

CABLE TELEVISION DIVISION

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of ) **DECISION AND ORDER NO. 327**  
)  
)  
TIME WARNER ENTERTAINMENT )  
COMPANY, L.P. )  
)  
Capital Payments for Public, Educational, )  
and Governmental Access Facilities and )  
Equipment in the County of Kauai, for the )  
period 2007 through 2009. )  
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**DECISION AND ORDER NO. 327**

I. **INTRODUCTION**

- A. On or about July 12, 2002, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") issued Decision and Order No. 291 ("**D&O 291**"), which approved the transfer and amendment of the cable franchises held by G Force LLC, dba Garden Isle Telecommunications, to Time Warner Entertainment Company, L.P. ("**TWE**"). The transferred cable franchises covered service areas in the County of Kauai ("**Kauai System**").
- B. Section 4.5 ("Facilities and Equipment") of the Terms and Conditions of D&O 291 specified TWE's franchise obligations relating to capital contributions for public, educational, and governmental ("**PEG**") access equipment and facilities for the Kauai System and set forth a schedule for

capital contributions by TWE for the years ending December 31, 2002 to December 31, 2006.

- C. Section 4.5(b) of the Terms and Conditions of D&O 291 directed TWE, in consultation with the designated PEG access entity, to submit to the Director of Commerce and Consumer Affairs ("**Director**") by April 30, 2006, a schedule for the payment of capital funds for PEG access facilities and equipment for years ending 2007, 2008, and 2009. The Director could then approve, deny, or modify the proposed payment schedule for the Kauai System.
- D. Decision and Order No. 319 ("**D&O 319**") was issued April 20, 2005 and extended the Kauai County cable franchise an additional four (4) additional years to December 31, 2016, unless otherwise terminated in accordance with the franchise or applicable law.
- E. On July 18, 1997, Hoike: Kauai Community Television ("**Hoike**") and the Department entered into a written agreement for Hoike to manage and operate the PEG access finances, facilities, and channels on the island of Kauai.
- F. The Department and Hoike subsequently entered into a new Agreement dated August 25, 1999 ("**1999 Agreement**") for Hoike to continue with the management and operation of PEG access finances, facilities, and channels as Kauai County's designated PEG access entity. Through various Supplemental Agreements, the term of the 1999 Agreement has been extended to December 31, 2006.

- G. By letter dated June 7, 2006, after discussions with and concurrence from Hoike, TWE requested approval from the Department for its proposed annual contribution of \$3.00 per customer to the Kauai County PEG capital fund for the years ending 2007, 2008, and 2009.
- H. By email dated June 6, 2006, JS Robertson, Managing Director of Hoike, conveyed Hoike's agreement to TWE's recommendation of \$3.00 per subscriber.
- I. After reviewing the request of TWE for approval of the proposed payment schedule and Hoike's concurrence, the Department believes that it is in the best interest of cable television subscribers to approve the capital fund payments as described therein.

II. **ORDER**

NOW, THEREFORE, the Director hereby orders that:

- A. For PEG access facilities and equipment, TWE shall make capital fund payments equal to \$3.00 per cable television subscriber in the Kauai County cable franchise to the designated PEG access entity for Kauai County. TWE's capital contributions based upon \$3.00 per cable television subscriber shall begin in 2007, and be in effect for 2008 and 2009.
- B. Capital payments for 2007 shall be based upon the number of cable television subscribers in the Kauai County cable franchise as of December 31, 2006. TWE shall make its annual capital fund payment for 2007 on or

before January 31, 2007 to the designated PEG access entity for Kauai County.

- C. For 2008 and 2009, TWE shall make its annual capital fund payment on January 31<sup>st</sup> of that year based upon the cable television subscriber count in the Kauai County franchise as of December 31<sup>st</sup> of the prior year.
- D. TWE in consultation with the designated PEG access entity for Kauai County, shall submit to the Director by April 30, 2009, a schedule for the payment of capital for PEG access facilities and equipment for each year from January 1, 2010 through the remaining years of the franchise term for TWE's Kauai County cable franchise area. The Director may, in the Director's sole discretion, approve, deny, or modify the payment schedule.
- E. Except as otherwise provided in this Decision and Order, the remaining terms and conditions of Decision and Order Nos. 291 and 319 not specifically amended herein shall remain in full force and effect.

DATED: Honolulu, Hawaii September 7, 2006.

  
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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. 327 was served upon the following person(s) at the address shown below by mailing the same, postage prepaid, on this 7th day of September, 2006.

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