

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

In the Matter of )  
)  
TIME WARNER ENTERTAINMENT ) **DECISION AND ORDER NO. 339**  
COMPANY, L.P. )  
)  
Franchise Amendment Regarding )  
Appointment and Removal of Board )  
Members of the Designated PEG Access )  
Organization in the Oahu Cable )  
Franchise Area. )  
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**DECISION AND ORDER NO. 339**

**I. INTRODUCTION**

- A. Pursuant to Hawaii Revised Statutes (“**HRS**”) section 440G-3, a public, educational, and governmental (“**PEG**”) “access organization” means in relevant part, “any nonprofit organization designated by the Director to oversee the development, operation, supervision, management, production, or broadcasting of programs for access channels obtained under section 440G-8, and any officers, agents, and employees of such an organization”.
- B. Pursuant to Section 5.5, Access Organization, of the Terms and Conditions (“**Section 5.5**”) of Decision and Order (“**D&O**”) No. 154, as amended by D&O No. 261, the Director of Commerce and Consumer Affairs (“**Director**” or “**Department**”) may designate one or more entities to fund, control, manage or operate the PEG access facilities and equipment.

- C. Section 5.5 also provides that any designated PEG access organization shall have a governing board with nine (9) members, with six (6) of the nine members appointed by the Director and three (3) members appointed by Time Warner Entertainment Company, L.P. (“**TWE**”), dba Oceanic Cablevision, the cable operator on Oahu.

## II. FACTS

- A. On or about September 22, 1989, ‘Olelo Community Television (“**‘Olelo**”)<sup>1</sup> was incorporated as a private nonprofit corporation whose purpose was to promote the creation, production and cablecasting of programs by, for, and about Hawaii, and to maintain cable channels dedicated to PEG access use.
- B. By a written agreement dated January 19, 1990, ‘Olelo was recognized as the entity designated by the Director to manage the PEG access channels and receive the PEG Access Operating Fees and the facilities and equipment fund contributions by the cable operators.
- C. Subsequently, pursuant to a December 24, 1998 Agreement (“**1998 Agreement**”) between the Department and ‘Olelo, ‘Olelo was contracted to manage and operate the PEG access channels, receive the PEG Access Operating Fees and facilities and equipment fund contributions, and manage the PEG access facilities and equipment for TWE’s Oahu franchise area.
- D. Through various Supplemental Agreements, the term of the 1998 Agreement has been extended to December 31, 2008.

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<sup>1</sup> Formerly known as “‘Olelo: the Corporation for Community Television.”

- E. From approximately 1990 to September 2006, the Director and TWE appointed directors to 'Olelo's Board of Directors in accordance with Section 5.5.
- F. On June 16, 2006, the State Procurement Office ("**SPO**") determined that the Department's contracts for PEG access services must be awarded in accordance with the Public Procurement Code ("**Code**") in HRS chapter 103D.
- G. Consequently, in a letter dated September 19, 2006, the Director informed 'Olelo and the other PEG access organizations that the Director would no longer be exercising the Director's authority regarding the appointment and/or removal of board members of the PEG access organizations in light of SPO's determination.
- H. In addition, the Director informed 'Olelo that it was free to determine, after consultation and discussion with the cable operator, its own policy with regard to any board members appointed by TWE. The Director also affirmed that at least one board member should be elected, and the process to seat an elected board member shall remain unchanged pending completion of the RFP process.
- I. The Director, however, reserved the right to reinstate the Department's authority regarding the appointment and removal of board members in the event there was a change in the determination that the PEG access services contracts are subject to the Code, or it was in the public's interest to do so.

J. By letter dated November 15, 2006, 'Olelo informed the Department that its Board of Directors unanimously approved to amend its bylaws at its November 2, 2006 Board Meeting to expand the Board from nine (9) to fifteen (15) members and to retain the Elected Director position and the appointment of three (3) members by TWE.

### III. CONCLUSION

Based upon the foregoing, the Director concludes that 'Olelo, as well as the other designated PEG access organizations in the State of Hawaii should be responsible for their own governance structure and process (i.e., determining the number of, composition of, and process to select and remove its board members).

### IV. ORDER

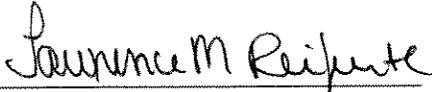
A. Accordingly, the Department hereby orders that Section 5.5, Access Organization, of the Terms and Conditions of D&O No. 154 is amended in its entirety to read as follows:

“The Director or the Director’s designee may designate one or more entities to manage and operate the PEG Access Facilities and Equipment. Any designated PEG access organization shall have a governing board, with the number of board members and composition specified in its bylaws. Prior to September 2006, the Director formerly appointed six members to the designated PEG access organization’s Board of Directors; however, the Director no longer shall exercise the Director’s authority to appoint and/or remove board members to the PEG access organization’s board; provided that (a) at least one board member shall be elected, and the process to seat an elected board member shall remain unchanged and in effect; and (b) the Director reserves the right to reinstate the Director’s authority regarding the appointment and removal of the PEG access organization’s board of directors in the event there is a

change in the determination that PEG access services contracts are subject to the public procurement process in Hawaii Revised Statutes chapter 103D, or it is in the public's interest to do so."

- B. Except as otherwise provided in this Decision and Order, the remaining provisions of D&O No. 154 (including but not limited to section 5.5), as amended by D&O Nos. 156, 158, 243, 261, 320, and 326, shall continue to remain in full force and effect.

Dated: Honolulu, Hawaii, July 24, 2008.

  
LAWRENCE M. REIFURTH  
Director of Commerce and  
Consumer Affairs