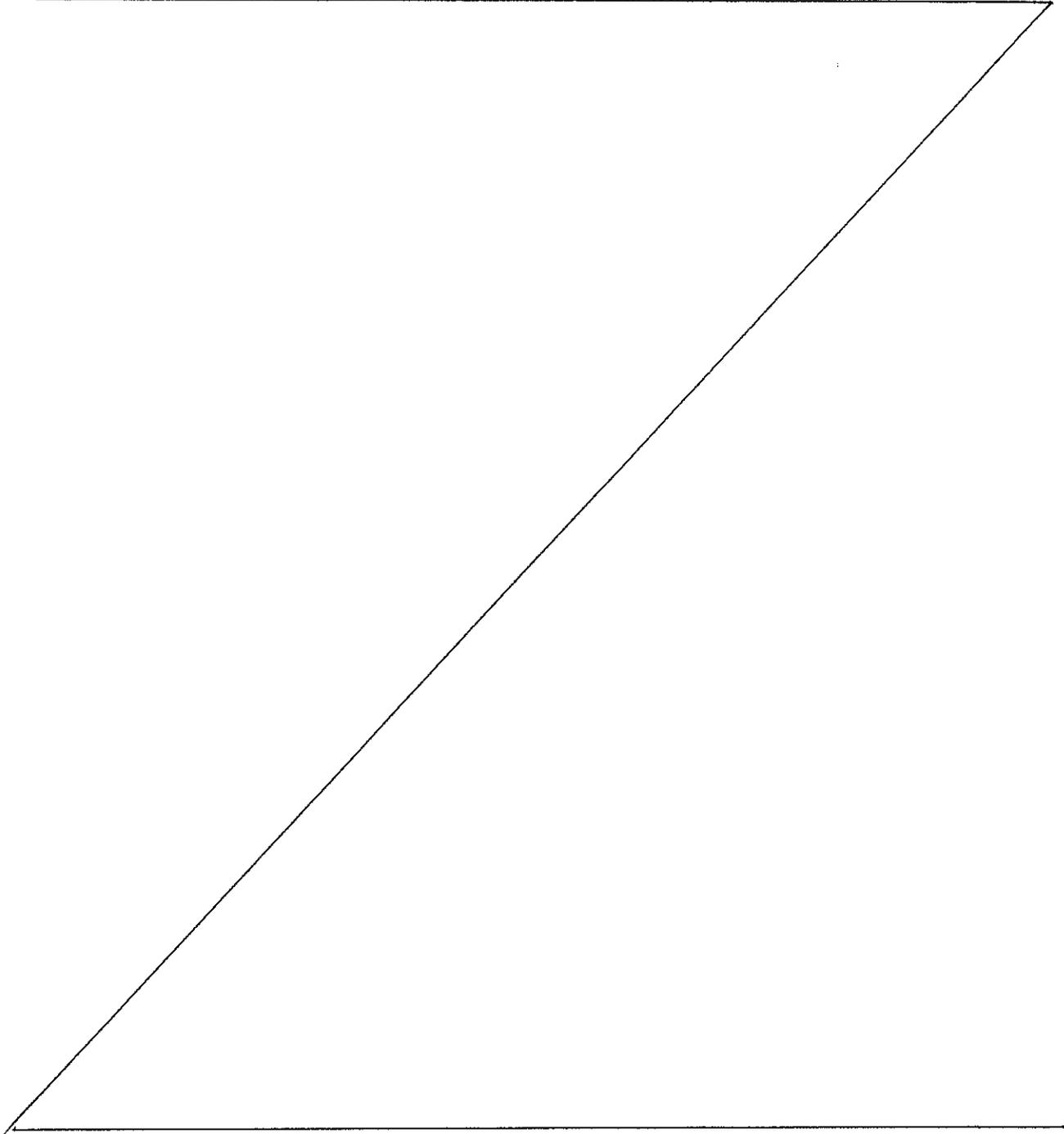
**F. Interconnection with Hawaii Interactive Television System (HITS).** The Director accepts TWE's proposal to provide and maintain a fiber interface with the Hawaii Interactive Television System (HITS) at no cost or charge to the State.

**G. University of Hawaii, Hilo Campus Interconnection.** Pursuant to section 5.7 of Decision and Order No. 155, Jones Spacelink is required to install, maintain and activate in two directions an interconnection between its cable system and the main campus facilities of the University of Hawaii, Hilo Campus. Jones Spacelink is required to provide such interconnection at no cost or charge the State.

