

January 14, 2010

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

In the Matter of the Application of)
)
TIME WARNER ENTERTAINMENT) **DECISION AND ORDER NO. 346**
COMPANY, L.P.)
)
For Renewal of its Cable Franchise for the)
Island of Oahu, City and County of Honolulu)
)
)
)
_____)

DECISION AND ORDER NO. 346

I. INTRODUCTION

Pursuant to Hawaii Revised Statutes (“HRS”) Section 440G-10, the Director of the Department of Commerce and Consumer Affairs (“DCCA”) hereby renews the cable franchise of Time Warner Entertainment Company, L.P. (“TWE”), doing business as Oceanic Time Warner Cable (“Oceanic”), for the island of Oahu, City and County of Honolulu, subject to the following terms, conditions, and requirements of this Decision and Order.

A. Definitions

For purposes of this Decision and Order, the following words and terms, shall have the meanings specified below. Words not defined shall be given their common and ordinary meaning.

1. “**Access Channel**” or “**PEG Access Channel**” means any Channel on the Cable System made available for PEG use.
2. “**Access Facilities and Equipment**” or “**PEG Access Facilities and Equipment**” means (a) Channel capacity designated for PEG use; and (b) PEG access facilities, including but not limited to real property and equipment related to the use of such Channel capacity or any PEG activity.
3. “**Access Operating Fee**” or “**AOF**” means the annualized fee paid by TWE to the Director or Director’s designee for PEG or other purposes specified by the Director.

4. **“Access Organization”** or **“PEG Access Organization”** means any nonprofit organization designated or selected by the Director to oversee the development, operation, supervision, management, production, or cablecasting/broadcasting of programs on any Access Channel(s); and which acquires and maintains Access Facilities and Equipment.
5. **“Affiliate”** means any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with TWE, including TWE's parent corporation and any subsidiaries of TWE.
6. **“Annual Fee”** means the Annual Fee required to be paid by TWE pursuant to HRS Section 440G-15, HAR Section 16-132-2, and applicable Decisions and Orders issued by DCCA, as may be amended from time to time.
7. **“Application”** means the “Application for Renewal of Cable Franchise, Island of Oahu, State of Hawaii” submitted by TWE on July 21, 2009, along with supplemental materials filed by TWE thereafter.
8. **“Basic Service Tier”** means the lowest cost tier of Cable Service offered by TWE to all of its Subscribers, which includes, at a minimum, the retransmission of local television broadcast signals, and PEG Access Channels.
9. **“Cable Drop”** means the cable from the feeder line to the Subscriber’s premises, or video signal drop.
10. **“Cable Service”** shall have the meaning set forth in HRS Section 440G-3, as amended, and applicable Law, as amended.
11. **“Cable System”** or **“System”** shall have the meaning set forth in HRS Section 440G-3 and applicable Law, as amended, and includes the video programming service provided by TWE.
12. **“CAC”** means DCCA’s Cable Advisory Committee.
13. **“CATV”** means the Cable Television Division of DCCA.
14. **“Capital Fund Payments”** means capital contributions made by TWE to the PEG Access Organization, the Director, or the Director’s designee, to the extent permitted under the Communications Act, for PEG Access Facilities and Equipment.
15. **“Channel”** shall have the meaning set forth in Section 522(4) of the Communications Act, as amended, and includes without limitation PEG Access Channels.

16. **“Communications Act”** means the federal Communications Act of 1934, as amended (e.g., by the Cable Consumer Protection Act of 1984, the Cable Communications Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996), codified at 47 U.S.C. Section 521, et seq.
17. **“DCCA” or “Department”** means the State of Hawai'i Department of Commerce and Consumer Affairs.
18. **“Decision and Order” or “Franchise Order”** means a cable franchise order issued by the Director.
19. **“Director”** means the Director of DCCA.
20. **“Director of Civil Defense”** means the Director of the State of Hawai'i Civil Defense.
21. **“DOE”** means the State of Hawai'i Department of Education, and shall include representation of State chartered school interests, whose interests and access shall be no less than those afforded to any other State public school or collection of public schools.
22. **“EAS”** means Emergency Alert System, as required under Section 624(g) of the Communications Act, as amended.
23. **“Educational Access Channel”** means any Channel of the Cable System that is made available by TWE for use by educational authorities and agencies (e.g., the University of Hawai'i, State Department of Education, Hawai'i Association of Independent Schools, etc.), and accredited educational institutions in Hawai'i for non-commercial educational purposes.
24. **“Emergency Authorities”** means the Director of Civil Defense; Deputy Director of Civil Defense; Administrator of the Oahu Civil Defense Agency, City and County of Honolulu; Deputy Administrator of the Oahu Civil Defense Agency, City and County of Honolulu; and any other similar Person designated by the Director.
25. **“Emergency Override System”** means the emergency alert system specified in section IV.M.2.
26. **“Facility” or “Facilities”** includes real property, antenna, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, fiber, and other personal property used by a cable operator in providing service to its Subscribers.
27. **“FCC”** means the Federal Communications Commission.

28. **“Franchise Fee”** shall have the meaning set forth in Section 542 of the Communications Act, as amended. At the time of this Decision and Order, this term includes the Access Operating Fee, HPTF Fee, and DCCA’s Annual Fee specified in HAR Chapter 16-132.
29. **“Franchise Required Channels”** means the seven Channels provided by TWE, pursuant to this Decision and Order, for programming by governmental and educational entities.
30. **“Gross Revenues”** includes, subject to applicable federal and State Law (as may be amended from time to time), for the purpose of calculating the Access Operating Fee and HPTF Fee, revenue from charges billed to and collected from Subscribers for Cable Service. Such charges shall include Subscriber billings and collections for entertainment and non-entertainment services, installation, connection, reconnection and reinstallation of equipment necessary for the utilization of the Cable System. “Gross Revenues” shall exclude revenue from charges and collections for non-subscription or non-Subscriber related sources such as advertising sales, home shopping commissions, Franchise Fees passed through to Subscribers, and uncollected debt; provided that the subsequent collection of such debt shall be included as part of Gross Revenues. In the case of a video service that is packaged, bundled, or functionally integrated with other services, capabilities, or applications, TWE shall not allocate discounts in bundled packages for the purpose of evading the Franchise Fee, and Gross Revenues for the purpose of computing the Franchise Fee shall be determined based on a pro rata allocation of the package discount, that is, the total price of the individual classes of service at rack rates compared to the package price, among all classes of service comprising the package. For purposes of determining Gross Revenues, TWE shall use the same method of determining revenues under generally accepted accounting principles as that which TWE uses in determining revenues for the purpose of reporting to national and state regulatory agencies. Further, TWE shall provide on a confidential basis to DCCA, upon the request of the Director, sufficient documentation to demonstrate that each of the above requirements are being met.
31. **“HAIS”** means the Hawai'i Association of Independent Schools.
32. **“HAR”** means the Hawai'i Administrative Rules.
33. **“HENC”** means the Hawai'i Educational Networking Consortium, which is a consortium comprised of representatives from accredited educational institutions within the State of Hawai'i, including public and private lower

and higher education schools such as the UH, DOE, the East-West Center, and HAIS.

34. “**HD**” or “**HDTV**” means high definition video programming.
35. “**HITS**” means the Hawai’i Interactive Television System, a microwave system owned and operated by UH that provides an interisland video service utilized by UH, DOE, State agencies and others.
36. “**HPTF**” means the Hawai’i Public Television Foundation.
37. “**HPTF Fee**” means the annualized fee paid by TWE to HPTF at the direction of the Director for HPTF-related services as may be directed by the Director.
38. “**HRS**” means the Hawai’i Revised Statutes.
39. “**INET**” means the institutional network that is used by government and educational authorities and agencies, and accredited educational institutions for broadband telecommunications purposes.
40. “**Law**” means any federal or State law (including common law), constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body.
41. “**LFA**” means the local franchising authority (i.e., the State of Hawai’i through the DCCA).
42. “**Local Origination Programming**” means programming of local interest produced by TWE employees or contractors.
43. “**Merina**” means Merina & Company, LLP, a consultant retained by DCCA to assist DCCA in this franchise renewal process.
44. “**Oceanic**” means Oceanic Time Warner Cable, the operating name used by TWE for its operations in Hawai’i and is used interchangeably to mean TWE in this Franchise Order.
45. “**‘Ōlelo**” means ‘Ōlelo Community Television and refers to the current designated PEG Access Organization for the Oahu franchise as of the date of this Franchise Order.
46. “**PBS Hawai’i**” means the public television station licensed to the HPTF.
47. “**PEG**” means public, educational, or governmental.

48. **“Person”** means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit; provided that this term shall not include the Director or DCCA.
49. **“Public Highways”** shall have the meaning set forth in HRS Section 264-1, as amended.
50. **“Public Place”** includes any property, building, structure, or water to which the public has a right of access and use.
51. **“SDV”** means switched digital video.
52. **“Service Area”** means those areas described in section IV.B.
53. **“State”** means the State of Hawai‘i, including its political subdivisions.
54. **“Subscriber”** means any Person lawfully receiving any Cable Service.
55. **“TWC”** means Time Warner Cable Inc.
56. **“TWE”** means Time Warner Entertainment Company, L.P., dba Oceanic Time Warner Cable.
57. **“UH”** means the University of Hawai‘i.
58. **“VOD”** mean video-on-demand.

II. **BACKGROUND**

A. **Applicant TWE**

TWE is a Delaware limited partnership authorized to do business in the State. In 1992, TWE commenced service in Hawai‘i, doing business as Oceanic Time Warner Cable on Oahu. Since then, TWE, has provided Cable Service to residents on Oahu, and ultimately expanded its Cable Service throughout the State upon the acquisition of Cable Systems in other counties.

Oceanic is a division of TWE. Oceanic has no separate legal status or existence, and its resources are under the control of TWE's management. TWE, in turn, is a subsidiary of TWC, and is a guarantor of the debt of TWC. TWC is the second largest cable operator in the nation.

B. TWE's Cable System

TWE's Cable System, as deployed in the franchise area, employs a hybrid fiber-coaxial network. TWE transmits signals on its System via laser-fed fiber optic cable from origination points known as "headends" and "hubs" to a group of distribution "nodes" and uses coaxial cable to deliver these signals from the individual nodes to the homes of Subscribers. Initially, the System had approximately 500 homes per node at its completion in 1999. TWE reports in its Application that it is currently working towards serving 125 homes per node on Oahu. As of the date of the Application, TWE's System passes 405,000 homes on Oahu.

All of TWE's Cable Systems in the State have been upgraded to a total bandwidth of 750 MHz or a total analog Channel capacity of approximately seventy-five Channels, with digital headroom for many more digital Channels.

As of November 30, 2009, TWE reported that it had 287,300 Subscribers (which includes military Subscribers) on Oahu, out of which 163,000 were digital Subscribers. Forty-three percent of TWE's Oahu Subscribers are analog Subscribers, and fifty-seven percent are digital Subscribers.

Among the Channels provided by TWE are PEG Access Channels, which are managed by 'Ōlelo, the current designated PEG Access Organization. 'Ōlelo is responsible for the cablecasting of access programming on Channels 49, 52, 53, and 54 in the current analog Channel lineup. Pursuant to a contract between 'Ōlelo and HENC, UH is responsible for educational programming on Channel 55, and the DOE and H AIS cablecast educational programming on Channel 56.

TWE also offers residential and commercial customers high-speed data services (i.e., Road Runner) and digital phone service. TWE sells its services separately or offers bundled services at a discount to its customers.

C. History of the Oahu Cable Franchise Renewal Application

On April 20, 2007, TWE submitted written notice to DCCA of its intent to renew its Oahu franchise. On June 28, 2007, DCCA sent written notice to TWE acknowledging receipt of TWE's notice of intent to renew.

