

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

In the Matter of the Application)	
of)	NOTICE OF FINDINGS OF FACT
)	AND PROPOSED DECISION AND
TIME WARNER ENTERTAINMENT)	ORDER
COMPANY, L.P.)	
)	CATV-03-2
For the Extension of its Cable)	
Television Franchise for the Island)	
of Maui (Excluding Lahaina).)	
_____)	

**NOTICE OF FINDINGS OF FACT AND
PROPOSED DECISION AND ORDER**

I. INTRODUCTION

a. On or about May 10, 1999, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") issued Decision and Order No. 241 ("**D&O 241**") to Time Warner Entertainment Company, L.P. ("**TWE**").

b. D&O 241 granted a cable television franchise to TWE for the island of Maui (excluding Lahaina) for census tracts 301, 302, 303.01, 303.02, 304.01, 304.02, 305, 306, 307, 308, 309, 310, 311.01, 311.02, 311.03, 312, and 313; the island of Molokai census tracts 317, 318, and 319; the island of Lanai census tract 316; the Ka'u area of the island of Hawaii census tract 212; and the Hawaii Kai area of the island of Oahu census tracts 1.02, 1.04, 1.05, 1.06, 1.07, and 1.08.¹

c. Section 2.1 of D&O 241 ("**Section 2.1**") states that the franchise term expires on December 31, 2009. However, that section also states that the franchise term shall be extended for an additional four (4) years only upon satisfactory completion of the 750 Mhz Upgrade described in section 3.1, in which case the term of the franchise shall expire on December 31, 2013 unless otherwise terminated in accordance with the franchise or applicable law. Among other things, section 3.1 of the "Terms and Conditions" of D&O 241 ("**Section 3.1**") required TWE to construct, reconstruct, rebuild, reconfigure, and/or upgrade the cable television system to a minimum bandwidth of 750 Mhz plus digital capacity, and provide a minimum of 75 activated channels by December 31, 2001 ("**750 Mhz Upgrade**").

¹ Decision and Order 242 removed the Ka'u area of the island of Hawaii census tract 212 from D&O 241; and Decision and Order 243 removed the Hawaii Kai area of the island of Oahu census tracts 1.02, 1.04, 1.05, 1.06, 1.07, and 1.08 from D&O 241.

d. In February 2002, TWE's attorneys informed the Department that TWE had completed the 750 Mhz Upgrade and asked the Department to acknowledge that TWE had satisfied the conditions for the extension of its cable television franchise. The Department responded in March 2002 and stated that it could not acknowledge that TWE had satisfactorily completed the 750 Mhz Upgrade by December 31, 2001 because the Department required further clarification and information on the 750 Mhz Upgrade. The Department deferred making that determination until such clarification and information were submitted.

The Department also deferred making a decision because of two outstanding issues:

1. Although cable modem service is a premium service, the Department requested that TWE also provide it in Hana. However, based on Hana's unique remote geography and because Hana was being served by microwave, additional engineering work by TWE was required to provide cable modem service to Hana. The Department and TWE agreed that the only remaining issue for Hana was the implementation of a two-way microwave that would allow Hana residents to request cable modem service (if desired), and the Department deferred making its decision on TWE's completion of the 750 Mhz Upgrade; and
2. TWE's fiber plan also included a connection through Ulupalakua Ranch. Although this connection would provide higher levels of reliability to TWE's network, it did not affect the delivery of cable television programming and services to Maui residents. Rights of way negotiations between TWE and Ulupalakua Ranch were completed after December 31, 2001, and the connection through the Ranch was eventually completed. The Department did not consider this to be a major issue to the completion of the 750 Mhz Upgrade.

e. In November 2002, TWE's attorneys provided a "Final Report" on the 750 Mhz Upgrade to the Department that addressed the issues raised by the Department in March 2002. TWE's attorneys also requested a determination from the Department that:

1. The 750 Mhz upgrade requirements of Section 3.1(a) of D&O 241 have been satisfied; and
2. TWE is entitled to a four (4) year extension of its Maui County franchise through December 31, 2013, pursuant to Section 2.1(b).

f. In February 2003, the Department randomly contacted subscribers on Maui (from a list provided by TWE) to confirm completion of TWE's digital service and high-speed Internet service as a result of their upgraded system. All of the contacted subscribers confirmed that they were receiving such service from TWE.

g. Based on the above, the Department finds that TWE has completed the 750 Mhz Upgrade which increased TWE's ability to deliver additional programming to Maui residents, and has complied with the requirements of section 3.1, except for the requirement that cable modem service be provided by December 31, 2001.

II. NOTICE OF INTENT TO ISSUE A DECISION AND ORDER

The Department intends to issue a Decision and Order addressing TWE's request to extend its franchise. However, prior to issuing a Decision and Order, the Department will allow interested persons to submit comments on TWE's 750 Mhz Upgrade described above for 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, January 22, 2004.



MARK E. RECKTENWALD
Director of Commerce and Consumer Affairs