

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

In the Matter of the Application)
of)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.)
For the Extension of its Cable)
Television Franchise for the North)
Kohala Area on the Island of Hawaii.)
_____)

**NOTICE OF FINDINGS OF FACT
AND PROPOSED DECISION AND
ORDER**

CATV-03-1

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I. FINDINGS OF FACT

a. On or about June 30, 1995, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") issued Decision and Order No. 173 ("**D&O 173**") to Time Warner Entertainment Company, L.P. ("**TWE**").

b. Among other things, D&O 173 granted a cable television franchise to TWE for the North Kohala area of the island of Hawaii for census tract 218.

c. Section 2.2 of D&O 173 ("**Section 2.2**") states that the franchise term expires on May 29, 2005. However, this section was amended by Decision and Order No. 244 ("**D&O 244**") and now provides that the term of the franchise shall be extended for an additional six (6) years upon completion of the 750 Mhz Upgrade described in section 3.2, in which case the term of the franchise shall expire on December 31, 2011 unless otherwise terminated in accordance with the franchise or applicable law. Among other things, section 3.2 of the "Terms and Conditions" of D&O 173 ("**Section 3.2**") required TWE to construct, reconstruct, rebuild, reconfigure, and/or upgrade the former Kamehameha Cablevision System to a minimum bandwidth of 750 Mhz and provide a minimum of 75 available channels by July 1, 2001 ("**750 Mhz Upgrade**").

d. In June and September 2001, TWE requested an extension to complete the 750 Mhz Upgrade. The Department responded in September 2001, and deferred making a decision on TWE's request and requested monthly progress reports from TWE.

The Department also deferred making a decision because of the following outstanding issue:

1. Although cable modem service is a premium service, the Department requested that it be provided in Kohala. However, based on Kohala's remote geography and because Kohala was being served by microwave, additional engineering work by TWE was required to provide cable modem service to Kohala. The Department and TWE agreed that the only remaining issue for Kohala was the implementation of a two-way microwave that would allow Kohala residents to request cable modem service (if desired), and the Department deferred making a decision on TWE's completion of the 750 Mhz Upgrade.

e. In November 2002, TWE's attorneys provided a "Final Report" on the 750 Mhz Upgrade to the Department, and stated that the 750 Mhz Upgrade of the Kohala coaxial system is completed. TWE's attorneys also requested a determination from the Department that:

1. The 750 Mhz upgrade requirements of section 3.2(a) of D&O 173 have been satisfied; and
2. TWE is entitled to a six (6) year extension of its franchise term for the Kohala system through December 31, 2011, pursuant to section 2.2(b) of D&O 173, as amended by D&O 244.


f. In February 2003, the Department randomly contacted subscribers in the Kohala area (from a list provided by TWE) to confirm completion of TWE's digital service and high-speed Internet service as a result of their upgraded system. All of the contacted subscribers confirmed that they were receiving such service from TWE.

g. Based on the above, the Department finds that TWE has completed the 750 Mhz Upgrade which increased TWE's ability to deliver additional programming to Kohala residents, and has complied with the requirements of Section 3.2, except for the requirement that cable modem service be provided by July 2001.

II. PROPOSED DECISION AND ORDER

The Department intends to issue a Decision and Order addressing TWE's request to extend its franchise. However, prior to issuing a Decision and Order, the Department will allow interested persons to submit comments on TWE's 750 Mhz Upgrade described above for thirty (30) calendar days from the date of this Notice. The Department will consider the comments timely submitted, and issue its Decision and Order thereafter.

DATED: Honolulu, Hawaii, January 22, 2004.



MARK E. RECKTENWALD
Director of Commerce and Consumer Affairs