The Director notes that the State's INET project for the island of Hawaii includes a two-way fiber optic interconnection between Jones Spacelink's system and the main campus of the University of Hawaii, Hilo Campus, at Jones Spacelink's actual cost of labor and materials which is estimated at \$35,000.00. The project is anticipated to be completed by June 30, 1996. Jones Spacelink will be reimbursed for its actual cost of labor and materials for the Hilo Campus interconnection. Therefore, the Director will designate other sites for interconnection to the State's INET and TWE shall install and maintain such interconnections at no charge or cost to the State, provided that the total cost of labor and materials for such interconnections shall not exceed \$35,000.00. The site or sites designated by the Director shall be considered part of the interconnections under section 5.1(c) of the attached terms and conditions.

**H. Extension of Franchise Term.** In connection with its transfer application, TWE has requested that the franchise term for the Jones Spacelink cable systems be extended for an additional 15 years, commencing January 1, 1996 and ending on December 31, 2011. Although TWE has made substantial commitments to the East Hawaii service area, the Director believes that a shorter initial extension of the franchise term, together with an additional period contingent upon completion of the 750 Mhz upgrades is in the public interest. Accordingly, the franchise term will be initially extended to December 31, 2006. If the 750 Mhz upgrades are satisfactorily completed on or before December

31, 2000, the franchise term shall be extended for an additional five (5) years from December 31, 2006 to December 31, 2011. However, if TWE does not satisfactorily complete the 750 Mhz upgrades by December 31, 2000, the Director, in addition to other rights and remedies the Director may have as provided by law or as provided in this Decision and Order, shall have the right to impose any term or condition deemed necessary or appropriate to serve or protect the public interest.



V. CONCLUSION

Based on the information presented in the application, and the evaluation of this information, the Director concludes that it is in the public interest to approve this application for transfer and amendment of the cable communications franchise for the East Hawaii area held by Jones Spacelink. TWE possesses the requisite capabilities for issuance of the franchise.

VI. ORDER

NOW, THEREFORE, the application for the transfer of Jones Spacelink of Hawaii, Inc. cable franchise to Time Warner Entertainment Company, L.P. is hereby APPROVED, subject however, to the closing of the Exchange Agreement and the terms and conditions described herein and attached hereto. Census tract 220 shall be included in TWE's franchise area for East Hawaii. All terms and conditions pertaining to the operation of TWE's East Hawaii System are contained in this Order. TWE shall immediately notify the Director in writing of the closing of the Exchange Agreement.

Notwithstanding any provision to the contrary, in the event the Exchange Agreement fails to close as contemplated therein or Jones Spacelink is not a part of the transaction under the Exchange Agreement at closing and upon receipt by the Director of written notification thereof, this Decision and Order and attached terms and conditions shall be deemed null and void. In any such event, Decision and Order Nos. 155 and 161 shall be in full force and effect, and the Director shall have the right to take any and all actions and to issue such orders as the Director deems necessary or appropriate to serve or protect the public interest with respect to cable services for the East Hawaii area.

DATED: Honolulu, Hawaii, April 8, 1996.

  
KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer  
Affairs

TERMS AND CONDITIONS OF ORDER NO. 185

Section One  
Definitions

For purposes of these terms and conditions of Order No. 185, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

"Access Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"Access Channel" means any Channel on the System made available for public, educational, or governmental (hereinafter sometimes referred to as "Access" or "PEG") use.

"Access Facilities and Equipment" means (2) channel capacity designated for public, educational, or governmental use; and (2) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by TWE to the Director or his designee for public, educational, or governmental uses pursuant to paragraph 4.2.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to residential subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee paid by TWE pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the lowest cost tier of cable service offered by TWE to all of its East Hawaii System Subscribers which includes the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. § 521 et seq.), and as may be further amended from time to time.

"Cable Drop" means the cable from the feeder line to the Subscriber's premises.

"Cable Service" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may be amended from time to time.

"Cable system" and "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may be amended from time to time.

"Channel" means a minimum of six megahertz (6 Mhz) in the electromagnetic spectrum which is capable of carrying any type of transmission which TWE is authorized to provide to Subscribers.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs of the State of Hawaii or the director's representative.

"Director of Civil Defense" means the Director of Civil Defense of the State of Hawaii.

"East Hawaii System" means the former cable systems owned by Jones Spacelink of Hawaii, Inc. (Hilo, Pahoa, and Volcano and Honokaa systems), which covers census tracts 201, 202, 203, 204, 205, 206, 207.01, 207.02, 208.01, 208.02, 209, 210.01, 210.02, 211, 219, 221, and census tract 220.

