

The application for transfer of Oceanic's cable franchise to TWE proposed to continue the partnership and the franchise obligations established through Oceanic's franchise renewal. The commitment undertaken by Oceanic, and being transferred to TWE, is a significant one, and for that reason much of the text of Decision and Order No. 135 and its terms and conditions as amended by Decisions and Orders No. 137 and 151 are set out again in this Order approving the transfer of the franchise to TWE.

II. THE LAW.

A. Federal law.

This transfer of a cable franchise is made under the authority of state law and is consistent with the Cable Communications Policy Act of 1984 (Cable Act).

As interpreted by the Federal Communications Commission, the Cable Act deprived franchising authorities of their ability to regulate rates charged by cable operators. However, 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 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 of annual gross revenues, any portion of which may be used for public, educational and governmental access.

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 and 440G-10.1 of the Hawaii Cable Law, Chapter 440, Hawaii Revised Statutes.

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

"(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 TWE 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 TWE 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 its community's communications capabilities by supporting public, educational and governmental access. This Order ties the length of the term of the franchise to the degree to which TWE is willing to be responsive to the needs and interests of the community.

III. STATUTORY CRITERIA.

A. Public Need for Proposed Service

TWE has proposed to provide the same cable programming services now offered by Oceanic. Oceanic now serves approximately 225,000 subscribers on Oahu, excluding the Hawaii Kai area. This area includes many communities where television reception is poor due to either the urban landscape or the topography of the island. Without the aid of a cable communications system, television reception would be marginal for many of the residents of the island. Roughly 73 percent of the residents whose homes are passed by a cable line subscribe to cable. Therefore, there is a public need for continuing the existing cable communications service.

B. Suitability of the Applicant

In evaluating the suitability of TWE, the State considered Time Warner's existing relationship to Oceanic through its subsidiary, ATC. In concluding that TWE is a suitable applicant, the State relied heavily on TWE's representations that Oceanic's operations will continue the same as before the transfer and that the management, personnel and policies of the organization will not change as a result of the transfer.

C. Operational Ability of the Applicant

The Oceanic cable system is the largest in the State and one of the ten largest cable systems in the country. Oceanic's president and staff have been intimately involved in operating the Oceanic system for many years prior to and after Oceanic's franchise renewal in 1989. They have demonstrated a capacity to operate a cable system generally attuned to the needs and requirements of Oceanic's subscribers. TWE has stated that the transfer of Oceanic's cable franchise to TWE will cause no change in the operations and no change in local management of the Hawaii cable system.

D. Technical Ability of the Applicant

Two clear goals of Oceanic's franchise renewal were "to provide for immediate increases in channel capacity" through a ten channel upgrade and "to build in the flexibility for further increases in capacity taking advantage of even newer technology at each step," with an emphasis on fiber. These continue to be the State's goals, and it is imperative that TWE have the technological expertise to accomplish the necessary system and technology upgrades.

Oceanic's technical staff is knowledgeable about the cable system, having maintained the existing system and conducted the ten channel plant upgrade that was a requirement of Oceanic's franchise renewal. They are also planning for the first major system upgrade using fiber technology. Thus it appears the staff has the competence 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 has stated there will be no effect on Oceanic's future subscriber rates for basic cable service and other services as a result of the transfer of Oceanic's cable franchise to TWE. Furthermore, TWE will hold the franchises for all of Time Warner's cable systems in the country, making it the nation's second largest multiple system operator, offering not only economies of scale, but also significant resources upon which to draw. Based on these factors, a review of ATC's and Time Warner's financial statements and TWE's financial plan, it appears that TWE has the financial capability to operate Oceanic's system.

F. Public Hearing

Testimony presented on the transfer in person at the public hearing and by correspondence to the Cable Television Division, and considered when reaching the decision to approve the transfer, centered on: (1) channel capacity, (2) effect on programming, (3) access programming and organization, (4) Time Warner's sponsorship of certain recording artists and motion pictures, and (5) Oceanic's line extension policy.

G. Other Matters

Since TWE is applying for a transfer of Oceanic's franchise, the franchise term granted TWE is the same as that granted to Oceanic under Decision and Order No. 135, as amended by Decision and Order Nos. 137 and 151. Like Oceanic, TWE will have the option to extend its franchise terms an additional five years providing certain conditions are met.

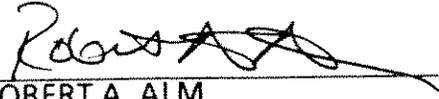
IV. CONCLUSION.

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. The applicant appears to possess the requisite capabilities for issuance of the franchise.

