

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

In the Matter of)	
)	DECISION AND ORDER NO. 342
)	
TIME WARNER ENTERTAINMENT)	
COMPANY, L.P.)	
)	
2009 Annual Fee Paid by Cable)	
Operator to the Department of)	
Commerce and Consumer Affairs.)	

DECISION AND ORDER NO. 342

I. **INTRODUCTION**

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

- D. Hawaii Administrative Rules (“**HAR**”) section 16-132-2(a) establishes the annual fee payable to the Department at one per cent (1%) of the income a cable operator received from subscribers for cable television services rendered during the preceding calendar year. The annual fee is due and payable to the Department on the last day of January of each calendar year.
- E. HAR section 16-132-2 also authorizes the Director to increase or decrease the amount of the annual fee by decision and order, if the Director determines that the existing annual fee is insufficient or exceeds the amount necessary to cover the costs of administering HRS chapter 440G.
- F. Federal law requires cable operators to pass through to subscribers the amount of any decrease in franchise fees. See, 47 U.S.C. section 542(e) (2001).

II. **FINDINGS OF FACT**

- A. TWE passes the one per cent (1%) annual fee assessment on to cable television subscribers by including it in the franchise fee amount listed on cable television subscribers’ monthly bills.
- B. The Department expects that one per cent (1%) of the income TWE received from cable television subscribers for 2008 would result in more funds than the Department currently requires to cover the costs of administering HRS chapter 440G in 2009. The Department anticipates

that the excess amount is approximately FOUR HUNDRED THIRTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$438,000.00).

- C. During the last year (i.e., 2008), many customers connected to and/or disconnected from TWE's cable television systems (i.e., many people became new cable television subscribers and many people canceled their subscriptions). Because of the high number of new and former subscribers, it would be difficult and expensive to identify all of the subscribers who were assessed the annual fee.

III. **CONCLUSION**

- A. Since the Department presently has accumulated sufficient funds to cover the costs of administering HRS chapter 440G at this time, the annual fee amount that is due and payable to the Department on the last day of January 2009 shall be decreased.
- B. It is in the best interests of cable television subscribers to lower their monthly cable television bills, whenever feasible. Therefore, TWE shall refund the excess amount to cable television subscribers.
- C. However, because it would be difficult and expensive to identify and locate all of the former cable television subscribers who were assessed the annual fee in 2008, it is not appropriate to require TWE to refund the excess amount to these former subscribers. The refund shall therefore be provided only to current cable television subscribers.
- D. TWE estimates that the cost to implement the refund to current cable television subscribers would be approximately \$38,000 because TWE

must create and mail out notification of the refund to each of the 92,000 automatic bill payment customers (i.e., forty-two cents (42 ¢) for postage, paper and printing expenses for each customer). The Department concludes that TWE should be reimbursed for the costs associated with the refund and that \$38,000 is a reasonable estimate of these costs.

IV. **ORDER**

- A. The annual fee amount that is due and payable to the Department on the last day of January 2009 shall be decreased by \$438,000 (i.e., \$438,000.00 shall be deducted from the one per cent (1%) of the income collected from cable television subscribers during 2008). TWE shall pay the balance to the Department on or about the last day of January 2009.
- B. Out of the \$438,000.00, TWE shall refund FOUR HUNDRED THOUSAND AND NO/100 (\$400,000.00) to current cable television subscribers (i.e., those who are cable television subscribers as of February 6, 2009) in TWE's franchise areas, and use the remaining \$38,000.00 to pay for administrative costs associated with the refund (e.g., printing, envelopes, postage, etc.).
- C. The refund shall take the form of a credit on a future monthly cable television bill to cable television subscribers in the franchise areas, and be completed no later than March 21, 2009.
- D. TWE shall confirm in writing to the Department that the refund has been completed and shall submit an itemization of the costs associated with the refund. Such confirmation and itemization shall be submitted no later than

fourteen (14) calendar days after the refund is completed to eligible recipients.

- E. Thereafter, beginning with the annual fee that is due and payable to the Department on the last day of January 2010, the annual fee shall revert back to one percent (1%) of the income received from subscribers for cable television services rendered during the preceding calendar year.
- F. Notwithstanding any other Decision and Order to the contrary, the Director may reconsider, in the Director's sole discretion, the amount of the Department annual fee payments at any time.

Dated: Honolulu, Hawaii, January 29, 2009.



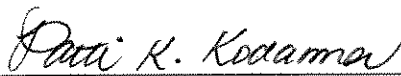
LAWRENCE M. REIFURTH
Director of Commerce and Consumer
Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 342 was served upon the following person(s) at the address shown below by mailing the same, postage prepaid, on this 29th day of January, 2009.

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