

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

In the Matter of)
)
TIME WARNER ENTERTAINMENT) **NOTICE OF FINDINGS OF FACT**
COMPANY, L.P.) **AND INTENT TO ISSUE A DECISION**
) **AND ORDER**
)
Migration of Analog Education Channels)
to Digital Format for its East Hawaii (Hilo)) **CATV-12-02**
Cable Television Franchise.)
)
_____)

NOTICE OF FINDINGS OF FACT AND
INTENT TO ISSUE A DECISION AND ORDER

I. FINDINGS OF FACT

- A. On or about April 8, 1996, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") issued Decision and Order No. 185 ("**D&O 185**") to Time Warner Entertainment Company, L.P. ("**TWE**").
1. Among other things, D&O 185 approved the transfer of the East Hawaii cable television franchise held by Jones Spacelink of Hawaii Inc. for the Honokaa, Hilo, Volcano and Pahoia areas of the Island of Hawaii to TWE and extended the existing service area to include the Hamakua area (census track 220).
 2. Section One ("Definitions") of D&O 185 defines a "Channel" as "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." This definition was based upon the existing analog technology available at that time and that analog technology would be employed in the distribution of video programming to TWE's East Hawaii subscribers in the future.
 3. By Decisions and Orders No. 241 and 242, TWE acquired the Ka'u area of the island of Hawaii, census track 212, and was consolidated and incorporated into TWE's East Hawaii cable system.

4. Pursuant to D&O 185, as amended, TWE's cable franchise for its East Hawaii system expired on December 31, 2011. By Letter Agreement dated February 24, 2012, the term of TWE's East Hawaii cable franchise was extended to April 16, 2012.
- B. Over the past decade, the development and implementation of digital technology has increased rapidly nationwide, and the current trend is that all aspects of communication, including the transmission of video programming and other broadband services, are being converted to digital.
- C. In 2009, the American Recovery and Reinvestment Act of 2009 ("ARRA") was enacted by the United States Congress to, among other things, stimulate the development of broadband infrastructure and services through grants and loans.
- D. The United States Federal Communications Commission ("FCC") mandated that all full power broadcast television stations were required to complete the transition from analog to digital only broadcast by June 2009. Full power broadcast stations in the State of Hawaii, however, completed this transition early, moving fully to digital broadcasts by January 15, 2009.
 1. As part of the digital TV transition, millions of households across the country were required to either obtain and install digital to analog conversion boxes, or to purchase new TV sets, in order to receive over-the-air digital broadcasts.
 2. In addition to this, almost all TV sets manufactured since 2007 are now equipped with QAM tuners.
- E. On or about January 14, 2010, the Department issued Decision and Order No. 346 ("D&O 346") to TWE, which among other things, renewed TWE's cable franchise for the island of Oahu.
 1. In D&O 346, the Department recognized that TWE's migration of its cable spectrum currently used for analog transmissions to digital format would benefit consumers because TWE would be able to offer its Subscribers enhanced services, including greater choices in high-definition programming, more efficient means of viewing programs and videos, and substantial increases in broadband speeds.
 2. Pursuant to D&O 346, TWE was authorized to transition any Channel in its analog lineup to digital service in its Oahu cable franchise, subject to an enumerated schedule for the public, educational, and governmental ("PEG") access channels; provided that TWE ensured that all Subscribers would have access to PEG channels and non-Access channels on the basic service tier. TWE

was directed to provide, at no charge, digital set-top boxes or similar devices to Subscribers who did not have digital access but who wished to view the Basic Service Tier programming that had been converted to digital format.

- F. On August 23, 2011, the State adopted the Hawaii Broadband Initiative to ensure ubiquitous access to up to one gigabit-per-second broadband service at affordable prices throughout Hawaii and to increase the use of high-speed broadband services and applications for economic development, health care, education, public safety, governmental efficiency, and civic engagement. The Hawaii Broadband Initiative promoted the use of digital technology to drive innovation, the economy and job creation in the 21st century in Hawaii.
- G. During 2010 and throughout the first half of 2011, TWE consulted and worked directly with representatives from the University of Hawaii ("UH"), the Hawaii Educational Networking Consortium ("HENC"), and the Hawaii State Department of Education ("State DOE") to work out the technical details and scheduling of the migration of the TEC (Channel 55) and TEACH (Channel 56) Education Channels from analog to digital format on the island of Oahu.
- H. On or about July and August 2011, TWE provided notification to its Oahu Subscribers that the TEC Education Channel 55 on Oahu would remain on the Basic Service Tier but would be moving to digital format only and be viewable with digital equipment (e.g., a digital set-top box, a CableCARD-equipped Unidirectional Digital Cable Product, or a digital television (or other device)). TWE further informed Subscribers that as of September 12, 2011, TEC would be found on Channel 355 when using a digital set-top box or on QAM Channel 46.55 and offered to provide analog Subscribers with converter boxes to view the migrated TEC Education Channel at no additional cost. TWE also informed the Department of its proposed migration plans and date for the TEC Education Channel on Oahu.
- I. On or about September 12, 2011, the TEC Education Channel 55 was relocated from the analog cable Channel line-up on Oahu to digital format only at Channel 355 (QAM 46.55).
- J. During the fall of 2011, TWE, the UH, the State DOE, and HENC continued to confer and work towards the digital migration of the TEACH Education Channel 56 in TWE's neighbor island franchises: the East Hawaii and West Hawaii cable franchises on the Big Island, the Kahului and Lahaina cable franchises in Maui County, and the Kauai cable franchise. TWE also consulted and conferred with the University of Hawaii Maui College ("UHMC") to resolve UHMC's concerns about the

scheduling of the TEC Education Channel migration in the Maui County franchise areas.