DCCA initiated the renewal process and retained Merina to assist in the franchise renewal process. DCCA conducted an ascertainment of future cable-related community needs and interests, as well as studies and reviews related to the ascertainment. In February 2008, Merina initiated background reviews related to ascertainment activities, including:

- A financial review of TWC and Oceanic to determine their financial capacity for carrying out future operations on Oahu;

- An engineering review of the TWE Cable System, focusing on its current and future capacity; and
- A review of TWE's past compliance with its obligations under its current Oahu franchise.

In addition, DCCA held a series of meetings with various stakeholders and groups in the government, educational, and non-profit sectors having particularly strong knowledge, history, or interest in the TWE Cable System on Oahu. Merina also created and distributed a community questionnaire and customer satisfaction survey to the public through the public meetings and DCCA's website, as well as through other means. In July, and September 2008, DCCA held three public meetings on Oahu (i.e., in Honolulu, Kaneohe, and Kapolei) to ensure that the public had ample opportunity to provide input on the renewal process. DCCA also solicited written comments from the public, resulting in hundreds of responses and comments to DCCA.

On January 30, 2009, Merina submitted to DCCA its Community Ascertainment and Related-Activities Report, which represents Merina's description of the results of the principal ascertainment and related background study activities. After review and analysis of the Community Ascertainment and Related-Activities Report, by letter dated June 23, 2009, DCCA informed TWE that the ascertainment process was completed.

On July 21, 2009 TWE submitted its written Application for renewal of its Oahu franchise and Exhibits "A" through "E", along with its application fee to DCCA. On July 29, 2009, DCCA sent a Request for Clarification of Application to TWE to obtain additional information necessary for DCCA to process the Application and accept it for filing. On July 30, 2009, TWE filed its Response to DCCA's Request for Clarification and Exhibit F. On August 4, 2009, DCCA accepted the Application, as amended by the July 30 response, for filing.

DCCA sent an additional information request to TWE on August 31, 2009. TWE filed its response on September 9, 2009.

Pursuant to HAR Section 16-133-30, DCCA held a public hearing on the Application on September 15, 2009, at McKinley High School to afford the public the opportunity to submit oral or written data, views, or arguments on TWE's renewal Application. Notice of the hearing was published in The Honolulu Star-Bulletin on August 24, 2009 and August 31, 2009. Copies of the Application were made available for review during normal business hours at TWE's locations in Mililani, Sears Ala Moana, Kaneohe, and Hawai'i Kai and also at CATV. The Application was also posted on DCCA's webpage. DCCA established September 15, 2009 as the deadline for receipt of public comments concerning the Application. That deadline was extended to September 30, 2009, after the Department received requests to submit additional comments. Although the bulk of all comments were received by September 30, additional comments were received through December, 2009.

On October 20, 2009, the Director convened a meeting of the CAC, during which the Director requested comments from CAC members on the issues raised by the Application. CAC members offered input, but recommended that another meeting be held after they had additional time to review the public comments that had been submitted.

A further CAC meeting, limited only to the issue of the Application, was held on November 24, 2009, during which CAC members discussed the Application and issues pertaining to the renewal of the Oahu franchise. CAC members expressed interest in developing technology and new services being made available to Subscribers, but expressed concerns about keeping costs the same for Subscribers.

Because DCCA and TWE were unable to finalize the renewal by December 31, 2009, the parties mutually agreed to extend the thirty-six-month renewal period for DCCA to make a decision on the Application from December 31, 2009, to January 15, 2010.

III. DISCUSSION

The Director has carefully considered TWE's representations in its Application and supporting materials in connection with the Application. The Director has also considered the community needs assessment and comments received from the public, elected officials, and community members. Based on the foregoing, the Director has determined that: TWE has the requisite financial, legal, and technical ability to maintain a Cable System; TWE has substantially complied with the material terms of its existing franchise and with applicable Law; the quality of the TWE's service has been reasonable in light of community needs; and TWE's proposal as modified by this Decision and Order is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

The Director hereby grants TWE's Application for the renewal of its non-exclusive cable franchise subject to the terms, conditions, and requirements specified in this Decision and Order.

A. Standard of Review

1. Federal Law

Federal franchise renewal guidelines are generally set forth in the Communications Act. Section 541 of the Communications Act allows an LFA to award one or more franchises within its jurisdiction and also sets forth provisions and requirements that the LFA may impose on a franchisee.

2. State Law

The regulatory powers of the Director regarding cable franchises and cable operators are generally set forth in HRS Chapter 440G (the Hawai'i Cable Communications Law), and specifically in HRS Section 440G-10. Subchapter 3 of HAR Chapter 16-133 sets forth the administrative rules regarding cable franchise renewal applications.

Irrespective of the technology utilized to deliver its video programming service, TWE is a facilities-based provider of Cable Services pursuant to 47 U.S.C. Section 522, and accordingly, is subject to regulation under HRS Chapter 440G.

B. Financial Ability of TWE and Oceanic

Based on past performance and an analysis of TWE's consolidated financial statements contained in TWE's most recent filing with the Securities and Exchange Commission and Oceanic's financial statements, DCCA concludes that TWE and Oceanic have demonstrated a sound financial base, maintained consistent profitable operating results, and met the financial requirements to renew TWE's cable franchise. TWE and Oceanic are and have been in a stable financial position with regard to maintaining their level of assets without incurring an appreciable amount of debt.

C. Technical Ability of TWE

Based upon an engineering review of TWE's System design and a review of TWE's performance, DCCA concludes that TWE's Cable System is technically sound. TWE's System performance and quality levels are within FCC requirements. Furthermore, its operations, maintenance, and repair activities are well organized and performed with attention to detail and with long-term reliability as a priority.

D. Operational Ability of TWE

DCCA concludes that TWE is capable of operating the Cable System authorized by this Decision and Order. TWE has consistently demonstrated since 1992 its ability to operate its Cable System in accordance with its cable franchise obligations. None of the responses and comments received by DCCA questioned TWE's ability to operate its Cable System.

Since 2000, TWE has conducted annual customer satisfaction surveys within the cable franchise area. The most recent survey results indicated that Subscribers were generally satisfied with TWE's Subscriber and product service performance. In addition, Merina, as part of the ascertainment of future cable-related community needs and interests, conducted a Subscriber survey of TWE's Oahu service. According to survey results, TWE received an overall rating of "good" for its service and performance on Oahu.

E. Compliance with the Current Franchise Order

DCCA concludes that TWE is in substantial compliance with existing Franchise Orders and with applicable Law. In connection with the ascertainment process, Merina reviewed TWE's compliance with the terms and conditions contained in the various cable franchise and letter orders, as well as TWE's compliance with applicable Law. At the time of the review, Merina determined that TWE was in full or substantial compliance with its franchise obligations.

DCCA notes that TWE has missed various reporting deadlines. TWE has acknowledged its late submissions and has stated its intent to take the necessary steps to ensure that all reports are submitted on a timely basis. In addition, TWE recognizes that further follow up is needed to examine the quality of PEG signal transmissions, to the extent the quality of such transmissions are within the control of TWE.

TWE has been the subject of several FCC proceedings, which are further described in TWE's Application, relating to a series of Notices of Apparent Liability and Orders issued by the FCC addressing TWE's use of SDV technology. On June 26, 2009, the FCC vacated its Forfeiture Orders and Notices of Apparent Liability relating to TWE's adoption of SDV technology, but affirmed a Forfeiture Order relating to the FCC's finding that TWE did not provide DCCA the required thirty-day advanced written notice when it migrated some of its Channels to an SDV platform. On September 29, 2009, the FCC entered an Order adopting a consent decree to resolve the remaining issues in the proceedings and ended the FCC investigation. TWE has agreed to enact the specified measures in the consent decree, which are intended to ensure that TWE provides proper notification to its Subscribers and to DCCA during its conversion to SDV.

F. Customer Service

DCCA concludes that TWE has provided satisfactory customer service to Subscribers. TWE provides Subscribers several means of gaining information, answering questions, placing orders, and reporting service trouble. Customers can access TWE through the telephone, via e-mail, and in person. TWE's front-line employees are provided with targeted answers and solutions to solve Subscribers' inquiries quickly and on the first call. In addition, TWE utilizes the services of offshore (i.e., outside the State) call centers to handle overflow calls of a non-technical nature, and each call center has the means to route high call volumes to other call centers.

Despite TWE's efforts, DCCA has received calls from consumers about delays in reaching a customer care representative or scheduling an in-home repair visit which is discussed later in section IV.R.1. DCCA, therefore, also concludes that specific terms regarding customer service requirements are warranted.

G. TWE's Proposal to Meet the Future Cable-Related Community Needs and Interests of Oahu Cable Subscribers

Finally, DCCA determines that TWE's proposal to meet the future cable-related community needs and interests of Oahu Subscribers, as modified in this Decision and Order, is reasonable. In its Application, TWE sets forth certain representations and/or commitments in order to address the future cable-related needs of TWE Oahu Subscribers. Although all representations made by TWE in connection with its Application are considered material by the State, some of the most significant representations include TWE's commitment to:

- Continue to improve and expand its System and services and continue the migration of its analog Channels to digital carriage over time. TWE has also agreed to expand its high definition programming, increase access to digital video-on-demand and provide higher broadband speeds to Subscribers.
- Continue to provide operating funding for the PEG Access Organization at three percent of TWE's Gross Revenues as required under its existing cable franchise. TWE will provide annual capital payments to the PEG Access Organization at a rate of \$3.00 per Subscriber.
- Provide five PEG Access Channels and adjust the number of PEG Access Channels as warranted by the availability or deployment of technology, the level of demand for PEG programming, and the long-term best interests of Oahu Subscribers as a whole. TWE plans to retain three PEG Access Channels within the analog spectrum and migrate two of the existing PEG Access Channels (along with a number of other analog Channels) to the digital spectrum. TWE plans to develop and implement a PEG video-on-demand system which would include a specified number of hours of PEG programming and permit Subscribers to view PEG programming at their convenience.
- Convert its analog bandwidth to a digital system over time. During the migration of analog Channels to digital Channels, TWE plans to provide, at no charge, digital set-top boxes or similar devices to all Subscribers who require them to continue to view PEG programming and all Basic Tier Channels that have transitioned to the digital spectrum.
- Continue to support the INET system and work collaboratively with the State in the extension, performance, and design of the INET.
- Continue to provide one percent of its annual Gross Revenues to HPTF (the successor to the Hawai'i Public Broadcasting Authority, dba PBS Hawai'i).

- Continue to expand the reach and coverage of Local Origination Programming, which airs on OC 16, including high school sporting events and local entertainment programs.

TWE is seeking a renewed franchise term of twenty years. TWE's Application correctly observes that the future will likely bring a progression of new developments, services, and associated cable television technology. TWE's access and distribution networks therefore need to evolve and be upgraded to deliver the features that Subscribers demand through a combination of one or more technologies.

In its Application, TWE contends that its network architecture is sufficiently flexible and extensive to support its Subscribers' current requirements. TWE looks to the promise of digital technology, and concludes that, as new services are developed and delivered to Subscribers over the next several years, TWE will be able to utilize existing available bandwidth more efficiently without having to invest in costly upgrades.

TWE is also in the process of deploying SDV, which expands network capacity by transmitting only those digital and high definition video Channels that are being watched to a Subscriber at any given moment. Since not all Channels are being watched at the same time by any one Person, SDV technology sends the digital video in a more efficient manner so that freed-up bandwidth may be utilized for other purposes.