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

"Emergency Authority" means the Director of Civil Defense, County of Hawaii, Deputy Director of Civil Defense, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5.2 of the Terms and Conditions.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by TWE, its affiliates, subsidiaries, parents, and any other person or entity in which TWE has a financial interest or which has a financial interest in TWE arising from or

attributable to operation of the East Hawaii System, including but not limited to:

- (a) Revenue from all charges for entertainment and non-entertainment services provided to Subscribers;
- (b) Revenue from all charges for the insertion of commercial advertisements upon the Cable System;
- (c) Revenue from all charges for the leased use of studios or Channels;
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable System and the provision of Subscriber and other service; and
- (e) Revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross Revenues shall include, valued at contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by TWE or others described above in consideration of performance by TWE or others described above of any advertising or other service in connection with the East Hawaii Cable System.

"Jones Spacelink" means Jones Spacelink of Hawaii, Inc., a Hawaii corporation.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court of administrative body.

"Order" or "Order No. 185" means Decision and Order No. 185 issued by the Director of Commerce and Consumer Affairs in Docket No. 95-20 and dated April 8, 1996, including all terms and conditions and exhibits.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

"Public Access Channel" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

"Public Highways" shall have the meaning set forth in Hawaii Revised Statutes section 264-1, as may be amended from time to time.

"Public Place" includes any property, building, structure, or water to which the public has a right of access and use.

"State" means the State of Hawaii including its political subdivisions.

"Subscriber" means any Person lawfully receiving any Cable Service.

"TWE" means Time Warner Entertainment Company, L.P., a Delaware limited partnership.

## Section Two Grant of Franchise

### 2.1 Franchise Term

(a) The term of the franchise for TWE's East Hawaii System shall expire on December 31, 2006 unless terminated sooner as provided herein or by applicable law, or unless extended as provided herein.

(b) If TWE satisfactorily completes the 750 Mhz upgrade to the East Hawaii System by December 31, 2000 as provided in section 3.1 hereof, the term of the franchise shall be extended for an additional five (5) years. The term of the franchise shall expire on December 31, 2011 unless terminated sooner as provided herein or by applicable law.

### 2.2 Service Area

This franchise shall cover all areas of the island of Hawaii which Jones Spacelink was authorized to serve, and extends the boundaries of Jones Spacelink's existing service areas to include the Hamakua area (census tract 220).

### 2.3 Consideration

(a) In consideration of the award of the franchise granted herein which permits TWE to use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as it may be amended from time to time, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of the franchise fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the HPBA Fee set forth in section 2.6 hereof, shall not exceed five percent (5%) of the East Hawaii System annual Gross Revenues or the maximum amount permitted by the applicable provisions of federal or State law, as said law may be amended throughout the term of this Order.

#### **2.4 Ownership of Facilities and Plant**

(a) TWE shall maintain legal and equitable title to all of its present and future East Hawaii System; provided, however, that TWE may lease or permit the use of all or a portion of the East Hawaii System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use will result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.

#### **2.5 Antitrust**

(a) Order No. 185 shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) Order No. 185 does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

#### **2.6 HPBA Fee**

(a) Effective as of the closing date of that certain Asset Exchange Agreement between Jones Intercable, Inc. and TWE ("Exchange Agreement") dated as of September 1, 1995, and for each and every year of the term of the franchise, TWE shall pay to the Hawaii Public Broadcasting Authority Revolving Fund an amount equivalent to one percent (1%) of TWE East Hawaii System annual Gross Revenues.

(b) Notwithstanding any provision to the contrary, Jones Spacelink shall be responsible for the payment covering January 1, 1996 up to the closing date of the Exchange Agreement, which payment is due on June 1, 1996 as set forth in section 2.3 of Amended Terms and Conditions of Decision and Order No. 155, attached to Decision and Order No. 161. In the event Jones Spacelink does not pay the full amount due by June 1, 1996, TWE

shall be responsible for making said payment to the HPBA Revolving Fund within 10 days after receipt of the Director's notice.

(c) For the remainder of year ending December 31, 1996, the one percent (1%) HPBA fee shall be paid on January 31, 1997, and for each and every year of the remaining franchise term the one percent (1%) HPBA fee shall be paid annually on January 31. The fee shall be based on TWE's East Hawaii System Gross Revenues for the preceding calendar year.

(d) In connection with the payments required under this section 2.6, TWE shall submit to the Director verified copies of all payments made to the Hawaii Public Broadcasting Authority Revolving Fund.

### **Section Three System Upgrades**

#### **3.1           750 Mhz System Upgrade**

(a) By December 31, 2000, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the East Hawaii System to a minimum bandwidth of 750 Mhz and provide a minimum of 75 activated Channels. For purposes of this Order, this upgrade shall be referred to as the "East Hawaii 750 Mhz Upgrade."