V. ORDER.

NOW, THEREFORE, the application for the transfer of Oceanic Cablevision, Inc.'s cable franchise to Time Warner Entertainment Company, L.P. is hereby APPROVED subject to the attached terms and conditions which are incorporated by reference herein. All terms and conditions pertaining to the operation of the TWE franchise are contained in this Order.

DATED: Honolulu, Hawaii, September 25, 1992.



ROBERT A. ALM
Director of Commerce and
Consumer Affairs

TABLE OF CONTENTS
TERMS AND CONDITIONS OF ORDER NO. 153

		<u>PAGE</u>
I.	DEFINITIONS	1
II.	GRANT OF FRANCHISE	4
	2.1 Grant of Franchise	5
	2.2 Effective Date	5
	2.3 Term of Franchise	5
	2.4 Service Area	5
	2.5 Consideration	5
	2.6 Ownership of Facilities and Plant	5
	2.7 Rate Regulation	6
	2.8 Antitrust	6
III.	IMMEDIATE SYSTEM UPGRADE	6
	3.1 Ten Channel Upgrade	6
IV.	FUTURE SYSTEM UPGRADES	6
	4.1 Fiber Optic Upgrade to 450 System	6
	4.2 Alternate Upgrade	7
	4.3 Development Fund	7
	4.4 Director's Option to Release	8
	4.5 TWE's Proposed Upgrade	8
	4.6 Director's Proposed Upgrade	8
	4.7 Development Fund II	8
	4.8 Uses of Development Fund	8
V.	PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS	9
	5.1 Access Operating Fee	9
	5.2 Access Channels	9
	5.3 Fallow Time on Access Channels	10
	5.4 Facilities and Equipment	11
	5.5 Access Organization	11
	5.6 Termination of Access Payments	11
	5.7 Emergency Override System	12
	5.8 Cable Service to Waiahole Elementary School	12
	5.9 Cable Service to Schools in Juvenile Detention and Correctional Facilities	13
	5.10 Reopening of Access Requirements	13
	5.11 Capital Contributions	13

	<u>PAGE</u>
VI. SUBSCRIBER SERVICE	13
6.1 Cable Television Division Notice	13
6.2 Customer Service Office	14
6.3 Telephone Service	14
6.4 Installation Service	15
6.5 Repair Service	15
VII. PROGRAMMING SERVICES	15
7.1 Mix, Quality, and Level of Service	15
7.2 Broad Categories of Programming	15
VIII. NETWORKS	16
8.1 Institutional Networks	16
8.2 PEG Access Interconnects	17
8.3 Interconnection for Access Purposes	17
8.4 Hawaii Interactive Television System	17
8.5 Capital Contributions	17
IX. MODIFICATION	17
9.1 Petition for Modification	17
X. TERMINATION	18
10.1 Cumulative Termination Rights	18
10.2 Six-Month Termination	18
10.3 New Franchise Application Not Excluded	18
XI. MISCELLANEOUS PROVISIONS	18
11.1 Headings	18
11.2 Successors	19
11.3 Notices	19
11.4 Annual Franchise Statements	19
11.5 Laws	19
11.6 Performance	19
11.7 Hold Harmless	19
11.8 Waiver	20
11.9 Time of Essence	20
11.10 Authority	20
11.11 Audit	20

TERMS AND CONDITIONS OF ORDER NO. 153

Section One Definitions

For purposes of these terms and conditions of Order No. 153, 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, the masculine pronoun includes the feminine pronoun, 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 (i) channel capacity designated for public, educational, or governmental use; and (ii) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by Oceanic to the Director or his designee for public, educational, or governmental uses pursuant to paragraph 5.1.

"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 Oceanic pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the most widely available level of service offered by Oceanic which includes the delivery of local television broadcast signals, Access Channels, leased channels, and local origination as covered by the regular charge paid by all Subscribers to obtain service, excluding premium and FM services.

"Cable Act" means the federal Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984).

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

"Cable Service" means the one-way transmission to Subscribers of video programming or other programming service together with subscriber interaction, if any, which is required for the selection of video programming or other programming services.

"Cable System" and "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3.

"Channel" means a minimum of six megahertz (6 MHz) in the electromagnetic spectrum which is capable of carrying any type of transmission which Oceanic 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.

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

"Emergency Authority" means the Director of Civil Defense, the City and County of Honolulu 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 of the Terms and Conditions.

"Feeder Line" means the coaxial or fiber optic cable running from the trunk line to line-extenders and taps for the purpose of interconnection to individual Subscribers.

