

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

In the Matter of)
)
TIME WARNER ENTERTAINMENT)
COMPANY, L.P.,)
)
Under-Collected Franchise Fees from)
Subscribers on the Island of Kauai for the)
Period of July 1, 2002 to)
December 31, 2003.)
_____)

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

CATV-06-05

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

I. FINDINGS OF FACT

- A. The State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") retained Merina & Company, LLP and Public Knowledge (collectively referred to as "**Merina**"), as a financial consultant to review the cable television franchise fee collection and payment process utilized by Time Warner Entertainment Company, L.P. ("**TWE**"), doing business as Kauai Cablevision on the island of Kauai, during the period of July 1, 2002 to December 31, 2003.
- B. 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 ("**D&O**") No. 291 dated July 12, 2002.
- C. The State received an October 29, 2004 report from Merina ("**Merina Report**").

- D. The Merina Report included amounts remitted by TWE (on behalf of the prior cable television franchise holder, G-Force) to Hoike-Kauai Community Television, Inc. (“**Hoike**”), Hawaii Public Television Foundation Fee (“**HPTF**”),¹ and the Department. For purposes of this “Notice of Findings of Fact and Intent to Issue a Decision and Order,” Hoike, HPTF, and the Department shall collectively be referred to as the “**designated beneficiaries.**”
- E. Since the Department had engaged Merina to review TWE’s cable television franchise fee activity and the accuracy of its payment process during the period of July 1, 2002 to December 31, 2003, the Department subsequently instructed Merina to separate the G-Force activity from the Kauai schedule of over/(under) collections in order to isolate TWE’s activity in its review.
- F. The Department subsequently received a letter from Merina (“**Merina Letter**”) dated August 1, 2006, with additional information clarifying its original October 29, 2004 report. In the Merina Letter, Merina removed all G-Force activity from TWE’s calculations of over/ (under) collections for the period July 1, 2002 to December 31, 2003.
- G. Merina reviewed the collection and payment process for the cable television franchise fee which consists of three elements: (1) an “Access

¹ Merina refers to HPTF by its former name, Hawaii Public Broadcasting Authority (“HPBA”).

Operating Fee” to support public, educational, and governmental (“PEG”) access programming,² (2) an HPBA fee,³ and (3) an “Administrative Fee.”⁴

- H. In its review, Merina began its carry-forward analyses to identify the cumulative amounts of the over/ (under) collections of cable television franchise fees from subscribers during the transition period (i.e., during the first two weeks in July 2002 after TWE purchased the Kauai cable television franchise from G-Force).
- I. When TWE acquired the Kauai cable television franchise from G-Force, TWE assumed selected assets and liabilities of G-Force. Among the assets and liabilities G-Force transferred to TWE was \$150,003.00 of Access Fees shown as a liability and payable to the designated beneficiaries on G-Force’s books.
1. TWE assumed this liability upon acquisition of the Kauai cable television franchise, but it had not included this amount in its original reporting to the Department, and this amount was not included in the Merina Report to the Department.
 2. After the acquisition of the Kauai cable television franchise from G-Force, TWE made payments of cable television franchise fees at the required times in 2003 to the designated beneficiaries on behalf of G-Force. In the end, TWE paid the designated

² Under D&O No. 291, TWE pays the Director or the Director’s designee an amount equal to three percent (3%) of TWE’s annual gross revenues from TWE’s Kauai cable television franchise system.

³ Under D&O No. 291, TWE pays HPTF or its designee an amount equal to one percent (1%) of TWE’s Kauai cable television franchise system annual gross revenues.

⁴ Pursuant to Hawaii Administrative Rule §16-132-2, TWE pays an administrative fee to the Department. During the time period in question here, the fee was one percent of the income received from subscribers during the preceding calendar year. The rule was subsequently modified.

beneficiaries a combined total of NINETY-FIVE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$95,112.00) more than the amount collected by G-Force from its subscribers.

- J. Merina also concluded that during the period of July 1, 2002 to December 31, 2003, TWE collected amounts of cable television franchise fees from Kauai cable television subscribers that differed from what it was required to pay to the designated beneficiaries. This resulted in a difference between the amounts collected and remitted to the designated beneficiaries as follows:

<u>Franchise Fee Element</u>	<u>Over/ (under) collected balances</u>
Access Operating Fee	\$(1,365.00)
HPBA Fee	\$(216.00)
Administrative Fee	<u>\$(23,027.00)</u>
Total Difference	\$(24,608.00)

1. In the Merina letter, Merina stated that the \$24,608.00 difference in the amount reported as collected from subscribers versus the amounts remitted to the designated beneficiaries largely arose during the transition from G-Force to TWE in July 2002. Merina noted that due to an imprecise cutoff date for the transition from G-Force to TWE, which was corroborated by TWE, it was difficult to separate out the activities of G-Force versus those of TWE.

