

AGREEMENT
(Na Leo 'O Hawaii, Inc.)

This Agreement entered into this 17th day of June, 1999, by and between the State of Hawaii through its Director of Commerce and Consumer Affairs, whose address is at 1010 Richards Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Director", and Na Leo 'O Hawaii, Inc., a Hawaii nonprofit corporation, whose address is at 1261 Kilauea Avenue, #270, Hilo, Hawaii 96720, hereinafter referred to as "Na Leo";

WITNESSETH:

WHEREAS, in Decision and Order No. 173, the Director approved the transfer of the cable communications franchise held by American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii and Kamehameha Cablevision to Time Warner Entertainment Company, L.P. ("TWE West Hawaii"); and

WHEREAS, in Decision and Order No. 185, the Director approved the transfer of the cable communications franchise held by Jones Spacelink of Hawaii, Inc. to Time Warner Entertainment Company, L.P. ("TWE East Hawaii"); and

WHEREAS, in Decision and Order No. 241, the Director approved the transfer of the cable communications franchise held by TCI of Hawaii, Inc. dba TCI ("TCI") to Time Warner Entertainment Company, L.P.;¹ and

WHEREAS, in Decision and Order Nos. 173, 185, 241 and 242 (hereinafter collectively referred to as "Decisions and Orders") the Director provided for the establishment of public, educational, and governmental ("PEG") access on the former TCI communications system serving the Ka'u area on the island of Hawaii, on the TWE East Hawaii communications system serving the Hilo, Volcano, Pahoa, Honokaa and Hamakua areas of the island of Hawaii, and on the TWE West Hawaii communications systems serving Kailua-Kona and the North Kohala district of the island of Hawaii; and

¹ In connection with said transfer to Time Warner Entertainment Company and pursuant to Decision and Order No. 242 issued concurrently with Decision and Order No. 241, the Ka'u district of the island of Hawaii and the former TCI cable system serving that area were incorporated into TWE East Hawaii franchise and service areas, and made subject to all terms and conditions set forth in Decision and Order No. 185.

WHEREAS, in connection therewith the Director required former TCI, TWE East Hawaii and TWE West Hawaii to: (1) pay annual access fees (sometimes hereinafter referred to as "Access Fees"), (2) contribute to PEG capital funds for facilities and equipment (sometimes hereinafter referred to as "Facilities and Equipment Fund"), (3) provide interconnection among all cable systems for the island of Hawaii, and (4) set aside channels of former TCI, TWE East Hawaii, and TWE West Hawaii cable communications systems for PEG access use; and

WHEREAS, in accordance with the recommendations made by an access planning committee appointed by the Director, Na Leo was created to manage the PEG access finances and to operate the PEG facilities, channels, and other resources for the island of Hawaii; and

WHEREAS, by that certain agreement dated December 31, 1996, by and between Na Leo and the Department of Commerce and Consumer Affairs, the management and operation of PEG access finances, facilities and channels for the island of Hawaii were contracted to Na Leo; and

WHEREAS, the Director and Na Leo have agreed to terminate said agreement dated December 31, 1996, and agreed to enter into this Agreement for the management and operation of the PEG access facilities, equipment and channels under the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto mutually agree as follows:

A. Term. The term of this Agreement shall be for the period beginning as of the date hereof and ending December 31, 1999, and shall be automatically extended on January 1, 2000 and thereafter automatically extended on an annual basis unless terminated as provided in this Agreement.

B. Responsibilities of Na Leo. Na Leo shall be responsible for the management and operation of the PEG access facilities and equipment including, but not limited to, the following:

1. Channels. Management of the channels allocated for PEG access in the Decisions and Orders, as the same may be revised or amended from time to time.

2. Facilities and Equipment. Provision of facilities and equipment for the production of programming to be cablecast on the PEG access channels.

3. Training. Training of educational, governmental, community organizations and the general public in the use of the access production facilities and equipment.

4. Marketing. Marketing and promotion of the access center and the PEG access channels and programs.

5. Support Services. Provision of support services to the users of the PEG access facilities and equipment. These services may include assistance in the production of access programs and support of special projects.

6. Insurance. Procure and maintain appropriate levels of insurance coverage for workers' compensation, general liability (including property damage and bodily injury), broadcasters' liability, equipment and facilities, and any other insurance coverage required by law.