In TWE's hybrid fiber-coax distribution system, digital Channels are transported from TWE's Oahu headend to distribution hubs serving about 20,000 homes. Fiber optic cable extends from the distribution hubs to nodes, and from these nodes, digital signals are transported to homes on coaxial cables. At the distribution hubs, Channels for SDV are reserved for groups of homes. Each digital Channel has its own Channel number, and a Subscriber sends a request for a specific Channel via a set-top converter box or TiVo adaptor to the distribution hub. If a Channel is not already being transmitted on the coaxial line, the distribution hub sends the digital Channel to Subscriber via the fiber optic node.

TWE's Subscribers receive service through a combination of digital and analog transmissions. Digital Subscribers using a TWE-provided set-top box or similar device generally have access to an interactive program guide, VOD services, music Channels, seasonal sports packages, premium services (e.g., HBO), and digital video recorders. TWE is expanding the VOD technology to provide Subscribers enhanced services such as "Start Over" (e.g., Subscribers using a TWE-provided set-top box or similar device can restart select "in progress" programs) and "Catch Up", which would allow Subscribers to view previously aired programs that they have missed. TWE currently offers fifty Channels of HD television and expects to add more HD programming in the future.

TWE also is evaluating the use of "tru2way" technology, a software platform that creates a common platform for set-top box applications regardless of the box's operating system and permits the integration of set-top box functionality into televisions.

With tru2way technology, TWE's digital Subscribers would be able to receive TWE's two-way video services through a TWE-approved digital set-top box, or through tru2way-enabled televisions and other devices.

IV. TERMS AND CONDITIONS OF THE CABLE FRANCHISE

A. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a non-exclusive right to use and occupy certain limited and scarce Public Places, Public Highways and easements for the construction, use, operation and maintenance of a Cable System for a fixed period. The franchise confers no right, title or interest in any public right-of-way beyond those expressly conferred herein. The privilege of a cable franchise also carries with it associated obligations. TWE recognizes that there are certain responsibilities it assumes when issued a cable franchise. These include operating a System that is reliable, responsive, and responsible to the public it serves, providing the widest possible diversity of information sources and services to its Subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and PEG access (as requested by the Director).

By agreeing to renew its franchise, TWE: (a) acknowledges and accepts the State's legal right to issue and enforce the terms, conditions, and requirements of this Decision and Order; (b) agrees that it shall not oppose intervention by the State in any proceeding affecting the enforcement of its rights under this Decision and Order; (c) accepts and agrees to each and every term, provision, condition, and requirement contained herein; and (d) agrees that the renewal of its cable franchise was granted pursuant to processes and procedures consistent with applicable Law, and agrees that it shall not raise any claim or defense to the contrary.

TWE acknowledges that it shall be bound by the terms, conditions, and requirements of this Franchise Order and its officers and directors shall be responsible for directing its operations; however, local TWE personnel shall continue to manage and be responsible for day-to-day operations of the Cable System in the State.

B. Service Area

This cable franchise shall cover the island of Oahu.

During the term of this cable franchise, TWE shall make available to all residents on the island of Oahu, its Cable Service, which shall include (at a minimum) its Basic Service Tier. TWE shall not deny service to any group of potential Subscribers because of the income of the residents of the local area in which such group resides, subject to its twenty-five homes per mile line extension policy and the feasibility provisions set forth in section IV.S.7.

C. Programming Tiers

1. Basic Service Tier

The programming in TWE's Basic Service Tier shall be provided to all Subscribers. Subject to availability, TWE shall carry programming on its Cable System in each of the following broad categories in its Basic Service Tier:

- a. Public access programming;
- b. Educational access programming;
- c. Governmental access programming;
- d. Public non-profit stations with national programming; and
- e. Broadcast television stations as required by the FCC or applicable Law.

In addition to the above programming, TWE may in its discretion include additional programming in its Basic Service Tier.

Notwithstanding any other provision to the contrary, TWE shall comply with federal programming requirements, as may be amended from time to time, and shall provide thirty calendar days' advance written notice to the Director and Subscribers of any proposed programming changes in its Basic Service Tier. TWE shall have the right to petition the Director for modifications to the programming requirements for the Basic Service Tier as warranted by the development of technology or other factors during the term of the franchise.

2. Other Tiers

In addition to the Basic Service Tier, TWE shall have the discretion to offer other tiers of programming to Subscribers; provided that these other tiers shall, at a minimum, include the Basic Service Tier in the packages offered to Subscribers. Except as otherwise provided in this Decision and Order, TWE shall provide at least thirty calendar days' written notice to the Director and provide reasonable notice to Subscribers of any proposed programming changes to its other tiers of programming. TWE shall not be required to obtain the Director's prior written approval to change the programming in these other tiers. TWE shall have the right to petition the Director for modifications to the requirement of the inclusion of the Basic Service Tier in all other tiers as warranted by the development of technology or other factors during the term of the franchise.

3. Leased Commercial Access

Consistent with the Communications Act, within thirty days after the effective date of this cable franchise, TWE shall file with the Director and provide a published schedule of terms, conditions, and charges for the leasing of its Cable System Channels for commercial use.

D. Local Origination Programming

TWE airs locally produced original programming on Channel OC16 addressing such subjects as local news, surf conditions and weather, cooking, pet care, beauty contests, healthy living, and craft demonstrations. TWE indicated that it plans to expand its reach and coverage of local high school and college sporting events, mostly in HD programming. TWE also supports local producers and communities for the production of concerts and special programs.

The Director recognizes that Local Origination Programming is a significant benefit to the community, providing for diversity in programming with an emphasis on local issues and concerns. TWE has made a commitment to continue Local Origination Programming. The Director commends TWE for its efforts to deliver a broad range of diverse entertaining, informative, and educational programming by supporting Local Origination Programming, and requires that TWE continue to reserve one Channel for Local Origination Programming as a condition of this Franchise Order.

E. Franchise Required Channels

The PEG Access Organization utilizes six analog Access Channels. Pursuant to this Decision and Order, TWE shall provide one additional digital PEG Access Channel and seven new digital Franchise Required Channels, for a total of fourteen Channels. The Director or Director's designee shall allocate the Franchise Required Channels, or portions thereof, provided that allocations made with respect to public access shall comply with applicable Law.

For each Franchise Required Channel, TWE shall provide a direct connection to its headend from a designated site to be determined by the entity or entities to which the Channel is allocated for the transmission of programming. TWE shall be solely responsible for all costs and maintenance of each connection. The cost for any facilities and equipment to implement each digital Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection) shall be borne by the entity or entities to which the Franchise Required Channels are allocated as described in further detail below.

1. Franchise Required Channel for State Government

Within a reasonable time after receipt of a written Order of the Director, TWE shall make available to the Legislature (Senate and House of Representatives) and the Executive (Governor's Office and Lieutenant Governor), collectively, one statewide digital Franchise Required Channel for governmental programming. TWE shall provide a direct connection to its headend from the State Capitol for the transmission of governmental programming on this channel. TWE shall be solely responsible for all costs for the connection to the State Capitol. The cost for any facilities and equipment to implement this digital Channel, for operation of the Channel, or for the creation of public service announcements pursuant to section IV.G.3. below, shall be borne one-

half each by the Executive and the Legislature, and the operation of the Channel shall be on a one-half/one-half basis by mutual agreement between the Executive and Legislative branches.

2. Franchise Required Channel for the City and County of Honolulu

TWE shall make available to the Mayor of the City and County of Honolulu and the Honolulu City Council, collectively, one statewide digital Franchise Required Channel for governmental programming originating from Honolulu Hale. TWE shall provide a direct connection to its headend from Honolulu Hale for the transmission of governmental programming on this channel. TWE shall be solely responsible for all costs for the connection to Honolulu Hale. The cost for any facilities and equipment to implement this digital Channel, for operation of the Channel, or for the creation of public service announcements pursuant to section IV.G.3. below, shall be borne one-half each by the Mayor's Office and the Honolulu City Council, and the operation of the Channel shall be on a one-half/one-half basis by mutual agreement between the Executive and Legislative branches.

3. Franchise Required Channel for the County of Hawai'i

TWE shall make available on its Oahu Cable System one digital Franchise Required Channel to the Mayor of the County of Hawai'i and the Hawai'i County Council, collectively. The Channel shall be made available on TWE's Oahu Cable System upon the renewal of TWE's Hawai'i cable franchises and within a reasonable time after receipt of a written Order of the Director, provided that the digital Channel is included in the Hawai'i cable Franchise Orders.

4. Franchise Required Channel for the County of Maui

TWE shall make available on its Oahu Cable System one digital Franchise Required Channel to the Mayor of the County of Maui and the Maui County Council, collectively. The Channel shall be made available on TWE's Oahu Cable System upon the renewal of TWE's Maui cable franchises and within a reasonable time after receipt of a written Order of the Director, provided that the digital Channel is included in the Maui cable Franchise Orders.

5. Franchise Required Channel for the County of Kauai

TWE shall make available on its Oahu Cable System one digital Franchise Required Channel to the Mayor of the County of Kauai and the Kauai County Council, collectively. The Channel shall be made available on TWE's Oahu Cable System upon the renewal of TWE's Kauai cable franchises and within a reasonable time after receipt of a written Order of the Director, provided that the digital Channel is included in the Kauai cable Franchise Order.

6. Franchise Required Channel for Educational Programming

Within a reasonable time after receipt of a written Order of the Director, TWE shall make available to HENC one statewide digital Franchise Required Channel for accredited educational programming. TWE shall provide a direct connection to its headend from a designated site to be determined by HENC for the transmission of educational programming on this channel. TWE shall be solely responsible for all costs for the connection to the site. The cost for any facilities and equipment to implement this digital Channel or for operation of the Channel shall be borne by HENC.

7. Franchise Required Channel for Video-on-Demand Educational Programming

In addition to the statewide educational Channel provided for in section IV.E.6. above, TWE shall make available to HENC within a reasonable time after receipt of a written Order of the Director one VOD digital Franchise Required Channel for accredited educational programming by HENC over TWE's Oahu Cable System. TWE shall provide direct connection from a site to be determined by HENC for the transmission of accredited educational programming. TWE shall be responsible to provide equipment and software so that there shall be no ongoing recurring costs to HENC, the State and/or DCCA. TWE and HENC shall consult to determine the total number of programming hours TWE shall maintain on its server for the VOD educational service.

8. Additional Franchise Required Channels

Upon reasonable request and supported by sufficient justification, the Director may allocate additional Franchise Required Channels. After requesting and reviewing input from relevant stakeholders, the Director shall have the sole discretion to determine whether to provide any additional Franchise Required Channels.

F. PEG Access Channels

DCCA supports PEG access in Hawai'i and has viewed PEG access as a means for Subscribers to receive programming that reflects the communities in which they reside. The Director also values PEG access because it provides a forum where people can voice concerns to the community and encourage community dialog.

TWE shall work cooperatively with the Director or the Director's designee regarding PEG access on the island of Oahu. For each PEG Access Channel, TWE shall provide a direct connection to its headend from a designated site to be determined by the entity to which the Channel is allocated for the transmission of programming.

TWE shall be solely responsible for all costs and maintenance of each connection. TWE shall be responsible for providing equipment and software so that there shall be no ongoing recurring costs to the PEG Access Organization, the DOE, the UH, or the Director or Director's designee. If at any time, a new PEG Access

Organization is selected to provide PEG Access for the Oahu franchise, TWE shall bear the reasonable cost of providing a connection to the facilities of that PEG Access Organization. If a PEG Access Organization moves from a facility that has been previously connected by TWE, the PEG Access Organization will be responsible for the cost of connecting its new facility to TWE's headend. The cost for any facilities and equipment to implement each PEG Access Channel (i.e., the cost of any type of terminal equipment required to activate and use the connection) shall be borne by the entity or entities that are responsible for managing the PEG Access Channel(s).