(b) TWE shall provide capacity for and access through its cable system for all of its East Hawaii System subscribers to the State's institutional network described in section 5 hereof (to the extent that two-way broadband video, voice, and data capabilities are available pursuant to the upgrade referred to in this section 3.1).

(c) No later than July 1, 1997, TWE shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the East Hawaii 750 Mhz Upgrade including the incremental deployment of fiber to node architecture in a manner that will allow network sites to be connected easily, and economically to the State's INET and activation of the completed portions of the upgraded system to specific communities or areas, a detailed analysis including cost estimates and plans for the interconnection of the Honokaa system with the TWE's West Hawaii system or with the Hilo system, and such other information as the Director deems necessary. If, after one year from receipt of the upgrade plan, the Director does not approve the upgrade plan or require any supplemental information or changes thereto, the upgrade plan as submitted shall be deemed approved.

(d) In the event the East Hawaii 750 Mhz Upgrade is not satisfactorily completed by December 31, 2000, all interest paid or accrued on the amount deposited by TWE into the Development Fund as provided in section 3.3 hereof shall belong to the State. The Director, in addition to all other rights and remedies the Director may have as provided by law or as provided in this Decision and Order No. 185, shall have the right to impose any term or condition deemed necessary or appropriate to serve or protect the public interest.

### **3.2 Further System Upgrades**

After completion of the East Hawaii 750 Mhz Upgrade as provided in section 3.1 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require TWE to complete additional system upgrades at such times as determined by the Director. In connection with any such review, the Director may review other matters relating to the East Hawaii System's capabilities including, but not limited to, public, educational, and governmental access requirements under section 4 hereof, and institutional network and interconnect requirements under section 5 hereof.

### **3.3 Development Fund**

In the event circumstances arise that significantly affect TWE's ability to complete the East Hawaii 750 Mhz Upgrade as provided in section 3.1 hereof, the Director, in the Director's sole discretion, may require TWE to set aside an amount equal to the total cost of construction of the 750 Mhz Upgrade. Within 30 days after receipt of written notification by the Director, TWE shall deposit an amount equal to the total cost of construction of the proposed upgrades in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii ("Development Fund"). All interest paid or accrued earned thereon shall belong to the State.

All amounts in the Development Fund including all interest paid or accrued thereon shall not be commingled with other funds of TWE or any related entity. TWE shall have the authority to draw on the Development Fund for purposes of financing and constructing the upgrade, provided, however, that TWE shall not make any withdrawals without the prior written approval of the Director or the Director's designee. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing and/or constructing the upgrades, except upon written application to and prior written approval by the Director. The provisions of this section 3.3 and section 3.1(d) hereof shall automatically terminate upon satisfactory completion of the East Hawaii 750 Mhz Upgrade.

**Section Four**  
**Public, Educational and Governmental Access**

**4.1      Access Plan and Implementation**

TWE shall work cooperatively with other cable operators and the access entity or entities designated by the Director for the management, operation and use of public, educational, and governmental access facilities and equipment for the County of Hawaii. TWE shall work cooperatively with other cable operators, the access entity or entities, the Director's staff, and others designated by the Director to develop a coordinated plan for the use of public, educational, and governmental access facilities and equipment for the County of Hawaii ("Access Plan"). The Access Plan shall at a minimum address the following:

(a) Resources available in the County of Hawaii for access use;

(b) User needs and interest;

(c) Models of access facilities and equipment, including the interconnection of the Honokaa, Hilo, Ka'u, Kailua-Kona, and North Kohala district cable systems within the County of Hawaii, the activation of additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;

(d) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) or any other interconnects;

(e) Coordination of access with the Institutional Network as described in section 5 hereof; and

(f) Funding requirements for public, educational and government access facilities and equipment, and long and short term alternative financial resources.

TWE and the access entity or organization shall coordinate, prepare and submit the Access Plan to the Director for approval by November 30, 1996 or at such other date as the Director may designate. Any cost associated with the preparation of the Access Plan including the cost of consultant services shall be shared equally among TWE, other cable operators, and the access entity or organization. Implementation of the Access Plan shall be at the direction of the Director or the Director's designee.