"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 Oceanic, its affiliates, subsidiaries, parents, and any other person or entity in which Oceanic has a financial interest or which has a financial interest in Oceanic, arising from or attributable to operation of the Hawaii Cable System, including but not limited to:

- (a) revenue from all charges for entertainment and nonentertainment 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 retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Oceanic or others described above in consideration of performance by Oceanic or others described above of any advertising or other service in connection with the Cable System.

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

"Oceanic" means Oceanic Cablevision, a division of Time Warner Entertainment Company, L.P.

"Oceanic Cablevision, Inc." means Oceanic Cablevision, Inc., a Hawaii corporation, and holder of the cable franchise (Decision and Order Nos. 135, 137, and 151) being transferred to TWE.

"Order" or "Order No. 153" means Decision and Order No. 153 issued by the Director of Commerce and Consumer Affairs in Docket No. 92-01 and dated September 25, 1992, 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 System made available for use by individuals and organizations for noncommercial purposes.

"Public Highways" shall have the meaning set forth in Hawaii Revised Statute section 264-1.

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

"Service Area" means those areas of the island of Oahu, State of Hawaii for which Oceanic Cablevision, Inc. or its predecessors in interest were issued cable franchises pursuant to the following:

- (a) Decision and Order No. 2, dated October 21, 1970, for Kaimuki, as more particularly described therein;
- (b) Decision and Order No. 3, dated October 21, 1970, for Kailua, Kalihi and Kaneohe, as more particularly described therein;
- (c) Decision and Order No. 4, dated October 21, 1970, for areas of Honolulu, as more particularly described therein;

- (d) Decision and Order No. 5, dated October 21, 1970, for Waianae, as more particularly described therein;
- (e) Decision and Order No. 8, dated October 21, 1970, for Mililani Town, as more particularly described therein;
- (f) Decision and Order No. 9, dated October 21, 1970, for areas of Honolulu, as more particularly described therein;
- (g) Decision and Order No. 10, dated January 15, 1971, for Waianae, as more particularly described therein;
- (h) Decision and Order No. 12, dated August 12, 1971, for Ewa and West Beach, as more particularly described therein;
- (i) Decision and Order No. 15, dated August 12, 1971, for Central Oahu and the North Shore, as more particularly described therein;
- (j) Decision and Order No. 16, dated August 12, 1971, for areas of Honolulu, as more particularly described therein; and
- (k) Decision and Order No. 17, dated August 12, 1971, for the Windward Coast, Waimanalo, and Kalihi, as more particularly described therein.

"State" means the State of Hawaii.

"Subscriber" means any Person lawfully receiving any Service.

"TWE" means Time Warner Entertainment Company, L.P.

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

"Vertical Blanking Interval" means the horizontal lines transmitted between each field of a television broadcast signal.

Section Two Grant of Franchise

2.1 Grant of Franchise

(a) Pursuant to Hawaii Revised Statutes section 440G-4, the Director has granted to TWE a franchise in Order No. 153 subject to the applicable terms and conditions herein.

(b) It is the intent of the Director that in the event that any other franchises are granted in TWE's Service Area, the same standards and criteria as have been applied to TWE will be applied to any new cable operators.

2.2 Effective Date

The effective date of this franchise is September 25, 1992.

2.3 Term of Franchise

(a) The term of the franchise shall be the balance of the fifteen year franchise term granted to Oceanic Cablevision, Inc. under Order No. 135, as amended by Decision and Order Nos. 137 and 151, effective January 1, 1989. The term expires December 31, 2003, unless terminated as provided herein or by applicable Law.

(b) The term of the franchise shall be extended automatically for an additional five calendar years in the event that any of the following events occurs:

- (i) The Director approves TWE's proposal for a further System upgrade pursuant to paragraph 4.5; or
- (ii) TWE agrees to the Director's proposal for a further System upgrade pursuant to paragraph 4.6; or
- (iii) TWE commits to contribute a total of Thirty Million Dollars (\$30,000,000) to the Development Fund pursuant to paragraph 4.7.

In the event that the franchise is extended by five years, the termination date of the term of the franchise shall be December 31, 2008.

2.4 Service Area

This franchise shall cover all areas of the island of Oahu, State of Hawaii which Oceanic Cablevision, Inc. is currently authorized to serve and does not extend or alter the boundaries of Oceanic Cablevision Inc.'s existing Service Area.

2.5 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 specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other paragraph herein, the total amount of the Annual Fee for any calendar year plus the annual Access Operating Fee shall not exceed five percent (5%) of Oceanic's annual Gross Revenues.

