

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

In the Matter of) **DECISION AND ORDER NO. 336**
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
)
Adjustment to Annual Fee Paid by Cable)
Operator to the Department of)
Commerce and Consumer Affairs.)
_____)

DECISION AND ORDER NO. 336

I. **INTRODUCTION**

- A. The Department of Commerce and Consumer Affairs (“**Department**”) has issued cable television franchises to Time Warner Entertainment, L.P. (“**TWE**”), the sole cable operator in the State of Hawaii (“**State**”). These franchises cover the following areas (“**franchise areas**”): Island of Oahu, Island of Kauai, Maui County (excluding Lahaina), Lahaina, West Hawaii (Kona and Kohala) and East Hawaii (Hilo and Kau).
- B. Under Hawaii Revised Statutes (“**HRS**”) § 440G-15(a), each cable operator is required to pay an annual fee to the Department (“**Department Annual Fee**”) that is determined by the Department Director (“**Director**”).
- C. Under HRS § 440G-15(b), the Director has the authority to adjust the Department Annual Fee pursuant to rules adopted in accordance with HRS chapter 91.

- D. Hawaii Administrative Rules (“**HAR**”) § 16-132-2(a) establishes the Department Annual Fee for each cable operator at one per cent (1%) of the income received from subscribers for cable television services rendered during the preceding calendar year.
- E. In addition HAR § 16-132-2(c) authorizes the Director to increase or decrease the amount of the Department Annual Fee by decision and order, if the Director determines that the Department Annual Fee is insufficient or exceeds the amount necessary to cover the costs of administering HRS chapter 440G.

II. FINDINGS OF FACT

- A. Pursuant to Decision and Order No. 323, the Department Annual Fee was reduced from one per cent (1%) to zero per cent (0 %) of the income received from subscribers for cable television services rendered during the preceding calendar year, commencing November 1, 2005.
- F. The assessment related to the Department Annual Fee is included in the franchise fee amount listed on the monthly bills for cable television subscribers. TWE adjusted the amount collected from cable television subscribers for franchise fees to reflect the reduction to 0% in the amount of the Department Annual Fee.
- G. During the period of the zero per cent (0%) Department Annual Fee, the Department utilized its reserves to fund the costs of administering HRS chapter 440G.

- H. The Department is now in need of funds to support the costs of administering HRS chapter 440G.

III. **CONCLUSION**

- A. The existing Department Annual Fee of zero per cent (0%) for each cable operator is insufficient to cover the costs of administering HRS chapter 440G.
- B. It is necessary, therefore, to increase the amount of the Department Annual Fee from cable operators from zero per cent (0%) to one per cent (1%) to provide sufficient funds to support the costs of administering HRS chapter 440G.
- C. The Federal Communications Commission (FCC) subscriber rate regulation, see *The City of Pasadena, Cal., et al.*, Petitions for Declaratory Ruling on Franchise Fee Pass Through Issues, Memorandum Opinion and Order, 16 FCC Rcd. 18192, 2001 WL 1167612 (FCC), permits cable operators to pass through the amount of the franchise fee to cable subscribers.

IV. **ORDER**

- A. Commencing December 1, 2007, the Department Annual Fee for TWE shall be increased from zero per cent (0%) to one per cent (1 %).
- B. TWE may pass through to their cable television subscribers, the increase in the amount of the Department Annual Fee commencing with its December 2007 billing cycles.

- C. TWE shall restart payments of the Department Annual Fee on the last day of January 2008.
- D. Notwithstanding any decision and order to the contrary, the Director may reconsider, in his sole discretion, the amount of the Department Annual Fee payments at any time.

Dated: Honolulu, Hawaii, October 1, 2007.



LAWRENCE M. REIFURTH
Director of Commerce and Consumer
Affairs