#### 4.2 Access Operating Fee

(a) On May 31, 1996, TWE shall pay an access fee for fiscal year ending May 31, 1996 in an amount equal to the greater of two percent (2%) of annual gross revenues from the East Hawaii System or \$131,000.00. The access fee shall be calculated on the estimated annual Gross Revenues for the fiscal year. Adjustments to the access fee due to differences between the estimated and actual Gross Revenues will be made within 30 days after the submission of TWE's annual financial statements to the Director. If TWE is entitled to a refund, the Director or the Director's designee will grant a credit toward the next payment of the access fee or make a refund if the last payment of the access fee has been made.

(b) For the period after May 31, 1996 and for each and every year of the term of the franchise, 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 East Hawaii System. These payments shall be used for public, educational and governmental purposes and for other public purposes as shall be designated by the Director. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(1) The 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 East Hawaii System Gross Revenues for 1997.

(2) 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.

(3) 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.

(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 and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Access Operating Fee may be reconsidered at any time by the Director.

#### **4.3 Access Channels**

(a) 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 public, educational, and governmental access over the East Hawaii System.

(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 Access Channels for East Hawaii public, educational, and governmental access. The Director, at any time, may require TWE and the access organization designated pursuant to section 4.6 hereof to prepare a plan which shall include an assessment of the need for additional Access Channels in excess of that required under paragraph (a) above, how such additional Access Channels will be made available, and other information the Director may require.

(c) All Access Channels shall be made available by TWE at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on TWE's most widely available service tier.

(e) TWE may use the two (2) additional Access Channels required to be made available under paragraph (b) above until such time as the Director or the Director's designee gives sixty (60) days prior written notice to TWE that an Access Channel or portion thereof shall be made available. TWE's use of Access Channels after it has received such notice from the Director or the Director's designee shall be subject to the fallow time provisions in section 4.4 hereof.

(f) The Director or the Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

#### 4.4 Fallow Time on Access Channels

(a) TWE shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system whether or not Activated and whenever such Access Channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least 72 hours in advance.

(b) All non-access programming on Access Channels shall be identified as such by an appropriate announcement made prior to and following each non-access use.

(c) Notwithstanding paragraphs (a) and (b) above, at such time as any Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of Access Cablecast Days, whichever is less, during any 90 day period, use of such Channel by TWE shall be suspended for such time as such minimum access use of the Channel is maintained. The provision of this paragraph may be waived by the Director for good cause.

#### 4.5 Facilities and Equipment

(a) For the period May 31, 1996 through January 1, 2001, TWE shall provide to the Director or the Director's designee capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
May 31, 1996	\$20,000.00
January 1, 1997	\$26,645.00
January 1, 1998	\$ 0
January 1, 1999	\$95,867.00
January 1, 2000	\$ 0
January 1, 2001	\$48,981.00

(b) Commencing January 1, 2002 and for each and every year of the remaining franchise term, TWE shall provide capital funds for public, educational, and governmental access facilities and equipment in the amount of \$3.00 per equivalent East Hawaii System basic service or most widely available tier subscriber. The capital funds required in this paragraph (b) shall be paid annually on January 1 and shall be based on TWE's average East Hawaii basic service or most widely available tier subscriber count for the preceding calendar year.

The Director, in the Director's sole discretion, may require a different method for the provision of capital funds for public, educational, and governmental access facilities and equipment. Upon written notification by the Director, TWE in consultation with the designated access entity or organization shall submit by the date specified by the Director a schedule for the payment of capital funds for public, educational, and governmental access facilities and equipment for year ending December 31, 2002 and for each year of the remaining franchise term. The Director may, in the Director's sole discretion, approve, deny, or modify the payment schedule.

(c) Any PEG capital funds provided pursuant to this section 4.5 shall not be credited to the Access Operating Fee.

(d) The capital funds for the provision of facilities and equipment required to be provided by TWE under paragraph (b) above shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(C) of the Cable Act.

(e) Any transfer of the East Hawaii System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and governmental access required to be provided in this section 4.5 before the effective date of the transfer.

#### **4.6 Access Organization**

The Director or the Director's designee may designate one or more entities to fund, manage, or operate Access Facilities and Equipment.

#### **4.7 Termination of Access Payments**

(a) TWE may suspend making payments under sections 4.2 and 4.5 hereof if any of the following events occur:

(1) A minimum of seventy-five percent (75%) of the current number of original hours of access programming is not produced; or

(2) Such payments are used for non-access purposes.

(b) TWE's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

#### **4.8 Interconnection for Access Purposes**

(a) TWE shall effect the required interconnections with other cable systems on the island of Hawaii in accordance with a schedule and in a manner determined by the Director.