2.6 Ownership of Own Facilities and Plant

(a) TWE shall maintain legal and equitable title to all of its present and future Cable System. TWE may lease all or a portion of its cable System to or 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 will result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's

control of distribution facilities; and (3) he is convinced that it is in the public interest to approve the proposed lease. The Director shall make such determination in his sole discretion.

2.7 Rate Regulation

(a) The Director reserves the right to regulate rates for cable service charged by TWE to the fullest extent permitted by Law.

(b) In the event of rate regulation, the Director shall regulate rates to ensure that they are fair both to the public and TWE taking into account the company's obligations under Order No. 153.

2.8 Antitrust

(a) Order No. 153 shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) Order No. 153 does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

Section Three Immediate System Upgrade

3.1 Ten Channel Upgrade

(a) TWE shall construct, reconstruct, rebuild, reconfigure, or upgrade its System to a minimum bandwidth of 360 MHz and provide ten available Channels. Such upgrade shall be completed as soon as possible and no later than December 31, 1991.

(b) The ten Channels specified in paragraph 3.1(a) shall be made available for reception in Subscriber's premises no later than December 31, 1993. This portion of the upgrade shall include the replacement as necessary of Subscribers' converters and other equipment which are necessary to enable all Subscribers to receive a minimum of 450 MHz transmissions and at least sixty Activated Channels.

(c) The ten channel upgrade shall be completed in accordance with the engineering plan in Oceanic Cablevision Inc.'s proposal submitted on August 1, 1988 or as modified and approved by the Director.

Section Four Future Systems Upgrades

4.1 Fiber Optic Upgrade to 450 MHz System

(a) TWE shall construct, reconstruct, rebuild, reconfigure or upgrade its System to a minimum bandwidth of 450 MHz by December 31, 1998, and provide a

minimum of sixty available Channels. Additionally, the entire fiber optic portion of this upgrade shall contain a minimum of four additional fibers which shall be reserved for future uses to be determined by the Director. For purposes of this section, this upgrade shall be referred to as the "450 MHz Upgrade."

(b) Except as provided in Section Eight Networks, the State shall be responsible for the cost of maintenance and activation of the additional fibers in the event that the Director determines that these fibers shall be used for State purposes.

(c) No later than July 15, 1991, Oceanic shall submit to the Director for his approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the 450 MHz Upgrade, and such other information as the Director deems necessary. The upgrade shall utilize fiber optic cable for all trunk and distribution lines and if commercially reasonable, extend to the homes.

4.2 Alternate Upgrade

In lieu of the 450 MHz Upgrade, Oceanic may submit to the Director an alternative proposal for his prior approval. This alternative must offer at a minimum the same reach and enhancement capabilities as the 450 MHz Upgrade. The alternative may include the use of some fiber optic technology. A system architecture which employs solely coaxial cables for trunk and distribution lines to minihubs shall not be deemed an acceptable replacement technology for fiber optic cable. The proposal shall contain a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule of construction, and such other information as the Director deems necessary. The alternative proposal shall be submitted by July 15, 1991.

4.3 Development Fund

(a) In the event that the Director has not approved by December 31, 1991, a plan pursuant to paragraphs 4.1 or 4.2, Oceanic shall set aside from its Gross Revenues Ten Million Dollars (\$10,000,000) each calendar year commencing with 1992. Further responsibility to set aside such amounts shall be discharged when the total amount set aside equals Forty Million Dollars (\$40,000,000) or when the Director has approved plans pursuant to paragraphs 4.1 or 4.2.

(b) Amounts set aside pursuant to paragraph 4.3(a) and all accrued interest shall be held in a bank or money market account or other investment vehicle approved by the Director which is designated as the "Development Fund." Deposits in the Development Fund shall be made no later than March 31st of each year for which a deposit is required.

(c) Amounts in the Development Fund including interest thereon shall not be commingled with other funds of TWE or any other entity. TWE shall have sole authority to draw on the Development Fund for the sole purpose of financing the upgrade. TWE shall not make any withdrawals from the Development Fund without the prior approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the upgrade, except upon written application to and prior written approval by the Director.

4.4 Director's Option to Release

The Director may propose a substitute upgrade plan. If such plan is agreed to by TWE, then TWE's obligations under paragraphs 4.1, 4.2 or 4.3 shall be released.

4.5 TWE's Proposed Upgrade

(a) No later than January 1, 2001, TWE may submit a proposal to the Director for his approval for a System upgrade to be constructed after 1998. This proposal shall contain a financial plan with detailed cost estimates, a detailed engineering plan, a schedule for construction, and such other information as the Director may require.