1. Digital PEG Access Channel

Within a reasonable time after receipt of a written Order of the Director, TWE shall make available to the Director or the Director's designee one statewide digital Channel for public-related PEG Access programming to be programmed pursuant to the direction of the Director's designee on a first-come, first-served basis. TWE and the PEG Access Organization on Oahu shall work together to develop the implementation and the activation date for this digital Channel. TWE shall provide a direct connection to its headend from the PEG Access Organization's main facility for the transmission of access programming. TWE shall be solely responsible for all costs for the connection to the PEG Access Organization. The cost for any facilities and equipment to implement this digital Channel shall be borne solely by the PEG Access Organization on Oahu.

2. Analog PEG Access Channels

In addition to the statewide digital PEG Access Channel provided for in section IV.F.1. above, TWE shall designate and make available to the Director or the Director's designee at no cost to the State and/or DCCA the following:

- a. Four analog Channels for PEG access programming by the PEG Access Organization.
- b. Two analog Channels for accredited educational programming currently managed by HENC pursuant to a contract with 'Ōlelo, the current designated PEG Access Organization. The two educational Channels shall be dedicated to accredited educational programming: one for the UH, and the other for the DOE and HAIS.

3. Additional PEG Access Channels

Upon reasonable request and supported by sufficient justification, the PEG Access Organization may request the Director to allocate additional PEG Access Channels. After requesting and reviewing input from relevant stakeholders, the Director shall have the sole discretion to determine whether to provide any additional PEG Access Channels.

4. Two-way PEG Access Connectivity Capacity

TWE and the PEG Access Organization shall confer in the selection of two sites for their connection to the PEG Access Organization for the purposes of enabling video connectivity, such as video conferencing, between each site with the PEG Access Organization's main facility. TWE and the PEG Access Organization shall determine the implementation methodology and TWE shall implement and be responsible for the connection of the two sites selected. All equipment costs to activate and utilize the connection shall be borne solely by the PEG Access Organization.

5. Designation or Selection of PEG Access Organization(s)

The Director shall have the sole discretion to designate or select one or more entities to manage and operate the PEG Access Facilities and Equipment and the Access Channels, and receive the Access Operating Fee and Capital Fund Payments.

6. Unused Time

Pursuant to Section 531(d) of the Communications Act, TWE shall be permitted to use time on one or more of the PEG Access Channels whenever there are no Channels otherwise available on its Cable System (whether or not activated) and whenever such Access Channel(s) are not scheduled for use at least seventy-two hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to the use designated by the Director, and shall terminate or be preempted by PEG access programming scheduled at least seventy-two hours in advance.

All non-PEG access programming on Access Channels shall be identified as such by an appropriate announcement made at least twenty-four hours in advance and following each non-PEG access use.

Notwithstanding any other provision to the contrary, if any Access Channel has been programmed for a daily average of eight hours or fifty percent of the hours of access cablecast days (whichever is less) during any ninety-day period, the use of such Access Channel by TWE shall be suspended for such time as the minimum access use of the Access Channel is maintained; provided that the provisions of this paragraph may be waived by the Director for good cause.

G. Requirements for Franchise Required Channels and PEG Access Channels

1. Technical Quality

The technical quality of all Franchise Required Channels and PEG Access Channels, to the extent within TWE's control, shall be at least equivalent to the technical and picture quality of the local broadcast television stations which are Affiliates of major

national broadcast networks and satisfy the requirements contained in applicable provisions in the HAR. Subject to FCC regulations, the Cable System shall be so constructed and operated that, to the extent within TWE's control, there is no significant deterioration in the quality of Access Channel signals or leased access Channels signals resulting from the transportation of the video signal, either upstream or downstream, as compared with any other Channel on the Cable System. Deterioration refers to any signal problem, including but not limited to ghost images and other interference and distortions and delays.

2. Channel Placement

All PEG Access Channels, once made available, shall be used for PEG access and shall be transmitted to all Subscribers on TWE's Basic Service Tier unless otherwise permitted by this Franchise Order or directed by the Director. Although DCCA acknowledges that TWE may determine Channel placement at its sole discretion, TWE agrees to assign each PEG Access Channel its own dedicated Channel number (i.e., the current numbering is 49, 52, 53, 54, 55 and 56) and shall not move the PEG Access Channels without at least thirty calendar days' prior written notification to the Director. TWE shall ensure that Subscribers can locate and view all PEG Access Channels in the same manner as other commercial Channels of video programming offered by TWE, unless otherwise agreed to by the Director.

TWE agrees to keep all Franchise Required Channels reasonably contiguous in the Channel lineup. TWE also agrees to keep all PEG Access Channels reasonably contiguous in the Channel lineup. TWE further agrees to keep all Franchise Required Channels reasonably contiguous with the PEG Access Channels in the Channel lineup, or, if it is impractical to make them reasonably contiguous without moving some or all of the PEG Access Channels from their current Channel placement, as close together in the Channel lineup as reasonably possible.

3. Promotional "Tune-in,"¹ Public Service Announcements

In addition to any public service announcements that TWE may be required to provide pursuant to any State, federal or county Law or agreement, TWE shall cablecast on its cable Channels, without charge to the State or the Director's designees, at least 1,800 public service announcements per calendar year, each thirty seconds in length relating to the subjects below. The beneficiaries of the public service announcements shall work collaboratively to maximize the use of the allocated spots. The airing of the public service announcements shall be on any Channel that TWE is permitted to insert commercial or promotional segments and otherwise in a manner consistent with TWE's public service announcement policy. TWE shall have the sole discretion to determine on which Channel(s) to air the public service announcements. The promotional public service announcements shall be allocated approximately as follows:

¹ "Tune-in" announcements are promotional announcements intended to increase viewership.

- a. PEG Access Organization (1,000 spots);
- b. Executive Branch (Governor's Office and Lieutenant Governor's Office) and Legislature (Senate and House of Representatives) (total of 200 spots);
- c. Mayor of the City and County of Honolulu and Honolulu City Council (total of 200 spots); and
- d. HENC (400 spots).

TWE shall be provided with the cablecast-ready public service announcements for airing by the applicable organizations.

H. Developing Technologies

1. TWE's Digital Migration

TWE represents that it plans to continue its commitment to efficiently allocate usable cable spectrum. During the first four years of the franchise period, TWE proposes to reallocate its cable bandwidth by migrating the cable spectrum currently used for analog transmissions to a digital format to free up more usable bandwidth for other services for the benefit of all Subscribers. The FCC has encouraged cable operators to implement SDV technology, concluding that its use can provide significant consumer benefits. As a result of this transition from analog to digital, TWE will be able to offer Subscribers significant benefits and enhanced services, potentially including greater choices in HD programming, more efficient methods of viewing programs and videos, more options to view programs in various formats, substantial increases in broadband internet speeds, and the ability to interconnect with household wired and wireless devices currently available and in the future.

TWE further represents that it plans to migrate approximately fifty analog Channels into the digital format during the first four years of the franchise term. TWE expects to accomplish the transition to digital without service disruption. By the third year of its transition plan, TWE anticipates that it will have developed the next phase of its plan to migrate additional Channels to the digital spectrum.

Pursuant to this Franchise Order, TWE is authorized to transition any Channel in its analog lineup to its digital service in its sole discretion, subject to the transition schedule of PEG Access Channels provided below. TWE may also transition non-Access Channels that are in the Basic Service Tier from analog to digital service without the requirement of maintaining the non-Access Channels in its analog Channel lineup; provided that TWE ensures that all Subscribers have access to these non-Access Channels in the Basic Service Tier, regardless of whether they are subscribing to analog or digital Cable Service.

TWE may transition Access Channels from analog to digital service without the requirement of maintaining the Access Channels in its analog Channel lineup; provided that TWE ensures that all Subscribers, regardless of whether they are subscribing to analog or digital Cable Service, have access to these Access Channels in the Basic Service Tier on a technologically equivalent basis as commercial Channels, meaning that they can be accessed and viewed by Subscribers in the same manner as commercial Channels.

In order to ensure that all Subscribers have access to all Access Channels and non-Access Channels in the Basic Service Tier that have been converted to digital, TWE shall provide to Subscribers of analog service, upon request and at no charge to the Subscriber, set-top boxes or similar devices to view Channels in the Basic Service Tier (up to a reasonable maximum per household) that have been migrated to the digital spectrum. TWE shall provide free installation and support for those Subscribers who need assistance with these devices.

As a further condition of this Franchise Order, TWE shall ensure that the time to access an SDV Channel, under normal operating conditions, shall not exceed a one second average delay per Channel and will not include a drop-down menu selection.

During the first three years of the renewal term, TWE may transition the following analog PEG Access Channels to digital service as follows:

- a. Year 1: one Educational Access Channel currently utilized by HENC;
- b. Year 2: one PEG Access Channel currently utilized by the PEG Access Organization; and
- c. Year 3: one Educational Access Channel currently utilized by HENC

TWE shall consult and work directly with the UH and DOE on the transition of the two analog Channels for accredited educational programming provided for in this Franchise Order to digital technology. TWE shall consult and work directly with the PEG Access Organization on the transition of the PEG Access Channels.

2. Technology Upgrade Plans

The Department is cognizant of the increasing pace of change in the technology sector, and that the definition of “state of the art” is changing faster than ever before. Technological investment today must be made with an eye toward ensuring compatibility with what has yet to be developed, and a franchise can not be the basis upon which services are frozen in time, but instead must encourage those services to evolve and remain current. As such, the Director must be able to address the needs of Oahu Subscribers for upgrades relative to advanced services such as enhanced digital

programming and other related matters. In connection therewith, the Director may also review PEG access, INET interconnect or connect requirements and/or point to point circuits, new technologies and services, and any other matter related to the Cable System and cable franchise area.

For every five-year period during the franchise term, TWE shall submit a technology upgrade plan for its Oahu Cable System to the DCCA. The first technology upgrade plan is due on August 1, 2010, and thereafter, each successive five-year plan shall be submitted no later than April 30th of the preceding year (i.e., April 30, 2014; April 30, 2019; and April 30, 2024). The technology upgrade plan shall report on new developments in cable technology and present an anticipated timetable for the incorporation of new developments in the Oahu Cable System. In addition, the plan shall describe the effect and costs of new technological developments on community needs and interests and also on PEG access, and the effect and compatibility and costs of those technological changes on consumer electronic equipment. TWE, to the extent such information is reasonably available, shall also describe how other cable companies have incorporated, or are planning to incorporate, new technological developments into their Cable Systems and the estimated timetable for doing so. TWE shall also address in its plans, among other things, the following: impacts to PEG Access and schools and libraries, Franchise Required Channels, INET interconnection or connection requirements, broadband internet speeds and other matters related to its Cable System and the cable franchise area. Nothing herein shall preclude TWE from filing confidential, proprietary and/or competitively sensitive information under seal with the DCCA.

In the event that TWE's technology upgrade plan fails to include any of the criteria established above, the Director may require TWE to amend and/or update its technology upgrade plan. If TWE fails or refuses to submit an amended and/or updated technology upgrade plan as requested by the Director, TWE shall provide a statement explaining how such non-compliance serves the public interest within fifteen calendar days after receipt of the Director's request.

The Director may also request that TWE improve its technology upgrade plan to incorporate new technologies in Oahu more rapidly. If TWE fails or refuses to submit and/or adhere to an improved technology upgrade plan as requested by the Director, TWE shall provide a statement explaining why its refusal or failure serves the public interest within fifteen calendar days after receipt of the Director's request.

