



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
INTERIM DIRECTOR
EVERETT S. KANESHIGE
DEPUTY DIRECTOR

January 26, 2011

Mr. Bob Barlow
President
Time Warner Entertainment Company, L.P.
200 Akamainui Street
Mililani, HI 96789-3999

Dear Mr. Barlow:

Re: Letter Order – 2011 Capital Fund Payment to 'Ōlelo

On January 14, 2010, in Section IV.J.2 of Decision and Order No. 346 ("D&O 346"), the Director of the Department of Commerce and Consumer Affairs ("DCCA") directed Time Warner Entertainment Company, L.P. ("TWE") to meet with the designated PEG access organization on Oahu ("currently 'Ōlelo") and develop a plan and schedule for the capital fund payments (i.e., capital contributions) to 'Ōlelo for the remaining balance of the first five-year period of the franchise (i.e., 2011-2014). TWE was to submit an agreed upon schedule to DCCA by August 1, 2010.

By letters dated July 23, 2010, November 1, 2010, December 1, 2010, and December 23, 2010, TWE and 'Ōlelo jointly requested and were granted by DCCA extensions of time to submit a joint schedule for PEG capital fund payments or to inform DCCA that the parties were not able to reach an agreement.

Subsequently, in a January 18, 2011 letter, TWE informed DCCA that after several mediation sessions between the parties, TWE and 'Ōlelo reached an agreement that the 2011 capital fund payment to 'Ōlelo be set at \$823,000.00. TWE did not object to 'Ōlelo's request that this payment be made in one lump sum by January 31, 2011. In addition, TWE and 'Ōlelo further agreed that negotiations for capital fund payments for 2012 to 2014 should commence by June 1, 2011 between TWE and the PEG access organization awarded the contract for PEG Access Services through the current and ongoing procurement process. In the event no such contract award is made by June 1, 2011, then TWE and 'Ōlelo will commence negotiations for future capital fund payments.

In addition, pursuant to DCCA's request, 'Ōlelo had obtained information regarding capital fund proposals from the Hawai'i Educational Networking Consortium ("HENC") and for the PEGNet System. 'Ōlelo did not make any representations, however, regarding the HENC and PEGNet capital fund proposals. TWE and 'Ōlelo jointly agreed that the proposed \$823,000.00 capital fund payment to 'Ōlelo satisfied TWE's capital fund obligation for 2011 under D&O No. 346 and applicable law, and that 'Ōlelo could use the funds for its capital needs.

On December 20, 2010, the State Procurement Office ("SPO") extended the procurement exemption for DCCA's contracts with the incumbent PEG access organizations for an additional three-month period (i.e., from January 1, 2011 to March 31, 2011). DCCA and each incumbent PEG access organization subsequently agreed to extend their respective PEG access agreement for another three-month period from January 1, 2011 to March 31, 2011.

On January 10, 2011, DCCA issued a letter order to TWE directing it to pay twenty-five percent (25%) of the PEG Access Operating Fees and capital fund payments to the incumbent PEG access organizations, with the exception of the capital fund payment to 'Ōlelo.

Accordingly, pursuant to Section IV.J.2 of D&O No. 346, DCCA hereby directs TWE to:

1. Pay twenty-five percent (25%) of 2011 capital fund payment (i.e., 25% x \$823,000 = \$205,750) to 'Ōlelo by January 31, 2011, or earlier if possible;
2. Maintain the remaining seventy-five percent (75%) balance of the 2011 capital fund payment to the PEG access organization on Oahu in an interest bearing account in any federally insured financial institution authorized in the State of Hawaii; and
3. TWE and the designated PEG access organization on Oahu shall meet and develop a schedule for capital fund payments for 2012 to 2014 and submit said agreed-upon schedule to the DCCA no later than July 1, 2011.

Except as otherwise provided in this Letter Order, the remaining provisions in the January 10, 2011 Letter Order and D&O No. 346 shall continue to remain in full force and effect.

Thank you for your attention to and cooperation in this matter. Please call me if you have any questions.

Sincerely,



EVERETT S. KANESHIGE
Deputy Director
Department of Commerce and
Consumer Affairs

c: Barbara Krieg, Esq.
Brian Kang, Esq.
Russell Saiki, TWE
Roy Amemiya, Olelo