(b) If in his sole discretion the Director approves this proposal by June 30, 2001, then the term of the franchise shall be extended by an additional five years.

4.6 Director's Proposed Upgrade

The Director may propose at any time a plan for a System upgrade to be constructed after 1998. If TWE agrees to this proposal, then the term of the franchise shall be extended by an additional five years.

4.7 Development Fund II

(a) No later than January 1, 2002, TWE may notify the Director in writing that it has elected to contribute Thirty Million Dollars (\$30,000,000) to the Development Fund as specified in paragraph 4.7(b).

(b) For each calendar year commencing with 2002, TWE shall set aside the greater of Ten Million Dollars (\$10,000,000) or ten percent of Oceanic's annual gross revenues for a further system upgrade. The total amount set aside under this paragraph shall not exceed Thirty Million Dollars (\$30,000,000) and contributions to this fund shall not commence prior to 2002.

(c) Amounts set aside pursuant to paragraph 4.7(b) and all accrued interest shall be held in a bank or money market account or other investment vehicle approved by the Director which is designated as the "Development Fund." Deposits in the Development Fund shall be made no later than March 31st of each year for which a deposit is required.

(d) Amounts in the Development Fund including interest thereon shall not be commingled with other funds of TWE or any other entity. TWE shall have sole authority to draw on the Development Fund for the sole purpose of financing a further system upgrade. TWE shall not make any withdrawals from the Development Fund without the prior approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing an upgrade, except upon written application to and prior written approval by the Director.

4.8 Uses of Development Fund

If the Director and TWE agree, any balance in the Development Fund provided for in paragraphs 4.3 or 4.7 will be spent on constructing, operating, and/or

maintaining any alternative system architecture or upgrade proposed under this section.

Section Five Public, Educational and Governmental Access

5.1 Access Operating Fee

(a) During each and every year of the term of the franchise, TWE shall pay to the Director or his designee three percent of Oceanic's annual Gross Revenues. These payments shall be used for public, educational and governmental ("PEG" or "Access") uses. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(b) The estimated Access Operating Fee shall be payable each year on the first day of the calendar year based on Oceanic's estimated Gross Revenues for that year. For example, on January 1, 1993 the entire estimated three percent Access Operating Fee for 1993 shall be paid based on the estimated Gross Revenues for 1993.

(c) The amount of Access Operating Fees paid during a year shall amount to no less than two and four-tenths percent of Oceanic's actual Gross Revenues for the applicable one-year period. If TWE fails to pay the minimum estimated Access Operating Fees required by this subparagraph, such failure shall be a violation of this section.

(d) All payments of the Access Operating Fee shall be reconciled with the actual amount of Oceanic's 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 his 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.

5.2 Access Channels

(a) On the effective date of the franchise, TWE shall make available to the Director, or to his designee, three full-time Activated Channels. When the total number of Activated Channels on Oceanic's System is increased to forty-two, TWE shall make available to the Director, or to his designee, two additional full-time Activated Channels. Thereafter, TWE shall make available to the Director or his designee ten percent of all available Channels on Oceanic's System in excess of forty-two Activated Channels. Any fractional amount of a channel shall be rounded up to the next whole number of full-time Channels. Activated Channels made available to the Director or his designee under this paragraph shall be hereinafter referred to as "Access Channels." All Access Channels shall be made available by TWE at no cost to the State.

(b) KHET or any successor broadcast television channel operated by the Hawaii Public Broadcasting Authority shall not be deemed an Access Channel and

shall not be counted or included among the Channels required by paragraph 5.2(a) to be made available as an Access Channel.

(c) All Access Channels shall include their Vertical Blanking Intervals. The technical quality of all Access Channels shall be at least equal to the same technical quality as the Channels used by TWE to retransmit local off-the-air broadcast television stations which are affiliates of the major national broadcast networks and satisfy all requirements under the administrative rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes.

(d) TWE may use Access Channels required to be made available under paragraph 5.2(a) until such time as the Director or his designee gives sixty-days 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 his designee shall be subject to the fallow time provisions in paragraph 5.3.

(e) All Access Channels shall be used for PEG uses and shall be transmitted to Subscribers on TWE's Basic Service.

(f) The Director or his designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Governmental Access Channels; provided that allocations made with respect to public access shall comply with applicable Law.

(g) The Director or his designee shall not exercise any editorial control over the use by the public of a Public Access Channel.

(h) TWE shall not exercise any editorial control over any Access Channel.

