

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

In the Matter of)
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.,)
)
Refund of Over-Collected Franchise Fees)
from Oahu Subscribers for the period)
January 1, 1995 through December 31,)
2002.)
_____)

**NOTICE OF FINDINGS OF FACT
AND INTENT TO ISSUE A DECISION
AND ORDER**

CATV-04-2

**NOTICE OF FINDINGS OF FACT AND
INTENT TO ISSUE A DECISION AND ORDER**

I. FINDINGS OF FACT

- A. On or about December 19, 2003, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") received a report from Merina & Company, LLP and Public Knowledge (collectively referred to as "**Merina**").
- B. The State retained Merina as a financial consultant to review the cable television franchise fee calculation, assessment, collection and payment process performed by Time Warner Entertainment Company, L.P. ("**TWE**") for the cable television franchise area for the island of Oahu for the period January 1, 1995 through December 31, 2002.
- C. In addition, Merina was directed to compare the cable television franchise fee calculation, assessment, collection and payment process with the

requirements in Decision and Order Nos. 154 (dated January 27, 1993) and 261 (dated August 11, 2000).

- D. In Decision and Orders Nos. 154 and 261, the franchise fee consists of three elements: (1) an "Access Operating Fee," (2) a Hawaii Public Broadcasting Authority ("**HPBA**") Fee, and (3) an "Administrative Fee."
- E. In general, the Merina Report concludes that TWE over-collected FOUR HUNDRED THIRTY THOUSAND THREE HUNDRED TWENTY-THREE AND NO/100 DOLLARS (\$430,323.00) in Access Operating Fees/HPBA Fees, and FIFTY-THREE THOUSAND FOUR HUNDRED THIRTY-SIX AND NO/100 DOLLARS (\$53,436.00) in Administrative Fees from Oahu subscribers during the period January 1, 1995 through December 31, 2002. Thus, the total amount of over-collection by TWE from Oahu cable television subscribers for this period of time was FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$483,759.00).
- F. The Merina Report further found that the over-collected amount was largely a result of TWE's internal accounting practices. TWE itemized franchise fees on a flat fee basis as opposed to charging subscribers a percentage fee. Over time the amount TWE collected in itemized franchise fees differed from the percentage amounts remitted to the designated recipients: 'Olelo Community Television ("**Olelo**"), the designated PEG (public, educational, and governmental) access organization; PBS HAWAII ("**PBS**"), formerly known as HPBA; and the

Department. The Merina Report also determined that this difference was attributable to the timing of the collection of the franchise fees from subscribers and the later remittance to designated recipients and to the subscriber bill itemization methodology. Upon review of TWE's accounting practices, the Merina Report did not find anything that would suggest that TWE deviated from the billing and remittance methodology permitted by the Department at that time.

- G. The Merina Report also evaluated whether TWE paid the designated recipients the franchise fee amounts that they were due during the period from January 1, 1995 through December 31, 2002.
- H. The Merina Report concluded that there was an under-payment attributed to TWE's bad debt allocation procedure to the designated recipients during the period from January 1, 1995 through December 31, 2002, and there was also an over-payment attributable to the inclusion of advertising revenue in 2001 for the Access Operating Fee and HPBA Fee.
- I. After considering the bad debt and advertising adjustments, the Merina Report determined that the cumulative net over-payments or under-payments were:

Over-payment to 'Olelo	(\$ 139,297.00)
Over-payment to PBS Hawaii	(\$ 46,378.00)
Under-payment to Department	\$ 3,718.00


- J. On or about May 5, 2004, 'Olelo reimbursed TWE for the over-payment of ONE HUNDRED THIRTY-NINE THOUSAND TWO HUNDRED NINETY-SEVEN AND NO/100 DOLLARS (\$139,297.00).
- K. On or about May 27, 2004, PBS reimbursed TWE for the over-payment of FORTY-SIX THOUSAND THREE HUNDRED SEVENTY-EIGHT AND NO/100 DOLLARS (\$46,378.00).
- L. TWE still owes the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00) for the under-payment of the Administrative Fee.
- M. Based on the above, the Department finds that TWE over-collected from Oahu cable television subscribers the amount of FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$483,759.00) during the period January 1, 1995 through December 31, 2002. The Department further finds that TWE owes the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00).

II. PROPOSED DECISION AND ORDER

- A. The Department intends to issue a Decision and Order directing TWE to refund the over-collected franchise fees in the amount of FOUR HUNDRED EIGHTY-THREE THOUSAND SEVEN HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$483,759.00) to Oahu subscribers.

- B. The Department also intends to issue an order directing TWE to pay the Department the amount of THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND NO/100 DOLLARS (\$3,718.00).
- C. However, prior to the issuing of a Decision and Order, the Department will allow interested persons to submit comments on the above Findings of Fact for thirty (30) calendar days from the date of this Notice. The Department will consider comments timely submitted and issue its Decision and Order thereafter.

Dated: Honolulu, Hawaii, DEC - 8, 2004.



MARK E. RECKTENWALD
Director of Commerce and
Consumer Affairs