The Director shall review all statements provided by TWE regarding how its refusal or failure serves the public interest and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting TWE's public interest statement. In the event that the Director rejects TWE's public interest statement, the Director may require TWE to submit a revised statement or technology upgrade plan. The Director shall have the option to reduce the duration of the cable franchise renewal term, terminate the cable franchise, or take any other appropriate action consistent with this Franchise Order and applicable Law, in the event

TWE's fails to either submit a revised and/or improved technology upgrade plan consistent with the direction of the Director or a statement that is accepted by the Director explaining why its non-compliance serves the public interest.

Furthermore, in the event that TWE fails to submit a technology upgrade plan by the established deadline and/or the Director determines that TWE has failed to implement a previously submitted technology upgrade plan, TWE shall be provided a reasonable time to cure any deficiencies or provide a statement of how such non-compliance serves the public interest.

Failure to remedy the deficiency or deficiencies with a reasonable time, or failure to provide a statement that is accepted by the Director explaining why TWE's non-compliance serves the public interest, shall subject TWE, at the option of the Director, to a reduction of the cable franchise renewal term, termination the cable franchise, or any other appropriate action taken by the Director and consistent with this Franchise Order and applicable Law.

3. Future Digital Upgrades to the PEG Access Channels

As part of its technology upgrade plan discussed above, TWE shall consider and address digital upgrades to the equipment and facilities of the PEG Access Organization.

I. Access Operating Fee

1. Payment of AOF

During each year of the franchise term and subject to further Decision and Order by the Director, TWE shall pay an Access Operating Fee to be used for PEG access purposes and/or any other public purpose(s) as determined by the Director.

TWE shall pay the Access Operating Fee to the Director or the Director's designee by January 31st of each year of the franchise term, or at such other time(s) as directed by the Director. The Director shall have the sole discretion to modify the amount and/or timing of the payment of the Access Operating Fee, and the Director may consider transitioning the payment of the Access Operating Fee from an annual to a monthly, semiannual or periodic collection and payment system.

2. Calculation of AOF

The Access Operating Fee paid by TWE to the Director or the Director's designee shall be either: (1) an amount equal to the amount paid for the previous calendar year multiplied by the percentage change (positive or negative) of the United States Department of Labor seasonally adjusted Consumer Price Index for all Urban Consumers Honolulu (CPIU) for all Items (1982-1984=100) from the most current period available and the comparable figure for the prior twelve-month period; or (2) an amount

equal to three percent of TWE's Gross Revenue for the applicable preceding calendar year, whichever amount is less.

For illustration purposes only, the calculation for the calendar year of 2010 for the percentage change of the seasonally adjusted CPIU is as follows:

Assume:

CPI for the most current period	228.070
Less CPI for same period in prior year	227.334
Equals Change in CPI	0.736
Change in CPI divided by CPI for the same period in prior year	$1 + (0.736 \div 227.334)$
Equals	1.003
Payments made in 2009	\$4,549,696
Payment for 2010 equals payment for prior year x 1.003	$\$4,549,696 \times 1.003 =$
This calculation is to be compared with three percent of Gross Revenue from the prior year. The AOF to be paid on January 31, 2010 is the lesser amount.	\$4,563,345

In the event that the CPIU is discontinued or replaced by the United States Bureau of Labor Statistics, the Director shall adopt a new index which shall be applied in calculating the payment amount.

3. Maximum Amount of AOF

Notwithstanding any other provision to the contrary, the maximum amount for the Access Operating Fee shall be no greater than three percent of TWE's Gross Revenue for the applicable preceding calendar year, as directed by the Director.

4. Reserve Account

The difference between the Access Operating Fee calculated and paid pursuant to section IV.I.1. above and an amount equal to three percent of TWE's Gross Revenues for the applicable preceding calendar year, if any, shall be deposited by TWE into an interest bearing account. The funds shall be used for INET/broadband connections or interconnects and equipment as directed by the Director. No disbursements shall be made from the account unless expressly authorized in writing by the Director or by the CATV Administrator, and appropriated by the Hawai'i State Legislature.

Commencing on January 31, 2010, and on January 31st of each year thereafter, TWE shall submit to the Director a written statement as to the balance in the reserve account as of December 31st of the previous year. TWE shall provide a sworn statement as to the accuracy and completeness of this written statement.

5. Access Operating Fee Reports

Commencing on January 31, 2010, and on January 31st of each year thereafter, TWE shall submit to the Director copies of the Access Operating Fee payments paid to the PEG Access Organization during the prior calendar year, together with its Gross Revenues statement, and any other supporting information requested by the Director. TWE shall provide a sworn statement as to the accuracy and completeness of these reports.

6. Director's Authority

Notwithstanding any other provision to the contrary, the Director may, at any time and in the Director's sole discretion, reconsider and amend the amount of the Access Operating Fee, the timing of the payments of the Access Operating Fee to the Director or the Director's designee, and/or the use of Access Operating Fee.

7. Obligation to Pay Upon Transfer

Any subsequent transfer of the Cable System shall require TWE to pay the Director or the Director's designee the outstanding Access Operating Fee required to be provided in this paragraph before the effective date of the transfer.

J. Capital Fund Payments

TWE and the PEG Access Organization shall meet and develop a plan and schedule for the Capital Fund Payments for PEG Access Facilities and Equipment for every five-year period during the franchise term. The Capital Fund Payments shall take into consideration the need to upgrade and replace the equipment of the PEG Access Organization in light of the anticipated technological changes to the Oahu Cable System and the evolution from an analog to a digital environment.

1. Payment in January 2010

On January 31, 2010, TWE shall make an annual Capital Fund Payment of \$823,000.00 to the PEG Access Organization.

2. Schedule of Future Payments

Commencing on January 31, 2011, and on January 31st of each year thereafter, TWE shall make annual Capital Fund Payments to the Director or the Director's designee, unless otherwise ordered by the Director. TWE and the PEG Access Organization shall meet and develop a plan and schedule for the Capital Fund payments for the PEG Access Facilities and Equipment for the remaining balance of the first five-year period (2011 – 2014) and submit said agreed-upon schedule to the Director by August 1, 2010. The Director, in the Director's sole discretion, and taking into account whether the plan serves the overall public interest, may approve, deny, or

modify the proposed amount and schedule of Capital Fund Payments, and the timing of those payments may be subject to further order.

For every subsequent five-year period during the franchise term, TWE and the PEG Access Organization shall meet and develop a schedule for Capital Fund Payments and submit said agreed-upon schedule to the Director no later than April 30th of the preceding year (i.e., April 30, 2014; April 30, 2019; and April 30, 2024). The Director, in the Director's sole discretion, and taking into account whether the plan serves the overall public interest, may approve, deny, or modify the amount and schedule of Capital Fund Payments, and the timing of those payments may be subject to further order.

In the event that TWE and the PEG Access Organization are unable to agree and develop a schedule in good faith for Capital Fund Payments, the Director shall have the sole authority to arbitrate and designate a schedule for the parties. If TWE refuses to accept the designated schedule, the Director shall have the option to reduce the duration of the cable franchise renewal term, terminate the cable franchise, or take any other appropriate action consistent with this Franchise Order and applicable Law.

Furthermore, in the event that TWE fails to adhere to a previously submitted schedule for Capital Fund Payments, TWE shall be provided a reasonable time to cure any deficiencies or provide a statement of how such non-compliance serves the overall public interest.

The Director shall review all statements provided by TWE regarding how its non-compliance serves the overall public interest and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting TWE's overall public interest statement. In the event that the Director rejects TWE's overall public interest statement, the Director may require TWE to submit a revised statement.

Failure to remedy the non-compliance within a reasonable time, or failure to provide an explanation that is acceptable to the Director regarding how the non-compliance serves the overall public interest, shall subject TWE, at the option of the Director, to a reduction of the cable franchise renewal term, termination of the cable franchise, or any other appropriate action taken by the Director and consistent with this Franchise Order and applicable Law.

3. Obligation to pay upon a transfer

Any subsequent transfer of the Cable System shall require TWE to pay the Director or the Director's designee the outstanding PEG Capital Fund Payments for PEG access required to be provided in this Franchise Order before the effective date of the transfer.

4. Capital Fund Payment Uses

The Capital Fund Payments for the provision of PEG Access Facilities and Equipment required to be provided by TWE under this Franchise Order shall be deemed to be capital contributions to the extent permitted under Section 542(g)(2)(C) of the Communications Act and shall not be used for operating expenses of the Director's designee.

5. Capital Fund Payment Reports

Commencing on January 31, 2010, and on January 31st of each year thereafter, TWE shall submit to the Director copies of the Capital Fund Payments and any other supporting information requested by the Director. TWE shall provide a sworn statement as to the accuracy and completeness of these reports.

K. Termination of Access Operating Fee and Capital Fund Payments.

At the sole direction of the Director, which shall be provided in writing, TWE may suspend paying the Access Operating Fee and Capital Fund Payments if any of the following events occur:

1. First-run or original PEG access programming cablecast on each Access Channel falls below a minimum of seventy-five percent of the total number of available hours per Access Channel during the previous year;
2. Such payments are used for non-PEG access purposes;
3. The Director's designee (currently, 'Ōlelo, the designated PEG Access Organization) fails to comply with any of the provisions in the PEG Access contracts with the DCCA, as determined in the sole discretion of the Director; or
4. The Director determines that a suspension is in the best interest of the State.

TWE's obligation to make such payments shall be reinstated at the sole direction of the Director.

L. Annual Fee Payment to DCCA

TWE shall pay to the Department an Annual Fee as specified in HRS Chapter 440G and HAR Chapter 16-132, which currently states that the Annual Fee shall be one percent of the income received from Subscribers for Cable Services rendered during the preceding calendar year, or as otherwise ordered by the Director. Commencing on January 31, 2010, and on January 31st of each year thereafter, TWE shall submit to the

Director copies of the Annual Fee Payments, together with its statement of income received from Subscribers, and any other supporting information requested by the Director. TWE shall provide a sworn statement as to the accuracy and completeness of these reports.

M. Networks

1. Institutional Network

Currently, the State operates and utilizes an INET for broadband telecommunications purposes by government and educational authorities, agencies, and institutions. INET contribution and support requirements are standard components of all cable franchises approved by DCCA. The maintenance and continued expansion of the State's INET is a significant component of the State's strategy for its telecommunications infrastructure.

a. New Interconnections. Within six months of a request by the Director, TWE shall provide two-way fiber optic INET interconnection or connections for two-way broadband video, voice, and data capabilities interconnecting network sites to be determined by the Director and shall be compensated by the State for TWE's actual cost of labor and materials; provided that the sites at which TWE shall install fiber optic cables have the necessary infrastructure (i.e., conduit capacity, pole attachment permits, etc.) and rights of way to receive the fibers. In order to expedite this process, TWE and DCCA shall request the assistance of the State Public Utilities Commission and/or the FCC in obtaining pole agreements from entities maintaining poles.

When requesting such interconnections, the State shall be cognizant of TWE's scheduling, manpower, resource limitations, and the cost of the connections compared to the public benefits provided.

b. Cost of Labor and Materials. The requesting agency, department, or other governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials for interconnections installed and replaced. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department, or governmental entity shall promptly reimburse TWE for the costs of such interconnections, which shall include the cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and terminating points.

c. Coordination between TWE and DCCA. TWE shall work with the Director's staff, consultants, and others designated by the Director to maintain and expand the INET and to develop and implement coordinated plans for its use.

TWE may construct the INET connections required under this section IV.M.1. in a manner it deems appropriate, consistent with the provisions hereof. TWE may utilize contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

d. Repair and Maintenance of the INET. TWE shall maintain and repair the fiber optic lines up to the termination points of each network site at no charge or cost to the State or Subscribers.

e. Additional Sites/Interconnections. During the first five years of the franchise term, TWE (at the request of the Director) shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the INET system and twenty additional sites/interconnections, selected within TWE's franchise areas statewide, to be determined by the Director, all at no cost or charge to the State or Subscribers during the term of the franchise. When determining the sites/interconnections to the INET system at no cost or charge to the State or Subscribers, the Director shall be cognizant of TWE's scheduling, manpower, resource limitations, and the cost of the connections compared to the public benefits provided.