- K. On or about September 28, 2011, the Department received written notification from TWE that it planned to migrate the TEC Education Channel 55 for its neighbor island franchises to digital format only by January 31, 2012.
- L. By letter dated October 17, 2011, TWE also informed the Department that on or about December 19, 2011, the statewide TEACH Education Channel 56 would remain on the Basic Service Tier but would be made available in digital format.
- M. On or about October and November 2011, TWE provided notifications to its neighbor island Subscribers of the digital migration dates of the TEC and TEACH Education channels on their monthly statements. TWE informed customers that TEACH Education Channel 56 would be moved from the analog lineup to digital Channel 356 and QAM Channel 46.56, and that TEC Education Channel 55 would be moved from analog to digital format only on digital Channel 355 and QAM Channel 46.55.
 - 1. The monthly statements also informed neighbor island Subscribers that although the TEC and TEACH Education Channels will remain on the Basic Service Tier, they will only be viewable with digital equipment (e.g., a digital set-top box, a CableCARD-equipped Unidirectional Digital Cable Product, or a digital television (or other device) with a QAM tuner).
 - 2. For Subscribers who need digital equipment to view the migrated Channels, TWE will provide digital converters upon request, at no additional cost; provided that the Subscriber continued to maintain the Subscriber's existing analog service from TWE.
- N. On or about November 2011, the Department received comments from the neighbor island PEG access organizations, Akaku Maui Community Television ("**Akaku**"), Ho`ike Kauai Community Television ("**Ho`ike**"), and Na Leo `O Hawaii ("**Na Leo**"), that TWE had not contacted nor consulted with them about the proposed migration of the TEC and TEACH Education Channels to digital format.
- O. The Department and TWE subsequently engaged in discussions to resolve the Department's concerns regarding TWE's set-top converter box policy for customers who wish to view the migrated digital TEC and TEACH Education Channels, and to ensure that TWE provided sufficient notification to its analog customers and the neighbor island PEG access organizations about its proposal to move the TEC and TEACH Education Channels to digital format.

P. On or about December 16, 2011, TWE informed the Department of its policy with respect to the distribution of digital set-top boxes to new and existing analog Subscribers in TWE's neighbor island franchises who may wish to view the TEC and TEACH Education Channels after the migration to digital format only:

1. For any new or existing analog Subscriber who is also a bona fide student and who requires a digital box to view the TEC and/or TEACH Education Channels after the digital migration, TWE will provide upon request and at any time, one digital box free of charge, and an additional box without cost upon further request.
2. For all other new or existing analog Subscribers who desire to view the TEC and/or TEACH Education Channels and require digital boxes to do so, TWE will provide, upon request, up to two (2) digital boxes (and evaluate requests for additional boxes on a case by case basis) free of charge; provided that the analog Subscriber maintains the same level of service with TWE.
3. TWE will make the requested boxes available to Subscribers through its customer service centers and also through its mail service.
4. If a Subscriber had special needs or required special technical assistance, TWE will install the requested set-top box at the Subscriber's location at no additional charge.
5. TWE and the Department agreed to meet and confer to further discuss TWE's box distribution policy.
6. TWE agreed to inform the neighbor island PEG access organizations of the digital migration plan for the Education Channels and of its set-top box distribution plans.

Q. On or about December 16, 2011, TWE made efforts to contact each neighbor island PEG access organization to provide information on the digital migration of the TEC and TEACH Education Channels in their respective cable franchise area.

1. On or about December 16, 2011, TWE informed the Department that a TWE representative had contacted Akaku and notified it of the migration of the Education Channels to the digital tier and of the availability of set-top converter boxes at no additional cost to analog Subscribers.
2. TWE also informed the Department that a TWE representative on or about December 16, 2011, had contacted Ho`ike and provided verbal notification of the proposed migration of the Education

Channels to the digital tier and of the availability of set-top converter boxes at no additional cost to analog Subscribers.