C. Na Leo's Reporting Requirements. In order that the Director may monitor Na Leo's compliance with the provisions of this Agreement, Na Leo shall file with the Director the following:

1. Amendments to the articles of incorporation and by-laws no later than 30 days after approval by the board of directors.

2. A roster of the board of directors and officers and their respective term of office no later than 30 days after Na Leo's annual meeting or no later than 30 days after a change in board membership when the change occurs other than at the annual meeting.

3. Annual financial statements no later than 90 days following the close of each calendar year.

4. Annual audited financial statements no later than 30 days after acceptance by the board of directors.

5. The 1999 calendar year operational plan and budget upon execution of this Agreement. For each year thereafter an annual operational plan and budget shall be due on or before November 1, e.g., the 2000 calendar year operational plan and budget shall be due on or before November 1, 1999. Notwithstanding the generality of the foregoing, Na Leo shall also develop and periodically update a strategic or long-range planning document for a period not

less than three years, and shall submit a copy of such document no later than 30 days after acceptance by the board of directors.

6. Complete equipment inventory upon execution of this Agreement, and thereafter an annual update on or before November 1 of each year.

7. An annual activity report no later than 30 days following the close of each calendar year which shall include, but not limited to, the following information:

a. Public Access Programming:

- i. Total hours of programming;
- ii. Total hours of locally produced original programming;
- iii. Total hours of repeat programming; and
- iv. Total hours of programming submitted but not aired and reasons therefor.

b. Governmental Programming:

- i. Total hours of programming;
- ii. Total hours of locally produced original programming;
- iii. Total hours of repeat programming; and
- iv. Total hours of programming submitted but not aired and reasons therefor.

c. Educational Programming:

- i. Total hours of programming;
- ii. Total hours of locally produced original programming;

- iii. Total hours of repeat programming; and
 - iv. Total hours of programming submitted but not aired and reasons therefor.
- d. Summary of all channel outages from maintenance records including total hours and reasons therefor.
- e. Facility Use:
 - i. Number of new users; and
 - ii. Number of repeat users.
- f. Training:
 - i. Number of persons certified to use the access equipment; and
 - ii. Number of persons who failed to be certified or did not complete certification to use the access equipment.
- g. Summary of complaints including the nature of the complaints and the actions taken.
- h. Summary of outreach and marketing efforts.
- i. Summary of revenues from sources other than the former TCI (now a part of TWE East Hawaii), TWE East Hawaii, and TWE West Hawaii systems including the amounts, sources, and purpose of funds.

Notwithstanding the generality of the above, quarterly reports for items described in subparagraphs a through i of paragraph C7 above shall be available for review and inspection by the Director or the Director's designee upon request.

8. Na Leo shall submit the 1998 calendar year end activity report upon execution of this Agreement. For each year thereafter Na Leo shall submit an annual year end activity report no later than 90 days after the close of each calendar year, e.g., the 1999 year end activity report shall be submitted on

or before March 31, 2000. Na Leo shall set benchmarks for the indicators listed in paragraph C 7 hereof based on its annual operational plan and budget.

9. Notwithstanding any provision to the contrary, the Director may require Na Leo to provide any additional information that the Director deems necessary.

D. PEG Funds. At the direction of the Director, Na Leo shall receive and hold, as restricted funds, amounts required to be paid by the former TCI (now a part of TWE East Hawaii), TWE East Hawaii, and TWE West Hawaii systems to support PEG access for the island of Hawaii pursuant to the Decisions and Orders. The funds shall be deposited and maintained in interest bearing accounts in any federally insured financial institution authorized to do business in the State of Hawaii. Because the funds paid by TCI, TWE East Hawaii, and TWE West Hawaii are separately designated by the Decisions and Orders for PEG access operations and facilities and equipment, Na Leo shall designate one account for operating and another account for capital (facilities and equipment). Na Leo shall be responsible for administering the accounts, and shall not commingle operating with capital funds without the prior written approval of the Director.

The Director, in the Director's sole discretion, may require an audit of the accounts and designate the auditor or accountant. The full cost of the audit shall be paid by Na Leo.

E. Records Requirements. Na Leo shall maintain at its office and shall submit to the Director upon request the following:

1. Evidence of workers' compensation, general liability, broadcaster's liability, and equipment and facilities insurance coverage and any other insurance policies relating to the responsibilities required to be performed under this Agreement.