TWE shall maintain and repair the fiber optic lines up to the termination point of each network site at no charge or cost to the State or Subscribers. In the event that TWE's access to conduits is not obtainable for interconnecting any of the sites, TWE shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director, TWE shall work cooperatively with the governmental agency or agencies affected and others designated by the Director, and shall develop and submit a plan for any such interconnection including, but not limited to, construction timetables and costs within sixty days after receipt of the Director's request.

f. Future Plans for INET Sites/Interconnections. For every subsequent five-year period during the franchise term, no later than April 30th of the preceding year (i.e., April 30, 2014; April 30, 2019; and April 30, 2024), TWE and the Director or CATV Administrator shall meet and confer on the number of additional INET sites/interconnections to be provided by TWE, without charge to the State or Subscribers for the next five-year period.

The Director, in the Director's sole discretion, may approve or reject the number of INET connections to be provided by TWE without charge to the State or Subscribers. In considering the proposed number of INET connections to be provided by TWE without charge to the State or Subscribers, the Director shall be cognizant of TWE's scheduling, manpower, resource limitations, and the cost of the connections compared to the public benefits provided. In the event that the Director rejects TWE's proposed number of INET connections, the Director may require TWE to submit a revised proposal. If TWE fails or refuses to submit a revised proposal for additional INET connections as requested by the Director, TWE shall provide a statement explaining why its initial proposal serves the overall public interest.

The Director shall review all statements provided by TWE and, in the Director's sole discretion, approve or reject the statements. The Director may also request additional information supporting TWE's overall public interest statement. In the event that the Director rejects TWE's overall public interest statement, the Director may require TWE to submit a revised statement or INET Proposal. The Director shall have the option to reduce the duration of the cable franchise renewal term, terminate the cable franchise, or take any other appropriate action consistent with this Franchise Order and applicable Law, in the event that TWE fails to either submit a revised INET proposal consistent with the request of the Director or a statement that is accepted by the Director explaining how such non-compliance serves the overall public interest.

Furthermore, in the event that TWE fails to submit a plan for proposed additional INET sites/interconnections by the established deadline and/or the Director determines that TWE has failed to implement a previously submitted proposal for additional INET sites/interconnections, TWE shall be provided a reasonable time to cure any deficiencies or provide a statement that is accepted by the Director explaining how such non-compliance serves the overall public interest.

Failure to remedy the deficiency or deficiencies with a reasonable time, or failure to provide an explanation that is accepted by the Director explaining how TWE's non-compliance serves the overall public interest, shall subject TWE, at the option of the Director, to a reduction of the cable franchise renewal term, termination the cable franchise, or any other appropriate action taken by the Director and consistent with this Franchise Order and applicable Law.

2. Emergency Override System

a. Power Supply. The hubs and headend all have or shall have uninterruptible power supply systems and backup generators (TWE installed a new generator at the headend at its principal office in Mililani in 2008).

b. Emergency Alert System. Pursuant to Section 624(g) to the Communications Act, Cable Systems must be capable of providing EAS alerts to their Subscribers. TWE shall therefore purchase and maintain EAS receivers and all associated equipment necessary to participate in national, State, and county level EAS activations and emergency alerts to Subscribers, at no cost to the State or Subscribers.

TWE's existing EAS has a direct feed from the Civil Defense location at Diamond Head, including a video feed. For analog systems, the EAS allows audio override and a text crawl over existing video. For digital Channels, the set-top box generates a crawl line. In an emergency situation, the Civil Defense will pre-set a message and send the message to Oceanic, which shall then transmit the message to Subscribers in the crawl line. TWE shall maintain and update this emergency system in full compliance with the State EAS requirements and FCC rules.

c. Override of System. TWE shall configure and maintain the Cable System to permit Emergency Authorities to override, simultaneously by remote

control, all audio and video signals on all Channels. The Emergency Authorities shall have the sole discretion to determine when to activate the Emergency Override System.

The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

The video display (a message crawl) during emergency voice messages may include State, Civil Defense, or other appropriate official emblems as designated by the Emergency Authorities.

d. Interconnection at No Cost. TWE shall provide an interconnection to its headend at no cost or charge to the emergency operating centers within its cable franchise area.

e. Cooperation with Emergency Authorities. TWE shall cooperate fully with the Emergency Authorities in the planning and implementation of the Emergency Override System, and shall at all times comply with all applicable Laws and regulations, including FCC requirements and standards.

3. Interconnection with the Hawai'i Interactive Television System

TWE shall support and provide carriage of the HITS programming on the Cable System at no cost or charge to the State or Subscribers. TWE shall provide and maintain a direct fiber interconnect with the HITS at points to be designated by the Director, at no charge or cost to the State or Subscribers.

4. Non-Franchise Fee/Capital Contribution

The items and services required to be provided under section IV.M. at no charge or cost to the State and Subscribers shall not be deemed to be Franchise Fees under Section 542 of the Communications Act.

N. Schools and Institutions of Higher Learning

1. Interconnection to Schools and Libraries

TWE shall interconnect all DOE schools, institutions of higher learning, and libraries within the Service Area to its Cable System and provide a Cable Drop, basic Cable Service and one set-top box, or similar device, to every DOE school, institution of higher learning and library within its Service Area, all at no cost or charge to the State or Subscribers, or to the DOE schools, institutions of higher learning or libraries at the direction of the Director. TWE shall maintain and repair the cable lines up to the termination points of each site at no charge or cost to the DOE schools, institutions of higher learning or libraries, and shall replace any such cable lines at TWE's actual cost of labor and materials, which costs shall be borne solely by the connected DOE school, institution of higher learning or library.

2. Maintenance and repair of the Cable Drop

TWE shall maintain, repair, and, if necessary, replace all infrastructure necessary to provide this service at no cost to the State or Subscribers.

O. High-Speed Broadband Service to Schools

The Director acknowledges that the FCC has classified cable modem service as an interstate information service as defined by Title I by the FCC, which is not currently subject to regulation by LFAs. Without waiving any rights with respect to the foregoing and under applicable Law, and in consideration of other terms and conditions in this Franchise Order, TWE voluntarily agrees to provide high-speed broadband service to schools as described below at no charge or cost to the State or Subscribers.

Upon the granting of the cable franchise, and at the direction of the Director, TWE agrees to provide business class high-speed broadband service, with maximum speeds of 15 MB downstream and 2 MB upstream, to one point of demarcation within each current as well as future DOE schools, institutions of higher learning and libraries throughout the State, for any purpose but primarily for online testing purposes, all at no cost or charge to the State and Subscribers, or to the DOE schools, institutions of higher learning or libraries. Each school, institution or library shall determine the point of demarcation and the cable modem(s) for the broadband connection. The DOE and TWE shall determine the implementation schedule of the high-speed broadband service. Whenever a DOE school has an INET connection, then TWE may remove its business class high-speed broadband service from that DOE school.

P. Public Broadcasting

DCCA believes that the continued viability of public broadcasting is in the public interest. The HPTF, dba PBS Hawai'i, provides statewide non-commercial broadcasting of Public Broadcasting Service's educational, cultural, and historic programs as well as local programming that educates, informs, and entertains residents, businesses, and visitors.

For the duration of the cable franchise term, unless modified by further Decision and Order by the Director, TWE shall provide funding to HPTF or the Director's designee in an amount equal to one percent of its Gross Revenues each year. The HPTF Fee shall be based on an amount no greater than one percent of TWE's Gross Revenue for the applicable preceding calendar year, as directed by the Director. The HPTF Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment for public broadcasting.

Commencing in 2010, during each and every year of the franchise term, TWE shall pay the HPTF Fee directly to HPTF or to the Director's designee no later than January 31st, unless otherwise ordered by the Director. In connection with the payment of the HPTF Fee, TWE shall submit to the Director copies of all such payments and any

other information requested by the Director along with a sworn statement as to the accuracy and completeness of these payments. The Director may consider transitioning the payment of the HPTF Fee to a monthly collection and payment system.

PBS Hawai'i or any successor broadcast television Channel(s) operated by the HPTF or its successor, shall not be deemed Access Channel(s) and shall not be counted or included among the Access Channels described in section IV.F.

Q. Cable System Facilities and Equipment

1. System Functionality

As designed, maintained, and upgraded, all facilities and equipment of the Cable System shall deliver high quality signals that meet federal law and FCC technical quality standards, regardless of the particular manner in which the signal is transmitted.

2. Test Results

As soon as available, but in no event more than thirty calendar days after the date of the test, TWE shall submit to the Director the annual test results from the FCC Cumulative Leak Index signal leakage and aeronautical offset requirements test.

3. Collateralization of Cable System Facilities And/Or Equipment

a. Notification of Collateralization. In the event that the assets of the Cable System will be or have been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notify the Director in writing no later than fifteen calendar days after the closing of the loan or credit facility. TWE shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount and any other information the Director may require.

b. Subsequent Notification of Change. During the term of the franchise, TWE is not required to seek pre-approval of any change in an existing loan agreement or credit facility which encumbers or pledges the assets of the System; provided that the Director shall have the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within thirty calendar days after closing, TWE shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine whether the change(s) to the loan agreement or credit facility affect the continued financial viability of the System and to require corrective measures if necessary.

c. Prompt Notification of Default. Notwithstanding any other provision to the contrary, in the event that TWE receives notice indicating that it is in default under any of its loan agreements, TWE shall: (1) promptly notify the Director in

writing of such event, (2) describe in sufficient detail the nature of default and TWE's actions to cure such default, and (3) promptly notify the Director in writing of the final resolution of such default.

R. Subscriber Service

1. Adequate and Reliable Service Required

Adequate and reliable service by a cable operator demands responsive and timely customer service. DCCA periodically receives telephone calls and written complaints from Subscribers who are frustrated at not being able to reach TWE quickly to report a cable outage or other service problems. Customers have reported long holding times before reaching a customer service representative or repeated busy signals. In addition, some Subscribers are dissatisfied with the length of time it takes to schedule a home service appointment or to schedule an installation from the request date. Although TWE's Customer Satisfaction Survey shows that overall Subscriber satisfaction for TWE remains favorable, there nonetheless are customer Service Areas where TWE could improve. DCCA shall monitor more closely TWE's compliance with the FCC Customer Service Standards and requirements contained in this Franchise Order.

2. Federal Customer Service Standards

TWE shall meet the federal cable television customer service standards set forth in applicable Law, including but not limited to 47 Code of Federal Regulations Sections 76.1602 and 76.309, as amended.

3. Customer Service Office

a. Number of Customer Service Offices. TWE shall maintain and operate within its Service Area at least four customer service offices to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints (including without limitation those regarding service, equipment malfunctions, or billing and collection disputes). TWE shall maintain an adequate staff or procure adequate support staff to provide such services in a timely, efficient, professional, and courteous manner.

b. Operating Hours. For each customer service office it maintains, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that shall be most convenient for its Subscribers. At a minimum, TWE shall maintain at least four customer service offices in the franchise area open for walk-in business at least nine hours each weekday and at least eight hours on Saturday.

