

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

In the Matter of) **DECISION AND ORDER NO. 323**
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
Decrease in Annual Fee Paid by Cable)
Operator to the Department of)
Commerce and Consumer Affairs.)

DECISION AND ORDER NO. 323

I. **INTRODUCTION**

- A. The Department of Commerce and Consumer Affairs ("Department") has issued cable television franchises to Time Warner Entertainment, L.P. ("TWE"), the sole cable operator in the State of Hawaii ("State"). These franchises cover the following areas ("franchise areas"): Island of Oahu, Island of Kauai, Maui County (excluding Lahaina), Lahaina, West Hawaii (Kona and Kohala) and East Hawaii (Hilo and Kau).
- B. Under Hawaii Revised Statutes ("HRS") § 440G-15(a), each cable operator is required to pay an annual fee to the Department that is determined by the Department Director ("Director").
- C. Under HRS § 440G-15(b), the Director has the authority to adjust the annual fee pursuant to rules adopted in accordance with HRS chapter 91.

- D. Hawaii Administrative Rules ("HAR") § 16-132-2(a) establishes the annual fee for each cable operator at one per cent (1 %) of the income received from subscribers for cable television services rendered during the preceding calendar year.
- E. An amendment to HAR § 16-132-2, effective September 30, 2005, authorizes the Director to increase or decrease the amount of the annual fee by decision and order, if the Director determines that the existing annual fee is insufficient or exceeds the amount necessary to cover the costs of administering HRS chapter 440G.
- F. HAR §16-132-2, as amended and effective on September 30, 2005, also changed the payment schedule of the annual fee paid by cable operators from two times per year to one time per year (i.e., on the last day of January each year).
- G. Federal law, specifically 47 U.S.C. § 542(e) (2001), requires cable operators to pass through to subscribers the amount of any decrease in franchise fees.

II. **FINDINGS OF FACT**

- A. The annual fee for TWE is presently one per cent (1 %) of the income received from subscribers for cable television services rendered during the preceding calendar year, as set forth in HAR §16-132-2.
- B. Prior to the recent amendment to HAR §16-132-2, TWE made two annual fee payments to the Department. The first payment was made on the first

day of June, and the second payment was made on the subsequent first day of December.

- C. As required by HRS § 440G-15(a), the annual fee collected by the Department from TWE is deposited into the compliance resolution fund established under HRS § 26-9(o).
- D. TWE passes along and collects this one percent (1 %) annual fee from its cable television subscribers. The annual fee assessment is included in the franchise fee amount listed on the monthly bills for cable television subscribers.
- E. If the amount of the annual fee to be paid to the Department were decreased, TWE must decrease the fees that it collects from cable television subscribers.
- F. The one percent (1 %) annual fee collected over time from cable operators has resulted in the Department accumulating more funds than it currently requires to cover the costs of administering HRS chapter 440G.

III. **CONCLUSION**

- A. Since the Department presently has accumulated sufficient funds to cover the costs of administering HRS chapter 440G at this time, the amount of the annual fee paid by TWE to the Department may be reduced.
- B. TWE is required to pass through to cable television subscribers the decrease in the amount of franchise fees paid.
- C. It is in the best interests of cable television subscribers to lower their monthly cable television bills, whenever feasible.

IV. **ORDER**

- A. Commencing November 1, 2005, the annual fee for each cable operator paid to the Department shall be reduced to zero per cent (0 %), subject to further order by the Director.
- B. Concurrently, TWE shall pass through to cable television subscribers, the decrease in the amount of franchise fees paid to the Department. The cable operator shall adjust the amount collected from cable television subscribers for franchise fees to reflect the reduced annual fee.
- C. Commencing the date of this Decision and Order, the annual fee payment shall be made on the last day of January of each year (as opposed to twice a year).
- D. On the last day of January 2006, TWE shall pay to the Department all amounts previously collected from cable television subscribers for the annual fee and held by TWE for payment to the Department.
- E. Notwithstanding any decision and order to the contrary, the Director may reconsider and increase, in his sole discretion, the amount of the annual fee payments at any time.
- F. The Director, in his sole discretion, shall instruct TWE on when the annual fee payment should be re-initiated.

Dated: Honolulu, Hawaii, OCT 3 2005, 2005.

Mark E. Recktenwald

MARK E. RECKTENWALD
Director of Commerce and Consumer
Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 323 was served upon the following person(s) at the address shown below by mailing the same, postage prepaid, on this 3rd day of October, 2005.

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