(b) The costs of the interconnections to be constructed shall be allocated among each of the cable franchise areas on the island of Hawaii. For costs of construction allocated to the areas served by it, TWE shall receive a credit for its actual costs for labor and materials to be applied against its requirement to pay the Access Operating Fee described in section 4.2 hereof or PEG capital funds described in section 4.5 hereof. The taking of any credit by TWE shall require the Director's prior approval. TWE shall provide the Director or the Director's designee with such verification of costs as may be requested.

#### **4.9 Reopening of Access Requirements.**

At any time during the term of the franchise, the Director may revisit any requirement under this section 4 for the purpose of identifying the future public, educational, and governmental access and other cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate.

#### **4.10 Reporting Requirements**

To the extent applicable to TWE, TWE shall submit by April 30 of each year to the Director a report of East Hawaii local origination expenses and a report for access programming expenses for the previous calendar year.

### **Section Five Networks**

#### **5.1 Institutional Networks**

(a) At no charge or cost to the State except for TWE's actual cost of labor and materials, TWE shall within six (6) months of a request by the Director provide fiber optic cables, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites among the cable systems, government and public institutions, and public, educational, and governmental access sites within TWE's East Hawaii Service Area to be determined by the Director, including but not limited to, the following:

- \* Jones Spacelink of Hawaii
- \* County Office Building
- \* State Office Building
- \* Judiciary Building
- \* Police Station
- \* UH-Hilo

TWE shall repair and maintain, but not replace, the institutional network's fiber optic cables installed under this

paragraph (a) up to the terminating point of each network site designated by the Director at no charge or cost to the State. TWE shall replace any such fiber optic cables at TWE's actual cost of labor and materials.

(b) TWE shall interconnect its East Hawaii System with Hilo Hospital with fiber optic cabling and materials and electronics for two-way broadband video, voice, and data capabilities at no charge or cost to the State.

(c) At no charge or cost to the State, TWE shall within six (6) months of a request by the Director provide fiber optic cables, materials, and electronics for two-way broadband video, voice, and data capabilities between the East Hawaii System and sites to be designated by the Director, including, but not limited to, the following:

- \* Hawaii Community College
- \* Main Fire Station
- \* Waiakea High School
- \* Hilo High School
- \* DOE Annex
- \* Civil Defense Office
- \* Federal Building
- \* Hilo Public Library

TWE shall repair and maintain the fiber optic cabling installed up to the terminating point of each site at no cost or charge to the State, and shall replace any such fiber optic cables at TWE's actual cost of labor and materials.

In the event TWE's access to conduits for interconnecting any of the sites identified in this paragraph (c) is not obtainable, TWE shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director, TWE shall work cooperatively with the affected government agency or agencies and others designated by the Director, and shall develop and submit a plan for any such interconnection including, but not limited to, construction timetable and costs within 60 days after receipt of the Director's request. TWE shall, at no cost to subscribers, contribute funds for construction in an amount to be determined by TWE and the Director.

(d) Within six (6) months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites as determined by the Director at TWE's actual cost of labor and materials; provided that the sites at which TWE shall install the fiber optic cables have the necessary infrastructure and rights of way to receive the fibers.

(1) When requesting such interconnections, the State will be cognizant of TWE's scheduling, manpower, and resource limitations.

(2) Upon written request, the Director may grant an extension for the installation of an interconnection requested under this paragraph (d) for good cause.

(3) TWE shall repair and maintain, but not replace, the institutional network's fiber optic lines installed under this paragraph (d) up to the termination points of each network site at no charge or cost to the State. TWE shall replace any such fiber optic lines at TWE's actual cost of labor and materials.

(e) All interconnections shall be via fiber optic cabling capable of carrying T-1 circuits for data, voice, video, and analog in both directions, and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof.

(f) TWE shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(g) Upon written request by TWE, the Director may grant an extension for the installation of the interconnections required under this section 5.1 for good cause.

(h) The Department shall bear the actual costs for labor and materials incurred by TWE in installing the interconnections described in paragraph (a) of this section 5.1. Except to the extent provided in paragraphs (c) and (d) above, the requesting agency, department or governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials. In addition, any and all costs associated with replacing fiber optic cabling shall be the sole responsibility of the agency requesting such replacement.

Upon submission of invoices, together with such supporting documentation as may be required, and approval by the Director, the Department or the requesting agency or government entity, whichever it may be, shall promptly reimburse TWE for the costs of such interconnections, which shall include cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and designation.

(i) TWE may construct the institutional networks required hereunder in a manner it deems appropriate, consistent with paragraphs (e) and (f) of this section 5.1. TWE may utilize

contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

## **5.2           Emergency Override System**

(a) On or before December 31, 1996, TWE shall configure and maintain the East Hawaii System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Hawaii Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system.