4. Customer Service Call Centers

a. Call Center Access Line. TWE shall maintain a publicly-listed local, toll-free or collect call customer service telephone access line that shall be available to its Subscribers twenty-four hours a day, seven days a week. Trained representatives shall be available to respond to Subscriber telephone inquiries during normal business hours. The customer service telephone number may be used for Subscriber repair service matters.

b. Telephone Response Time. TWE shall comply with federal customer service standards when answering telephone calls.

c. After Hours Answer Service. After normal business hours, the customer service telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained company representative on the next business day.

d. Call Center Service Performance Report. In order to monitor TWE's customer service, TWE shall submit to the Director on the fifteenth day of each month a customer service performance report detailing TWE's customer service performance including but not limited to the following matters:

- 1) The average length of time that it takes a human operator to answer a Subscriber telephone call;
- 2) The number of abandoned telephone calls to customer service telephone numbers;
- 3) The number and percentage of busy signals received by callers;
- 4) The percentage of telephone calls answered within thirty seconds when a connection is made;
- 5) The percentage of telephone calls that are transferred to another TWE employee or representative in which the transfer time exceeds thirty seconds; and
- 6) The effectiveness of any new computer equipment in decreasing response time.

The report shall be submitted by TWE in a form acceptable to the Director, and shall be subject to provisions of the Hawai'i Uniform Information Practices Act, Chapter 92F, HRS.

5. Installation and Repair Service

a. Installation Service Hours. TWE shall provide installation service at least eight hours each weekday and on Saturdays, except for legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

b. Repair Service Hours. TWE shall provide repair service at least eight hours each weekday and on Saturdays. At all other times, TWE shall have, at a minimum, an answering service to take calls and a technician on call to respond to after hour emergencies.

6. Billing Statements

a. Subscriber Bill Information. Subscriber bills shall be clear, concise, and understandable. Bills shall be fully itemized, with itemizations including but not limited to the Basic Service Tier and other programming tier charges (i.e., standard and premium Channels), equipment charges, and any other charges requested by the Director. The bills shall also clearly delineate all activity during the billing period (including optional charges, rebates, credits, and Franchise Fee itemizations) and any other information requested by the Director.

- 1) Late fees may not be imposed upon consumers for delinquent payments related to video programming services until sixty calendar days after an invoice's due date.
- 2) TWE shall provide Subscribers with prior notice of the imposition of a late fee for delinquent payment. TWE shall adhere to the following procedure for charging late fees on Subscribers' billing statements:
 - a) Billing Period 1: Subscriber's bill for Billing Period 1 is generated.
 - b) Billing Period 2: If the Subscriber has not paid his/her bill for Billing Period 1 by the date that TWE prints the bill for Billing Period 2, the Billing Period 2 bill shall include a notice to the Subscriber stating that a late fee will be charged if the Billing Period 1 bill is not paid in full by the date that the Billing Period 3 bill is generated. This notice shall also specify the amount of the late fee.

- c) Billing Period 3: If TWE has not received the Subscriber's payment for Billing Period 1 by the date that TWE prints the Subscriber's payment for Billing 3, TWE may include the Billing Period 1 late fee assessment on the Subscriber's bill for Billing Period 3.

b. Billing Disputes. In the case of a billing dispute, TWE shall respond to a written complaint from a Subscriber within thirty calendar days.

c. Refunds. Refund checks to Subscribers, if applicable, shall be issued promptly, but no later than either:

- 1) The Subscriber's next billing cycle following resolution of the request or thirty days, whichever is earlier, or
- 2) The return of the equipment supplied by TWE if service is terminated.

d. Credits. Credits for service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

7. Customer Satisfaction Survey

TWE shall submit to the Director the results of an annual customer satisfaction survey, conducted by an independent marketing company and submitted by December 31st of each year. The results of the annual customer satisfaction survey shall be reported in a form acceptable to the Director. Prior to conducting the survey, TWE shall submit the proposed questionnaire/survey to the Director for review and approval.

8. Compliance

a. Review of Customer Service Operations. The Director may require TWE to perform further analysis of its customer service operations and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its customer service operations.

b. Notification of Violation. The Director, or the Director's designee, reserves the right to take any action deemed necessary and appropriate regarding TWE's customer service franchise obligations at any time; provided that before any action is taken, the Director or the Director's designee shall consult with TWE about the action. In the event of a violation, the Director or the Director's designee shall provide TWE thirty days' written notice of its intent to enforce these standards. In the event that TWE repeatedly violates a customer service standard and does not cure the violation in a reasonable period of time, the Director or the Director's designee shall

have the authority to impose fines and/or other sanctions in accordance with this Decision and Order.

S. Reports and Audits

1. Financial Information Provided by TWE

Information regarding the financial condition of TWE, results of operations, and Franchise Fee payments shall be submitted to the Director and/or the Director's designee pursuant this Decision and Order and applicable Law. In order to provide a streamlined and consolidated approach to such financial reporting, the Director reserves the right to require financial information to be submitted by TWE to be in the form and schedule approved by the Director. TWE shall work cooperatively with the Director and the Director's staff on this matter. The Director also reserves the right to require financial information to be submitted by TWE concerning Oceanic and all principals and beneficial owners of TWE, including TWC.

2. Tariff

TWE shall provide DCCA its schedule of service rates and information as required under this Decision and Order and applicable Law. If TWE amends its service rates and other information, TWE shall amend its schedule of service rates and other information as required at least thirty calendar days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director, to the extent permitted by applicable Law.

3. Reporting of Violations

Upon acquiring knowledge of any event which has or is reasonably likely to lead to a violation of any term or condition of this Decision and Order, TWE shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur or has occurred, and (3) the action that TWE proposes to take regarding the probable violation.

Upon acquiring knowledge of the existence of a violation of any condition of this Decision and Order, TWE shall promptly inform the Director or the Director's designee in writing specifying: (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that TWE proposes to take with respect to the violation.

By April 30th of each year, TWE shall submit to the Director a statement to the effect that no violation of this Decision and Order has occurred and that TWE has observed or performed every condition contained in this Decision and Order. In the event that a violation has occurred and is continuing or if TWE has not observed or performed all of the terms and conditions contained in this Decision and Order, it shall

specify the nature and period of the violation and what action(s) TWE has taken or proposes to take with respect to the violation(s).

4. Notification of Proceedings by Regulatory Agencies

TWE shall report any disciplinary or corrective administrative proceedings by regulatory agencies (e.g., the FCC or the State Public Utilities Commission) to DCCA within ten calendar days of notification.

5. Annual Audited Financial Statements

By April 30th of each calendar year, TWE shall submit to the Director its annual audited financial statements and also the annual audited or reviewed financial statements for Oceanic for the preceding calendar year if required by the Director pursuant to HAR Chapter 16-131 (including but not limited to HAR Section 16-131-44). TWE shall submit audited, or at the minimum, reviewed financial statements, which shall include a balance sheet, an income statement, a statement of cash flows, and supporting footnotes. Each financial statement shall be prepared in accordance with generally accepted accounting principles, consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of TWE's Oahu Cable System operation on a stand-alone basis and not consolidated with other TWE or TWC companies.

The financial statements required to be furnished pursuant to this section IV.S.5. shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE, or any subsidiary of its parent company, Affiliates, subsidiaries, general partners, or any Person for management fees and fees in the nature of general and administrative allocations.

6. Feasibility of Cable Service to Unserved Communities

TWE currently has an extension policy of twenty-five homes per mile. As a condition of this Franchise Order, TWE shall either maintain through the duration of the renewal term its extension policy or, if technically feasible, improve its extension policy such that homes in less densely populated areas can be served. TWE shall work with the Director's staff and shall prepare an annual report regarding the feasibility of extending Cable Service to all communities that remain unserved. This report shall be submitted to the Director by December 31st of each year.

7. Other Reports

In addition to the reports required to be submitted under this Decision and Order, TWE shall timely submit to the Director all other reports: (a) required by applicable Law or (b) reasonably requested by the Director.

8. Inspection of Books and Records

TWE shall maintain at its local office(s) a complete set of books and records for its operations in Hawai'i including, but not limited, to Subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State.

All books and records not maintained and available for review at the local office(s) shall, upon request, be made available to the Director locally within five business days.

The Director reserves the right to require financial information to be submitted by TWE and Oceanic, and all principals and beneficial owners of TWE, including TWC.

9. Audit or Financial Review

The Director shall have the sole discretion to require TWE to submit to an audit and/or other verification such as performance of agreed-upon procedures by the Director's accountant or auditor for purposes of, among other things, validating TWE's annual Gross Revenues, the collection and payment of Franchise Fees (including but not limited to the Franchise Fee process), the cross-subsidization between Cable Service and non-Cable Service, and other matters deemed necessary by the Director.

The total cost of the audit or financial review shall be solely paid by TWE, and TWE shall cooperate fully with the conduct of the audit or financial review.

T. Director's Authority

The Director has the power and jurisdiction to supervise and regulate every cable operator within the State so far as may be necessary to carry out the purposes of the Hawai'i Cable Communications Systems Law, and to do all things which are necessary and convenient in the exercise of this power and jurisdiction.

Therefore, the Director, from time to time, may adopt or issue such rules, Decisions and Orders, or other directives governing cable franchises as DCCA finds necessary or appropriate in the exercise of DCCA's police power; provided that any action taken by the Director shall comply with applicable Law. TWE shall comply with all rules, Decisions and Orders, and other directives adopted or issued by the Director.

The Director, from time to time, may require that TWE undergo a performance and/or compliance review or audit. TWE shall timely comply with the recommendations of the compliance reviews or audits and remedy any deficiencies. The Director may also require TWE to develop specific performance measures which if not met, would subject TWE to fines and compliance in accordance with this Decision and Order, and in the event that TWE fails to pay such fines or further comply, this cable franchise may be subject to the termination and revocation provisions in section VI.

The total cost of the compliance audit or review shall be solely paid by TWE, and TWE shall cooperate fully with the conduct of the audit or compliance review. The Director shall select the consultant to perform the franchise compliance review or audit.

In granting this cable franchise, DCCA has relied, in part, on the representations of both fact and intention on the part of TWE. If, during the term of this cable franchise, these representations prove to be incorrect (as determined solely by DCCA), DCCA may, in its sole discretion, invoke the termination and revocation provisions in section VI.

In addition, the Director, at any time during the term of the cable franchise and in the Director's sole discretion, may commence formal or informal proceedings for the purpose of addressing developing technology, future PEG access, and cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate consistent with this Decision and Order and applicable Law.

V. TERM OF THE CABLE FRANCHISE

The term of this cable franchise is twenty years from the effective date of this Decision and Order, subject to the every five-year and other reviews and any technology upgrade schedules provided for in this Decision and Order, unless terminated or revoked as provided in this Decision and Order or by applicable Law.

VI. TERMINATION AND REVOCATION

The termination and revocation provisions set forth in this section VI shall be in addition to (and not in derogation of) any other rights or remedies the Director may have with respect to this Decision and Order.

A. Termination

If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of this Decision and Order invalid, or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of this Decision and Order, or cease performing any act required by any provision of this Decision and Order, then at the sole discretion of the Director this cable franchise shall terminate six months from the date of such event.

The provisions of section VI above may be suspended for such period of time as TWE may elect to voluntarily perform its obligations under this Decision and Order; provided that TWE provides prior written notice to the Director of such voluntary performance.

In the event that TWE fails to timely comply with the recommendations of the periodic franchise compliance reviews or audits and remedy any deficiencies, the Director may terminate this cable franchise.

B. Revocation

If TWE abandons its cable franchise or refuses to perform any of the terms, conditions, or requirements under this Decision and Order, the Director reserves the right to immediately revoke TWE's cable franchise. TWE shall be deemed to have abandoned its cable franchise if it willfully refuses to operate the Cable System as required under this Decision and Order, when there is no event beyond TWE's control that prevents the operation of the Cable System, and where its operation would not endanger the health or safety of the public or property. The provisions of this paragraph may be suspended for such period of time as TWE may elect to voluntarily perform its obligations under this Decision and Order; provided that TWE provides prior written notice to the Director of such voluntary performance.