5.3 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 seventy-two 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 seventy-two 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 the foregoing, at such time as any Access Channel has been programmed for a daily average of eight hours or fifty percent of the hours of Access Cablecast Days, whichever is less, during any ninety-day period, use of such Channel by TWE shall be suspended for such time as such minimum Access use of the Channel is maintained. This paragraph may be waived by the Director for good cause.

5.4 Facilities and Equipment

(a) TWE shall provide the Director or his designee capital funds for facilities and equipment for public, educational and governmental use on an annual basis on the following schedule:

<u>Amount</u>	<u>Due Date</u>
\$ 70,000	January 1, 1993
564,279	January 1, 1994
248,984	January 1, 1995
536,589	January 1, 1996
261,646	January 1, 1997
207,852	January 1, 1998
1,257,006	January 1, 1999
984,845	January 1, 2000
587,069	January 1, 2001
318,582	January 1, 2002
337,146	January 1, 2002

(b) In franchise years 1993 through 2003, TWE shall pay annually an amount equal to the amount specified above for each respective year multiplied by the ratio of the United States' Department of Labor Consumer Price Index for Urban Consumers ("CPIUC") (1982-1984 = 100) for the calendar year preceding that in which the payment accrues, divided by 120.2. In the event that the CPIUC is discontinued or replaced by the United States Bureau of Labor Statistics, the Director shall adopt a new index which shall be applied to payments.

(c) TWE shall provide capital funds for equipment and facilities for Access use after the year 2003 as determined pursuant to paragraph 5.10.

5.5 Access Organization

The Director may designate one or more entities pursuant to paragraphs 5.1, 5.2, and 5.4 to fund, control, manage or operate Access Facilities and Equipment. Any designated entity shall have a governing board with nine members. Three of the members shall be appointed by TWE and six shall be appointed by the Director. Designated entities may include one entity with oversight powers and another entity which owns and operates Access Facilities and Equipment.

5.6 Termination of Access Payments

(a) TWE may suspend making payments under paragraphs 5.1, 5.4, and 5.10 if any of the following events occur:

- (1) A minimum of seventy-five percent 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.

5.7 Emergency Override System

(a) TWE shall configure and maintain its System to permit emergency authorities to override, simultaneously by remote control, all audio and video Channels. Emergency authorities shall include the Director of Civil Defense and any other Person designated by the Director. 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 operations 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) The voice feed from the Emergency Broadcast System shall be transmitted by a combination landline and radio relay system which is similar to the system presently used by radio broadcast stations.

(e) TWE shall purchase an Emergency Broadcast System receiver of the same type which radio broadcast stations are required by the FCC to purchase.

(f) TWE shall provide a Cable Drop and Basic Service at no cost to the State Emergency Operating Center at Diamond Head Tunnel and the Oahu Civil Defense Agency at Honolulu Hale.

(g) TWE shall permit tests of the Emergency Override System in a manner and on a frequency as requested by the Director of Civil Defense.

(h) As of July 1, 1992, TWE shall provide complete video and audio override capacity on all Channels on its System in order that the Director of Civil Defense may transmit emergency programming from a studio at the emergency operating center at Diamond Head Tunnel.

(i) As of July 1, 1992, TWE shall provide at no cost an access hardline for voice and video upstream capability to TWE's master headend from the studio at the State emergency operating center at Diamond Head Tunnel.

(j) As of July 1, 1996, TWE shall provide a bidirectional interconnection capable of voice, video, and computer data transmissions for the Emergency Override System described herein, between its System and other cable systems and telecommunication systems as required by the Director. Such interconnection capability shall utilize to the extent possible the Hawaii Interactive Television System or other inter-island telecommunication systems.

(k) TWE shall cooperate fully with the Director of Civil Defense and any other emergency authorities designated by the Director in the planning and implementation of the Emergency Override System.

5.8 Cable Service to Waiahole Elementary School

At no cost to the State, TWE shall provide a Cable Drop and Basic Service to Waiahole Elementary School upon completion of the road widening project to the school.

5.9 Cable Service to Schools in Juvenile Detention and Correctional Facilities

At no cost to the State, TWE shall provide a Cable Drop and Basic Service to each school located in a juvenile detention and correctional facility in its Service Area.

5.10 Reopening of Access Requirements

(a) After December 31, 2001, the Director may commence proceedings for the purpose of identifying the future cable-related community needs and interests.

(b) After December 31, 2003, the Director may require TWE to provide additional Access Operating Fees and capital funds for facilities and equipment subject to the limits set forth in paragraphs 5.10(c) and 5.10(d).