(b) The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) TWE shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) TWE shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) TWE shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System.

## **5.3           Interconnection with Hawaii Interactive Television System (HITS)**

TWE shall continue to support and provide carriage of the Hawaii Interactive Television System (HITS) programming on its East Hawaii System. Within six (6) months after receiving notice from the Director, TWE shall provide and maintain a fiber interface with the Hawaii Interactive Television System (HITS) at no charge or cost to the State.

## **5.4           Non-Capital Contribution**

The items and services required to be provided under this section 5 at no charge or cost to the State shall not be deemed to be capital contributions under section 622(g)(2)(C) of the Cable Act.

**Section Six  
Programming Services**

**6.1 Mix, Quality, and Level of Service**

TWE shall not alter its current mix, quality, and level of programming services for its East Hawaii System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

**6.2 Broad Categories of Programming**

(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable Law.

(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director.

(c) TWE shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

**Section Seven  
Management**

**7.1 Books and Records**

TWE shall maintain at its local office(s) a complete set of books and records including, but not limited to, subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State. All books and records not maintained and available for review at the local office(s) shall, upon request, be made available locally within five (5) working days.

## 7.2 Tariff

TWE will amend its schedule of rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, as amended, at least 30 days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

## 7.3 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, TWE shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that TWE proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, TWE shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that TWE proposes to take with respect to the violation.

(c) By April 30 of each year, TWE shall submit to the Director a statement to the effect that no violation of this Order has occurred and that TWE has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if TWE has not observed or performed all of the conditions contained in this Order, it shall specify the nature and period of the violation and what action TWE has taken or proposes to take with respect to the violation.

## 7.4 Annual Financial Statements

(a) By April 30 of each year, TWE shall submit to the Director its annual financial statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its East Hawaii System operation on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph (a) above shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations.

**7.5            Other Reports**

In addition to the reports required to be submitted under this Order, TWE shall submit to the Director all other reports at the time required by applicable State and Federal law, rules and regulations.

**7.6            Change in Ownership**

Any change in the general ownership of five percent (5%) or more of TWE shall require the prior approval of the Director.

**Section Eight  
Collateralization of System Assets**

**8.1            Collateralization of System Assets**

(a) In the event the assets of the East Hawaii System will be or has been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notify the Director in writing no later than 15 days after the closing of the loan or credit facility. TWE shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount, and any other information the Director may require.

(b) During the term of the franchise, TWE is not required to seek pre-approval of any change in a loan agreement or credit facility which encumbers or pledges the assets of the East Hawaii System; provided, however, that the Director has the right to pre-approve any financing plan or agreement during a franchise renewal or transfer proceeding. Within 30 days after closing, TWE shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine that the change(s) to the loan agreement or credit facility is not in the interest of the continued financial viability of the system and to require corrective measures if necessary.

(c) Notwithstanding any provision to the contrary, in the event TWE receives a notice indicating that it is in default under any of its loan agreements, TWE shall (1) promptly notify the Director in writing of such event, (2) describe in sufficient detail the nature of default and TWE's actions to cure such default, and (3) promptly notify the Director in writing of the final resolution of such default.

**Section Nine  
Subscriber Service**

**9.1           Customer Service Office**

(a) TWE shall maintain and operate within its Service Area at least one customer service office to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints including without limitation, those regarding service, equipment malfunctions, or billing and collection disputes. TWE shall maintain a staff adequate to provide such services in a timely and efficient manner.

(b) For each customer service office, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that will be most convenient for its Subscribers.

**9.2           Telephone Service**

(a) TWE shall have a publicly listed local customer service telephone number which shall be open at a minimum for telephone business for ten (10) hours each weekday and for six (6) hours on Saturdays as determined by TWE to be most convenient for its Subscribers. This customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, TWE shall have at a minimum an answering service to take calls.

(b) Within 30 days of a request by the Director, TWE shall submit to the Director all available information with respect to the adequacy of its telephone response capability including the following matters:

- (1) The average length of time which it takes a human operator to answer a Subscriber telephone call during peak times;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers during peak times;
- (3) The number of busy signals received by callers during peak times; and
- (4) The effectiveness of any new computer equipment in decreasing response time.

(c) After reviewing such information, the Director may require TWE to perform further analysis of its telephone service and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its telephone service.

### **9.3 Installation and Repair Service**

(a) TWE shall at a minimum provide installation service for eight (8) hours each weekday and Saturdays, except for Sundays and legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

(b) TWE shall at a minimum provide repair service eight (8) hours each week day and Saturday. At all other times, TWE shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

### **9.4 Compliance**

Notwithstanding any provision to the contrary, TWE shall comply with all applicable customer service standards prescribed by the State and the Federal Communications Commission.