In the event that TWE fails to timely comply with the recommendations of the periodic franchise compliance reviews or audits and remedy any deficiencies, the Director may revoke this cable franchise.

C. New Cable Franchise Application Not Prevented

In the event that TWE's franchise is terminated or revoked pursuant to section VI, nothing herein shall prevent TWE from applying for a new cable franchise.

VII. FINES FOR FAILURE TO PERFORM

For each violation of this Decision and Order, the Director may fine TWE an amount not less than \$50.00 nor more than \$25,000.00 per violation; provided that each day's continuation of a violation may be treated as a separate violation. In addition, a violation of any of the terms of this Franchise Order may permit the Director to invoke the modification provisions of section IX.E.

VIII. FRANCHISE FEES

A. Payment of Franchise Fees

In consideration of the award of the cable franchise granted herein which permits TWE to operate a Cable System and use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by HRS Chapter 440G, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

Notwithstanding any other provision to the contrary, the State is entitled to Franchise Fees that in total do not exceed five percent of the System's annual Gross

Revenues paid in a calendar year, or the maximum amount permitted under applicable Law, as amended. Because federal law does not dictate how LFAs should use the Franchise Fee, the State can use the Franchise Fees for any purpose it deems necessary and/or appropriate. Currently, the State has determined that PEG access is important and has required that the cable operator provide Channels and financial support for PEG access. Accordingly, the State has determined that Franchise Fees include without limitation DCCA's Annual Fee specified in HRS Chapter 440G and HAR Chapter 16-132, the annual Access Operating Fee, and the HPTF Fee; provided that this term does not include the Capital Fund Payments or capital contributions to PEG Access Organizations and/or the Director's designee, and does not include contributions of network capacity to the State's INET.

TWE shall be responsible for ensuring accurate collection and payment of the Franchise Fees, and shall be responsible for any and all underpayments of Franchise Fees to the Director or the Director's designee(s) during TWE's operation of the Cable System.

TWE shall, as a facilities-based provider of Cable Services pursuant to 47 U.S.C. Section 522, pay Franchise Fees on the revenues from its video programming services, irrespective of whether the services are received by Hawai'i Subscribers using TWE's Hawai'i-based infrastructure or through any other means.

TWE shall implement a procedure that reflects Franchise Fee assessments as a percentage of a Subscriber's monthly billing for cable and other services, which shall be effective as of the first billing date for Subscribers.

TWE markets its cable programming as part of a bundled package of services including non-cable programming services as high-speed Internet service. Customers shall be offered a choice as to the combination of services they can subscribe to and shall be charged a single discounted fee for the bundled package of services.

DCCA does not object to TWE's strategy of bundling services, so long as (a) consumers have the option of purchasing individual services on an unbundled basis, and (b) TWE complies with the definition of Gross Revenues for purposes of calculating Franchise Fees.

B. Discount for Senior Citizens

Under 47 U.S.C. Section 543(e)(1), cable operators may offer discounts for Cable Service to senior citizens. TWE is encouraged to develop and implement discounts for bulk Subscribers serving senior citizens, such as retirement communities and long-term care facilities located on Oahu.

C. Reconciliation by TWE

TWE shall reconcile the collection and payment of Franchise Fees no later than March 31st of each year, and shall provide DCCA with its calculations and supporting documentation. The reconciliation by TWE shall be subject to an audit or financial review as required by the Director.

1. Over/under Payment of Franchise Fees

If there is an overpayment of Franchise Fees to the Director or the Director's designee(s), TWE either may request a repayment of the overpaid amounts from the Director or the Director's designee(s), or may credit the amount overpaid to subsequent payment(s) to the Director or the Director's designee(s), as authorized by the Director in writing. Credit(s) to subsequent payment(s) of the overpaid amount shall be made in a timely manner and fully disclosed to the Director or the Director's designee(s).

If there is an underpayment of Franchise Fees to the Director or the Director's designee(s), TWE shall pay the Director or the Director's designee(s) the amount underpaid, as authorized by the Director in writing. Payment(s) of the underpaid amount shall be made in a timely manner and fully disclosed to the Director or the Director's designee.

2. Over/under Collection of Franchise Fees from Subscribers

If there is an over collection of Franchise Fees from Subscribers, TWE shall credit Subscribers the amount over collected, as authorized by Director in writing. Refunds to Subscribers of over collected amounts, which may be in the form of a credit, shall be made in a timely manner with full disclosure to Subscribers on Subscribers' billing statements.

If there is an under collection of Franchise Fees from Subscribers, TWE may charge Subscribers the amount under collected, as authorized by Director in writing. Additional charges to Subscribers of the under collected amount shall be made in a timely manner with full disclosure to Subscribers.

IX. OTHER PROVISIONS

A. Familiarity and Compliance with Applicable Law

TWE, its officers, directors, agents, employees, and subcontractors shall be familiar with and comply with all applicable Laws that may, in any manner, affect the Cable System. If TWE discovers that any provision in the applicable Laws is contrary to or inconsistent with any of the terms, conditions, or requirements of this cable franchise, TWE shall promptly report it to the Director in writing.

B. Subcontracting and Assignment

TWE shall not subcontract or assign any of TWE's duties, obligations, or interests under this cable franchise without the prior written approval of the Director.

C. Change in Ownership or Control

HRS Chapter 440G states that no change of control of a Cable System may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the Cable System, regardless of the means by which that Person holds that control, is known to the State, meets the threshold requirements for holding a cable franchise, and is responsible and accountable to the State. Therefore, the Director's prior written consent shall be required for any direct or indirect change in the control, or sale, assignment or transfer of controlling ownership of TWE's Cable System or franchise.

Any change in the general ownership of five percent or more of TWE, or the sale, assignment or transfer of the controlling ownership of TWE's Cable System or franchise shall require the prior written approval of the Director. TWE shall submit a written application for transfer to the Director for approval pursuant to applicable Law. In addition TWE shall inform DCCA of any material changes in general ownership that may affect any of the terms and condition of this Franchise Order.

D. Successors and Assignees

All of the terms, conditions, and requirements of this Decision and Order that apply to TWE shall also apply to its permitted successors and assignees.

E. Modification

1. Modification by the Director

If TWE fails to comply with any of the terms, conditions, or requirements of this Franchise Order and fails to remedy such non-compliance within a reasonable time after receiving notice by the Director, the Director may, upon the Director's own initiative and in the Director's sole discretion, taking into consideration the best interests of the public, modify any of the terms, conditions, and requirements of this Decision and Order. If TWE declines to accept the modification, the Director shall have the authority to terminate or shorten the term of the cable franchise, or take any other appropriate action consistent with the terms of this Franchise Order and applicable Law. In addition, a violation of any of the terms, conditions, or requirements of this Franchise Order, regardless of whether cured by TWE, may permit the Director to invoke the enforcement provisions of section VII.

2. Requests to Modify by TWE

TWE may at any time request that the Director modify any of the terms, conditions, and requirements of this Franchise Order during the term of this cable franchise. The Director shall have the sole discretion to consider TWE's request and issue a modification of this Decision and Order. The Director shall take into account any appropriate factor(s) provided under applicable Law as may be amended and ensure that the terms and conditions upon which Cable Service is provided are fair to both the public and TWE. In addition, nothing in this cable franchise shall restrict TWE from exercising any rights or seeking any remedies that are or may become available to it under applicable Law.

F. Independent Contractor

In the provision of cable and all other services under this cable franchise, TWE shall be considered an independent contractor.

TWE (and TWE's employees, agents, and subcontractor(s)) shall not, under any circumstance, be considered employees of the State, and shall not be entitled to claim or receive any benefits provided to State employees.

G. Indemnification and Defense

Notwithstanding any other provision to the contrary, TWE shall defend, indemnify, and hold harmless the State and DCCA from and against all liability, loss, damage, cost, and expense (including all attorneys' fees and court costs) based upon or arising out of:

1. Any provision or requirement of this cable franchise;
2. Any acts or omissions to act that result from the negligence, bad faith, or willful misconduct of TWE, its directors, its officers, its agents, and/or its employees; and/or
3. Any acts or omissions to act by TWE's Affiliates or subcontractors under this cable franchise.

The provisions of this paragraph shall remain in full force and effect notwithstanding the termination or revocation of this cable franchise.

H. Antitrust

This Decision and Order shall not be construed as exempting TWE and any Affiliated or controlling entities from any antitrust law.

I. Headings

The headings or titles contained in this Decision and Order are for reference purposes only, and shall not in any way affect the construction or interpretation of the terms, conditions, or requirements of this Decision and Order.

J. Waiver

The Director reserves the right to waive any term, condition, or requirement of this Decision and Order for good cause determined by the Director.

The waiver by the Director or the State of any breach of any term, condition, or requirement of this Decision and Order shall not be taken or held to be a waiver of any succeeding breach of such term, condition, or requirement, or as a waiver of the term, condition, or requirement itself.

The failure of the Director to insist upon the strict compliance with any term, condition, or requirement of this cable franchise shall not constitute or be deemed to constitute a waiver or relinquishment of the Director's right to enforce the same in accordance with this cable franchise.

K. Governing Law

Except as otherwise provided under federal law, the validity of this cable franchise and any of its terms, conditions, or requirements, as well as the rights and duties of the Director and TWE, shall be governed by the laws of the State of Hawai'i.

Any action at law or in equity to enforce or interpret the provisions of this cable franchise shall be brought in a State court of competent jurisdiction in Honolulu, Hawai'i, unless federal law requires the filing of a certain cause of action in another forum.

L. Notices

Any written notice required to be given to any party under this cable franchise shall, at a minimum, be delivered personally or sent by United States first class mail, postage prepaid.

Notice to the Director shall be sent to:

Cable Television Administrator
State of Hawai'i
Department of Commerce and Consumer Affairs
335 Merchant Street, Room 101
Honolulu, Hawai'i 96813

Notice to TWE shall be sent to:

Vice President of Finance
200 Akamainui Street
Mililani, Hawai'i 96789

and

Watanabe Ing LLP
999 Bishop Street, 23rd Floor
Honolulu, Hawaii 96813

M. Severability

In the event that any provision of this cable franchise is declared invalid or unenforceable by a court, the invalid or unenforceable provision shall be severed and the remaining provisions of this cable franchise shall continue to remain in full force and effect.

N. Non-Exclusivity

During the term of this Decision and Order, in the event that any new cable operator receives a cable franchise to provide Cable Service or to operate a Cable System in TWE's Service Area, the material terms, conditions, and requirements of such additional cable franchise shall be reasonably comparable to the terms and conditions of this Decision and Order, taking into account any applicable legal limitations on DCCA's authority; provided that this provision shall not require an identical cable franchise for the new cable operator as long as the regulatory and financial burdens on each cable operator are generally equivalent, taking into account any difference in the number of Subscribers served, the number of PEG Access Channels

and aggregate support provided, the level of fees and taxes imposed, the term of the cable franchise, and all other circumstances affecting the cable operators' respective burdens.

Dated: Honolulu, Hawai'i, January 14, 2010


LAWRENCE M. REIFURTH
Director of Commerce and Consumer
Affairs

Acknowledged and agreed to by:

Time Warner Entertainment Company, L.P.



Name: Nate Smith

Title: President, Oceanic Time Warner Cable

Date: January 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 346 was served upon the following person at the address shown below by mailing the same, postage prepaid, on this 14th day of January, 2010.

BRIAN A. KANG, ESQ.
Watanabe Ing, LLP
First Hawaiian Center, 23rd Floor
999 Bishop Street
Honolulu, HI 96813

(Attorneys for Time Warner Entertainment Company, L.P.)

Patti K. Kodama
Patti K. Kodama
Secretary