(c) The annual payment of capital funds for facilities and equipment for the remainder of the franchise term shall not exceed one hundred and thirty-three percent of the average annual payment for facilities and equipment under paragraph 5.4. In computing the average annual payment for facilities and equipment under paragraph 5.4, TWE in addition to those amounts listed in 5.4(a), shall include the payments made by Oceanic Cablevision, Inc. in the amount of \$1,941,088 for the year 1989, \$1,196,491 for the year 1990, \$724,921 for the year 1991, and \$50,000 for the year 1992.

(d) If the Director determines that access needs are substantially in excess of needs ascertained during the ascertainment proceeding conducted prior to the issuance to Oceanic Cablevision, Inc. of Order No. 135, then the total amount of the annual Access Operating Fee required by paragraph 5.1 may be increased from an amount equal to three percent of Oceanic's annual Gross Revenues to a maximum annual amount equal to four and one-half percent of Gross Revenues.

5.11 Capital Contributions

The facilities and equipment required to be provided and the funds for the provision of facilities and equipment required to be provided by Oceanic under paragraph 5.4 and paragraph 5.10 shall be deemed to be capital contributions under section 622(g)(2)(C) of the Cable Act.

Section Six Subscriber Service

6.1 Cable Television Division Notice

In order to promote subscriber awareness of the availability of State assistance to Subscribers, TWE shall print on its monthly bill sent to Subscribers, a single line item which contains the name and telephone number of the Cable Television Division. The format and placement of the entry shall be subject to prior approval by the Director.

6.2 Customer Service Office

(a) TWE shall maintain and operate within its Service Area at least two customer service offices to accept payments from Subscribers, returns of converters, 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) At a minimum, each of the consumer service offices shall be open for walk-in business nine hours each weekday, and eight hours on Saturdays. The specific hours of operation shall be those hours determined by TWE to be most convenient for its subscribers. These requirements shall not apply to legal holidays.

6.3 Telephone Service

(a) TWE shall have a publicly listed local telephone number which shall be open at a minimum for telephone business for eleven hours each weekday and for eight hours on Saturdays as determined by TWE to be most convenient for its subscribers. These requirements shall not apply to legal holidays.

(b) TWE shall have a special repair service local telephone number which shall be open at a minimum for sixteen and one-half hours each weekday, for twelve and one-half hours on Saturdays, and for eight and one-half hours on Sundays and all legal holidays. The specific hours of operation shall be those hours determined by TWE to be most convenient for its subscribers. At all other times, TWE shall have at a minimum an answering service to take calls.

(c) Within thirty 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.

(d) 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.

(e) Based on the above information, the Director may require TWE to improve its telephone service.

6.4 Installation Service

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

6.5 Repair Service

TWE shall at a minimum provide repair service twelve hours each week day and eight hours on Saturdays, Sundays, and all legal holidays.

Section Seven Programming Services

7.1 Mix, Quality, and Level of Service

TWE shall not alter its current mix, quality, and level of programming services without first obtaining the approval of the Director; provided that such approval shall not be unreasonably withheld.

7.2 Broad Categories of Programming

(a) TWE has offered to continue to provide the video programming Oceanic Cablevision, Inc. currently offers.

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

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Public nonprofit station with national programming;
- (5) National sports programming;
- (6) National news programming;
- (7) Broadcast television stations as required by the FCC or applicable Law;
- (8) General entertainment including, for example, music, children's, cultural, and special interest programming.

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

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

Section Eight Networks

8.1 Institutional Networks

(a) TWE shall provide and maintain interconnections by installing fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities at no charge or cost to the State between the following points:

- (1) The State government complex in downtown Honolulu (hereinafter the "Civic Center") and Oceanic's master headend;
- (2) The Civic Center and the University of Hawaii at Manoa;
- (3) The Civic Center and Kapiolani Community College at Diamond Head; and
- (4) The Civic Center and Kapolei/Ewa second city complex.

(b) Within twelve months of a request by the Director, TWE shall install and maintain fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting institutional network sites determined by the Director, at no cost to the State, except for the actual cost for labor and materials.

- (1) Upon submission of invoices for the cost of such interconnections, together with supporting documentation as may be required, and approval by the Director, the State shall promptly reimburse TWE for the cost of such interconnections. Supporting documentation may include, but is not limited to, the 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; and rental value of equipment and machinery.
- (2) The State when requesting such interconnection shall be cognizant of TWE's scheduling, manpower, and resource requirements.
- (3) Upon written request by TWE, the Director may grant an extension for the installation of an interconnection requested under paragraph 8.1 (b) for good cause.

(c) TWE together with the Director's staff, consultants, and designees shall design, develop, and implement coordinated plans for the institutional network's construction.