2. Operating policies and procedures as the same may be amended from time to time.

3. Training schedules and manuals as the same may be revised from time to time.

F. Accessibility. Na Leo shall at all times comply with applicable provisions of the Americans with Disabilities Act (ADA).

G. Payment for Services. Na Leo shall not receive any money or other valuable consideration from the Department of Commerce and Consumer Affairs. Na Leo agrees to perform all services, duties, responsibilities and obligations required to be performed by Na Leo under this Agreement, in exchange for Access Fees and Equipment and Facilities Fund contributions from the former TCI (now a part of TWE East Hawaii), TWE East Hawaii, and TWE West Hawaii systems pursuant to the Decisions and Orders.

H. Plan for Self-Sufficiency. Along with its strategic plan, Na Leo shall submit a long-range plan which shall include, at a minimum, measurable objectives and schedules whereby operations and maintenance, repair and replacement of equipment and facilities would no longer be solely or largely dependent upon Access Fees and the Facilities and Equipment Fund.

I. Assignment. Na Leo shall not assign any of its rights under this Agreement nor delegate any duties, obligations, or responsibilities required to be performed under this Agreement without the prior written approval of the Director.

J. Modification of Agreement. Any modification, alteration, or amendment of any term, provision, or condition of this Agreement shall be in writing and signed by the parties hereto.

K. Indemnification. Na Leo shall defend, indemnify and save harmless the State of Hawaii, its departments, and its officers and employees from and against any and all claims, actions, losses, expenses, damages, or liability to person or property arising out of or resulting from any provision or requirement of this Agreement, or in exercising its rights or in performing its obligations under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

L. Default. In the event Na Leo fails to satisfactorily perform in a timely or proper manner any of its obligations or responsibilities or fails to observe or perform any term or condition required to be performed or observed by Na Leo under this Agreement, and having been given reasonable notice of and opportunity to cure the same, fails to take satisfactory corrective action within the time specified, the Director, in addition to all other available rights and remedies, shall have the right to direct TWE East Hawaii and TWE West Hawaii to withhold contributions of Access Fees and PEG capital funds or to terminate this Agreement, or both. The Director shall have the right to designate one or more entities as the successor of Na Leo, and to enter into an

agreement with such successor for the management and operation of the PEG access resources, facilities, equipment, and channels for the island of Hawaii.

M. Termination.

1. In the event TWE East Hawaii's or TWE West Hawaii's cable communications franchise is terminated, this Agreement shall be automatically terminated on the date such franchise is terminated.

2. In the event any court, agency, commission, legislative body, or other authority of competent jurisdiction declares invalid any part of the Decisions and Orders relating to PEG access requirements, this Agreement may be terminated by the Director or Na Leo upon 30 days prior written notice to the other party.

3. The Director may, when the interests of the State so require, terminate this Agreement for the convenience of the State. The Director shall give at least 120 days prior written notice of the termination to Na Leo.

N. Relinquishment and Return of Access Funds, Facilities and Equipment. Upon termination of this Agreement and at the direction of the Director, Na Leo shall (1) immediately relinquish any and all claims to the Access Fees, Facilities and Equipment Fund, and the access facilities and equipment; and (2) within 60 days provide the Director with a verified accounting of all Access Fees and Facilities and Equipment Fund, a current inventory of all access facilities and equipment, and transfer to the Department of Commerce and Consumer Affairs or its designee the balance of the operating and capital accounts, and all access facilities and equipment. In winding down its operations, Na Leo shall follow generally accepted accounting principles in closing its books, and Na Leo shall neither incur any new obligation nor disburse funds except for matters necessary in the normal course of business and those directly related to winding down its operations.

If any PEG facility and/or equipment has been purchased or acquired with funds from other sources and not solely from the Facilities and Equipment Fund, the disposition of such facility and/or equipment shall be by appropriate appraisal and allocation agreed to by the Director and Na Leo.