2. Merina also concluded that the remainder of the difference in collections from subscribers versus the amounts TWE paid to the designated beneficiaries was the difference in accounting methods used for the collections and remittances. The remittance of cable television franchise fees to the designated beneficiaries is based on an accounting income which includes adjustments for items such as revenues earned but not yet billed, pro-rations for service adjustments, and other cash to accrual differences. This methodology is the accrual basis of accounting. In contrast, collection amounts from subscribers were taken solely from the total of the monthly invoices sent to subscribers and do not include any required adjustments. This method is essentially the cash basis of accounting.
3. As reported in the Merina Letter, TWE implemented a procedure pursuant to D&O No. 291 that reflects franchise fee assessment as a percentage of a subscriber's monthly subscription for cable and other services as of the effective date of D&O No. 291 (i.e., July 12, 2002), making these payments retroactively based. The subscriber bill itemization was therefore not a causative factor in the different amounts.

K. In the Merina Report, Merina concluded that in its cable television franchise fee computation, TWE did not utilize bad debt write-offs in the revenue reported to the Department and did not include launch fees,

marketing support credits, and/or coop advertising in its gross revenue calculation.

- L. In addition, Merina evaluated whether TWE paid the designated beneficiaries the cable television franchise fee amounts that they were due during the period of July 1, 2002 to December 31, 2003. Merina concluded that there were no instances in which the designated beneficiaries did not receive the correct amount of cable television franchise fees. Each entity received the correct amount that it was due.
- M. The Department therefore finds that during the period of July 1, 2002 to December 31, 2003, there was a difference of NINETY-FIVE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$95,112.00) between the amounts collected by G-Force from subscribers in the Kauai cable television franchise area for cable television franchise fees and the amount paid out by TWE to the designated beneficiaries.
- N. The Department further finds that at the end of the reporting period (i.e., July 1, 2002 - December 31, 2003), there was a difference of TWENTY-FOUR THOUSAND SIX HUNDRED EIGHT AND NO/100 DOLLARS (\$24,608.00), between the amounts collected by TWE from subscribers in the Kauai cable television franchise area for cable television franchise fees and the amount paid out by TWE to the designated beneficiaries.

II. PROPOSED DECISION AND ORDER


- A. Based on the above Findings of Fact, the Department must decide whether to allow TWE to recover the under-collected amounts.
- With regard to the amounts paid by TWE on behalf of G-Force for the period prior to July 1, 2002, the Department does not believe it is appropriate to allow TWE to collect those amounts now from past subscribers. TWE assumed liability for the G-Force advance collections when TWE took over the Kauai cable television franchise and later remitted these amounts to the designated beneficiaries. Any issues regarding undercollections by G-Force should have been resolved as part of the sale, and to the extent they were not, the undercollections are the responsibility of TWE. Accordingly, TWE should be responsible for the under-collected balance of **NINETY-FIVE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$95,112.00)**.
- B. With regard to the **TWENTY-FOUR THOUSAND SIX HUNDRED EIGHT AND NO/100 DOLLARS (\$24,608.00)** in under-collected amounts during the period from July 1, 2002 – December 31, 2003, the Department finds that nearly all of the undercollection arose during the transition from G-Force to TWE in July, 2002, and was a liability that was assumed by TWE. That liability should have been resolved as part of the sale of the cable television franchise from G-Force to TWE, and to the extent it was not, these under-collected amounts are the responsibility of TWE. The remainder of the \$24,608 was due to accounting methods used by TWE.

Accordingly, TWE should be responsible for the under-collected balance of **TWENTY-FOUR THOUSAND SIX HUNDRED EIGHT AND NO/100 DOLLARS (\$24,608.00)**.

C. Accordingly, the Department intends to issue a Decision and Order providing that TWE may not assess and collect the under-collected cable television franchise fees in the amounts of **NINETY-FIVE THOUSAND ONE HUNDRED TWELVE AND NO/100 DOLLARS (\$95,112.00)** and **TWENTY-FOUR THOUSAND SIX HUNDRED EIGHT AND NO/100 DOLLARS (\$24,608.00)**, from current or past cable television subscribers in TWE's Kauai cable television franchise area.

D. However, prior to issuing a final 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, November 27, 2006.



MARK E. RECKTENWALD
Director of Commerce and
Consumer Affairs