8.2 PEG Access Interconnects

(a) TWE shall provide and maintain at no charge or cost to the State upstream electronics and links to its Cable System from the following PEG origination studios: University of Hawaii at Manoa, Leeward Community College, a public access studio to be designated by the Director, the Department of Education administration building, and three government sites located in the Civic Center to be selected by the Director. TWE shall perform these services within six (6) months after receiving notice from the Director.

(b) TWE shall provide and maintain at no charge or cost to the State, except for TWE's cost for labor and materials, upstream electronics and links to its Cable System from the following four Department of Education high schools: Moanalua, Kalaheo, Campbell and McKinley. These links shall be completed upon six (6) months notice by the Director.

(c) If there are additional PEG access origination sites established during the term of the franchise, TWE shall provide and maintain the upstream electronics and links to its Cable System from these sites at no cost or charge to the State except for TWE's cost for labor and materials. TWE shall perform these services within six (6) months after receiving notice from the Director.

8.3 Interconnection for Access Purposes

TWE shall cooperate with other cable systems on Oahu to interconnect their cable systems for the purpose of carrying access programming.

8.4 Hawaii Interactive Television System

Within six 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.

8.5 Capital Contributions

The items and services required to be provided by this section at no charge or cost to the State shall be deemed to be capital contributions under section 622(g)(2)(C) of the Cable Act.

Section Nine Modification

9.1 Petition for Modification

(a) No provision of Order No. 153 shall preclude TWE from petitioning the Director for a modification of any provision of Order No. 153 for any reason including but not limited to the following: (1) a change in federal law which would permit the Director to regulate rates under any circumstances; (2) the emergence of increased competition to the cable services offered by TWE; or (3) underutilization of access facilities and equipment. The Director may in his sole discretion issue an appropriate modification of Order No. 153.

(b) In determining any modification of Order No. 153, the Director shall take into account the geographic, topographic, and economic characteristics of the 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 Ten Termination

10.1 Cumulative Termination Rights

The termination provisions herein shall be in addition to and not in derogation of any other rights or remedies which the Director may have with respect to the subject matter of Order No. 153.

10.2 Six Month Termination

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (i) declares any part of section three (Immediate System Upgrade), section four (Future System Upgrade), section five (Public, Educational and Governmental Access), or section eight (Networks) of these terms and conditions invalid or (ii) requires or allows TWE either to (a) perform any act which is inconsistent with any provision of such sections or (b) 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, in no event shall the franchise be terminated under paragraph 10.2(a) prior to the end of the fifth franchise year.

(c) The termination provisions of paragraph 10.2(a) shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided that TWE has given prior written notice to the Director of such voluntary performance.

10.3 New Franchise Application Not Excluded

In the event that TWE's franchise is terminated pursuant to paragraph 10.2, nothing herein shall prevent TWE from applying for a new franchise.

Section Eleven Miscellaneous Provisions

11.1 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 way affect the construction or interpretation hereof.

11.2 Successors

All of the provisions of Order No. 153 and these terms and conditions shall apply to the Director, TWE and their respective successors.

11.3 Notices

All required notices to the Director under Order No. 153 shall be made in writing and shall be submitted to the Cable Television Administrator, 1001 Bishop Street, Suite 1460, Honolulu, Hawaii or at such locations as may otherwise be specified by the Director.

11.4 Annual Financial Statements

(a) TWE shall submit audited financial statements of TWE and of the Hawaii Cable System for years ending December 31, 1992, 1993, and 1994. Thereafter, by April 30 of each year, TWE shall submit financial review statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each such 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 Hawaii cable operations on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 11.4(a) 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.

11.5 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 Hawaii cable 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 paragraph.

11.6 Performance

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

11.7 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.

11.8 Waiver

The Director reserves the right to waive any condition of this Order for good cause.

11.9 Time of Essence

Time is of the essence with respect to this Order.

11.10 Authority

The State may, from time to time, 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 may, from time to time, issue such orders governing TWE as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or State law, as said law may be amended or modified throughout the term of this Order. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

11.11 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, by statute or by rules, the Director may require TWE to pay the cost of the audit.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 153 in Docket No. 92-01 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 25th day of September, 1992:

KEVIN S. C. CHANG, ESQ.
Watanabe, Ing & Kawashima
745 Fort Street
5th & 6th Floors
Honolulu, HI 96813

DON E. CARROLL
President
Oceanic Cablevision, Inc.
200 Akamainui Street
Wahiawa, HI 96786



Patti K. Kodama
Secretary