- R. On or about December 19, 2011, the TEACH Education Channel 56 was transitioned to digital format only. The TEACH Channel statewide remained on the Basic Service Tier viewable with a digital set-top box or a digital TV with a QAM tuner.
- S. On or about January 8, 2012, TWE proceeded with the digital migration of TEC Education Channel 55 for the Kauai, East Hawaii and West Hawaii cable franchises. The TEC Education Channel remained on the Basic Service Tier and was viewable with a digital set-top box or a digital TV with a QAM tuner.
- T. TWE also informed the Department that given the continuing objections to the full migration of the Education Channels on Maui, it was not proceeding with the transition of TEC Education Channel 55 for the Kahului and Lahaina cable franchise systems to digital format at that time, that TEC Education Channel 55 would remain in its analog channel lineup until further notice by TWE, and that digital services to UHMC were postponed.
- U. TWE reported to the Department that the amount of bandwidth recovered on Kauai and the Big Island as a result of the digital migration of the TEC and TEACH Education Channels is approximately twelve (12) MHz.
- V. TWE also reported to the Department that for the Kahului and Lahaina franchises, the bandwidth recovery from the transition of the TEACH Education Channel is approximately six (6) MHz.
- W. TWE informed the Department that consistent with consumer demand, it would be using the recovered bandwidth on the neighbor islands for the benefit of all customers on the neighbor islands to increase broadband speeds, to add additional video- on-demand Channels, to increase the number of high definition Channels among other improvements, and to launch the statewide education and government franchise required Channels required in D&O 346.
- X. On or about February 14, 2012, TWE requested a waiver (pursuant to Section 12.8 of D&Os 173, 174, 185, and 241; and Section 11.8 of D&O 291) of the applicable provisions in D&Os 173, 174, 185, 241, and 291 that defined a "Channel" as "a minimum of six megahertz (6 MHz) in the electromagnetic spectrum" for the purpose of migrating the TEC and TEACH Education Channels on the neighbor islands to the digital spectrum and recovering the attendant bandwidth for the purposes stated. In general, TWE's digital migration of the TEC and TEACH Education Channels allows TWE to continue to provide increased speeds for its

Road Runner High Speed Online, Road Runner Extreme and Road Runner Wideband services on the neighbor islands while also making it possible to launch the statewide education and government channels required by the Oahu franchise, D&O 346. In addition the digital migration of the Education Channels on the neighbor islands also enables TWE to provide digital and high definition channels to neighbor island residents and to further increase broadband speeds in 2012 commensurate with consumer demand.

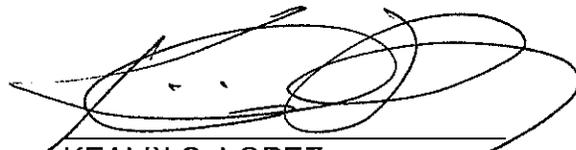
- Y. On or about February 17, 2012, TWE reported to the Department that a TWE representative had contacted Ho`ike again and also spoke to Na Leo to explain TWE's policies and plans regarding the continued migration of analog channels to digital format.
- Z. Based upon the above, the Department finds that TWE has provided reasonable notice to the Department and its East Hawaii cable Subscribers of its planned migration of the TEC and TEACH Education Channels to digital format only.
- AA. The Department also finds that initially, TWE did not effectively communicate with the neighbor island PEG access organizations prior to the migration of the TEC and TEACH Education Channels to digital Channels 355 and 356, respectively. However, the Department finds that TWE eventually remedied this situation and provided information to the neighbor island PEG access organizations about the digital migration of its analog Channels to digital format and about its box distribution policy.
- BB. The Department further finds that TWE consulted and worked with education providers on the scheduling of the migration of the Education Channels, and on the development of enhanced video services as part of the bandwidth recovery effort.
- CC. Furthermore, the Department finds that TWE's set-top box distribution plan ensures that analog Subscribers who wish to view the migrated Channels have the equipment to do so at no cost and those current analog Subscribers who own TV sets equipped with QAM tuners will not need any special equipment to view the TEC and TEACH Education Channels.
- DD. The Department further finds that as a result of the digital migration of the TEC and TEACH Education Channels, TWE will be recovering bandwidth, and this recovered bandwidth should be utilized on the neighbor islands including the East Hawaii cable franchise, to benefit neighbor island residents, to upgrade broadband speeds and services, and to provide enhanced flexibility to the neighbor island Education partners and enhanced video-on-demand services for UHMC.

- EE. The Department observes that pursuant to Section 12.8 of D&O 185, the Director has the authority to waive any requirement of the franchise order for "good cause."
- FF. The Department finds that TWE's digital migration of the TEC and TEACH Education Channels constitutes "good cause" under Section 12.8 of D&O 185 to waive the six megahertz (6 MHz) requirement in the definition of "Channel" in D&O 185.

II. INTENT TO ISSUE A DECISION AND ORDER

Based on the foregoing, the Department intends to issue a Decision and Order addressing TWE's request for a waiver from the definition of "Channel" in D&O 185. (The Department will address separately TWE's concurrent requests for waiver from the definition of "Channel" in D&Os 173, 174, 241, and 291.) However, prior to issuing a Decision and Order, interested persons may submit written comments to the Department on TWE's request for a waiver described above within thirty (30) calendar days from the date of this Notice. The Department will consider the comments timely submitted, and issue its Decision and Order thereafter.

DATED: Honolulu, Hawaii. March 5, 2012.



KEALI'I S. LOPEZ
Director of Commerce and Consumer Affairs