O. Performance. The failure of the Director at any time to require performance of any obligation or condition under this Agreement shall not affect the right of the Director to enforce the same. The waiver by the Director of any breach of any term or condition of this Agreement shall not be deemed or held to be a waiver of

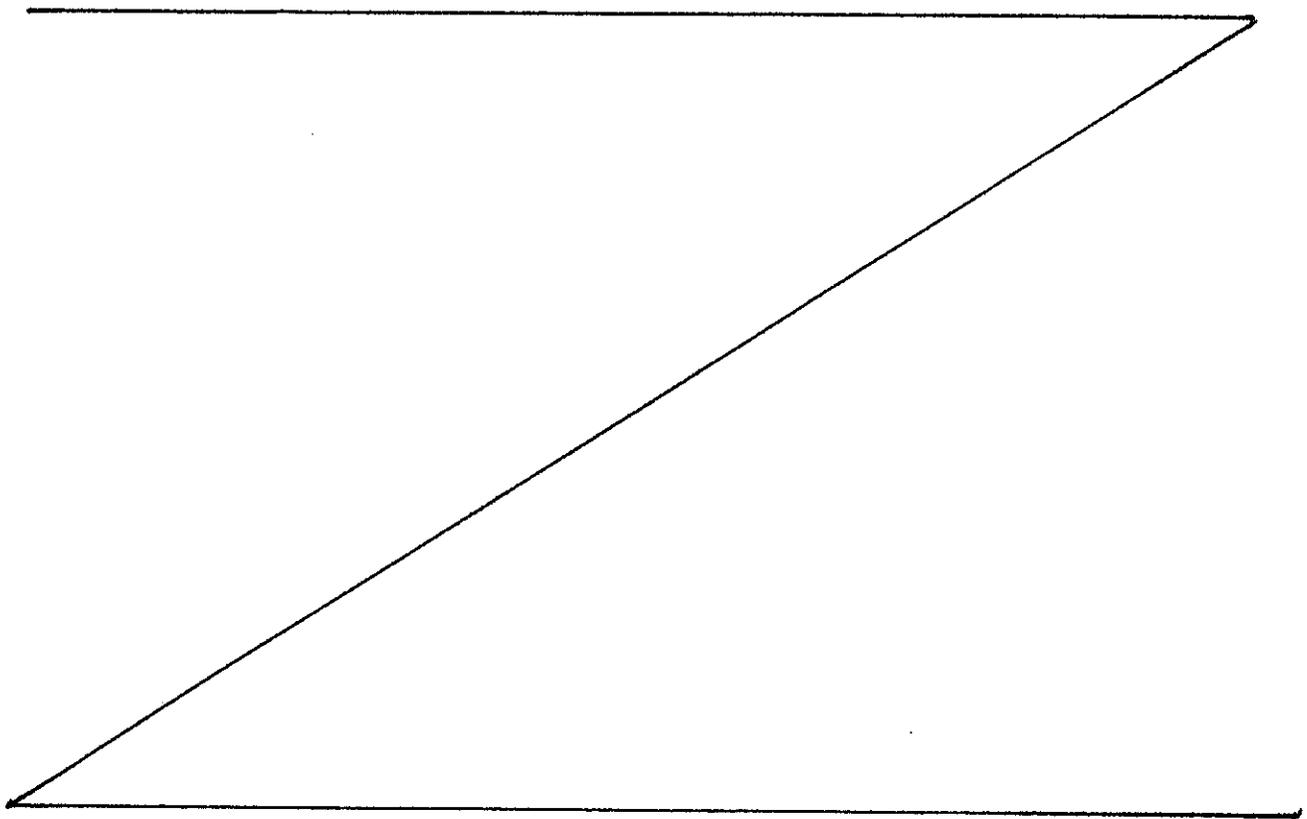
any succeeding breach of such term or condition or as a waiver of the term or condition itself.

P. Termination of Prior Agreement. The agreement between the Department of Commerce and Consumer Affairs and Na Leo dated December 31, 1996, shall be terminated as of the date hereof, and this Agreement shall constitute the entire understanding between the parties, superseding any and all previous understandings or agreements, oral or written, pertaining to the subject matter contained herein.

Q. Waiver. The Director shall have the right to waive any condition or obligation required to be observed or performed upon a showing of good cause.

R. Compliance with Laws. Na Leo shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time.

S. Filings and Notices. All filings required to be made or written notice required to be given by a party shall be delivered personally or sent by United States first class mail, postage prepaid, to the other party at such party's mailing address.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.



KATHRYN S. MATAYOSHI
Director of Commerce and Consumer Affairs

JUN 17 1999
Date



It's President
Na Leo 'O Hawaii, Inc.

MAY 25 1999
Date

APPROVED AS TO FORM:



Deputy Attorney General