## **Section 10 Modification**

### **10.1 Petition for Modification**

(a) No provision of Order No. 185 shall preclude TWE from petitioning the Director for a modification of any provision of Order No. 185 for any reason including, but not limited to, the following: (1) the emergence of increased competition to the cable services offered by TWE; or (2) under-utilization of access facilities and equipment. The Director may, in the Director's sole discretion, issue an appropriate modification of Order No. 185.

(b) In determining any modification of Order No. 185, the Director shall take into account the geographic, topographic, and economic characteristics of the East Hawaii Service Area, the economics of providing cable service to subscribers and any other matters necessary to ensure that the terms and conditions upon which cable service is provided are fair both to the public and TWE.

## **Section Eleven Termination**

### **11.1 Cumulative Termination Rights**

The termination provisions herein shall be in addition to and not in derogation of any other rights of remedies which the Director may have with respect to the subject matter of this Order No. 185.

## **11.2 Six Month Termination**

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of section 3 (System Upgrades), section 4 (Public, Educational and Governmental Access), or section 5 (Networks) of these terms and conditions invalid or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six months from the date of such event.

(b) Notwithstanding the above paragraph (a), in no event shall the franchise be terminated under said paragraph prior to the end of the fourth franchise year.

(c) The provision of paragraph (a) above shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided that TWE provides prior written notice to the Director of such voluntary performance.

## **11.3 New Franchise Application Not Excluded**

In the event TWE's East Hawaii franchise is terminated pursuant to section 11.2 hereof, nothing herein shall prevent TWE from applying for a new franchise.

## **Section Twelve Miscellaneous Provisions**

### **12.1 Headings**

The headings or titles of paragraphs and sections contained in these terms and conditions are to facilitate reference only and shall not in any affect the construction or interpretation hereof.

### **12.2 Successors**

All of the provisions of this Order No. 185 and these terms and conditions shall apply to TWE and its permitted successors and assigns.

### **12.3 Notices**

All required notices to the Director under this Order No. 185 shall be made in writing and shall be submitted to the Cable Television Administrator, 1010 Richards Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

**12.4            Leased Commercial Access**

Consistent with the Cable Act, on or before November 30, 1996, TWE shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of the East Hawaii System Channels for commercial use.

**12.5            Laws**

TWE, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the East Hawaii System. If TWE discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, TWE shall promptly report it to the Director in writing. TWE, its employees, and agents, shall comply with all applicable federal, state, and local laws, rules and regulations issued pursuant thereto and shall indemnify the State against any loss, liability or damage occasioned by reason of a violation of this section by TWE and its officers, employees and agents.

**12.6            Performance**

The failure of the Director or the State at any time to require performance by TWE of any obligation or condition of this Order No. 185, shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

**12.7            Hold Harmless**

TWE shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the franchise or exercising its rights or performing its duties under this franchise.

**12.8            Waiver**

The Director reserves the right to waive any condition of this Order No. 185 for good cause.

**12.9            Authority**

The State, from time to time, may adopt or issue such rules, orders or other directives governing TWE as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing TWE as the Director shall find reasonably necessary or

appropriate pursuant to and in furtherance of the purposes of this Order No. 185. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order No. 185. Further, any action to be taken by the Director regarding this Order No. 185 shall be taken in accordance with the applicable provisions of Federal or State law, as said law may be amended throughout the term of this Order No. 185. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order No. 185.

**12.10            Test Results**

As soon as available, but in no event more than 30 days after the date of the test, TWE shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test, and other tests that may be required by the Federal Communications Commission or the State.

**12.11            Audit**

The Director may require that TWE submit to an audit by the Director's accountants. If an audit of TWE results in disclosure of unpaid fees or payments required by this Order No. 185, statute or rules, the Director may require TWE to pay the total cost of the audit.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 185 in Docket No. 95-20 was served upon the following party at the address shown below by mailing the same, postage prepaid, on this 8th day of April, 1996.

TIME WARNER ENTERTAINMENT COMPANY, L.P.  
c/o JOHN T. KOMEIJI, ESQ.  
Watanabe, Ing & Kawashima  
745 Fort Street  
5th & 6th Floors  
Honolulu, Hawaii 96813

JONES SPACELINK OF HAWAII, INC.  
Box 787  
1257 Kilauea Avenue  
Hilo, Hawaii 96721

Attention: Ms. Lorene Hough

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Patti K. Kodama  
Secretary