LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

MARK E. RECKTENWALD
DIRECTOR

LAWRENCE M. REIFURTH
DEPUTY DIRECTOR

April 11, 2006

Mr. Nate Smith
President
Time Warner Entertainment Company, L.P.
200 Akamainui Street
Mililani, HI 96789-3999

Dear Mr. Smith:

Re: Letter Order No. 2 – 2006 Access Operating Fees for Akaku

This is a follow-up to the January 23, 2006 Letter Order ("**Letter Order**") issued by the Department of Commerce and Consumer Affairs ("**Department**") to Time Warner Entertainment Company, L.P. ("**TWE**") regarding the 2006 Access Operating Fees paid to Akaku: Maui Community Television ("**Akaku**"). See attached.

In the Letter Order, the Department noted that the current contract with Akaku expires on June 30, 2006. Because it is uncertain whether this contract will be extended beyond this date, the Department determined that it would be premature to provide Akaku with a full year's Access Operating Fees. Thus, the Department directed TWE to temporarily retain 50% of the 2006 Access Operating Fee pending further order from the Department. This was consistent with the Department's direction with regard to all other public access entities.

As to the remaining 50% of the Access Operating Fees, the Letter Order referred to an April 7, 2005 agreement that was entered into between Akaku and Maui Community College/Maui Department of Education ("**E-partners**") to (among other things) share a portion of the Access Operating Fees. This agreement was subsequently repudiated by some of Akaku's board members, and there was a disagreement between Akaku and the E-partners as to the appropriate division of the Access Operating Fees.

Because the Department believes that the E-partners provide valuable educational programming to the people of Maui County, the Department determined that it is appropriate to allocate a portion of the 2006 Access Operating Fee to the E-partners. Thus, the Letter Order stated that only a percentage of the first and second quarter 2006 Access Operating Fee should be provided to Akaku. The Letter Order further stated that the Department believes that the allocation of the remaining funds is a matter best determined between Akaku and the E-partners, and was awaiting the results of negotiation or mediation in a lawsuit in the Second Circuit between the various factions on Akaku's board.

Based on these reasons, the Letter Order directed TWE to: (1) pay 16.75% of the 2006 Access Operating Fee to Akaku; (2) pay 8.25% of the 2006 Access Operating Fee to the E-partners after the E-partners executed sample letters attached to the Letter Order; and (3) deposit the remaining 75% of the 2006 Access Operating Fee in an interest-bearing account in a federally insured financial institution. Pursuant to the Letter Order, the Department intended to subsequently issue payment instructions to TWE for the remaining 75% of the 2006 Access Operating Fee.

The Department is informed that TWE paid 16.75% of the 2006 Access Operating Fee to Akaku on or about January 31, 2006 in accordance with the Letter Order. The Department was subsequently served with a copy of the complaint in Akaku v. Recktenwald, et al, Civil No. 06-1-0035(1), in the Circuit Court of the Second Circuit, before TWE paid 8.25% of the Access Operating Fee to the E-partners. The Department determined that under the circumstances, it was prudent to withhold payment to the E-partners pending resolution of some of the issues in the case although the E-partners executed letters agreeing to use their share of the 2006 Access Operating Fees in accordance with previously submitted budgets. The Department therefore advised TWE to temporarily withhold payment of the 8.25% of the 2006 Access Operating Fee to the E-partners.

On April 10, 2006, the Department received an executed copy of the "Supplemental Agreement (Educational Access)" ("**Supplemental Agreement**") between Akaku and the E-partners, dated February 2006. Among other things, the Supplemental Agreement provides that members of Akaku's board have settled their dispute through mediation regarding the validity and enforceability of the April 7, 2005 Educational Access Agreement ("**Education Agreement**") and have agreed to re-instate the Education Agreement with the following additional provisions: (1) if Akaku fails to timely pay the E-partners in accordance with the

Education Agreement and fails to pay the E-partners within five days after receiving written notice of the delinquency, Akaku agrees that a stipulated judgment will be entered against Akaku for the amount due plus a penalty of 10% of the amount due; and (2) the “Education seats” on Akaku’s board shall be reduced from four to two seats.

Because Akaku has confirmed and re-instated all of the provisions of the Education Agreement (with the two amendments described above) and is willing to share the Access Operating Fees with the E-partners, the Department finds that there is good cause to issue this Letter Order No. 2.

Accordingly, in view of the fact that TWE has already paid 16.75% of the Access Operating Fees to Akaku, and pursuant to Hawaii Revised Statutes § 440G-12, and sections 4.2(d) and 12.8 of Decision and Order Nos. 174 and 241, as amended, TWE is hereby directed to:

1. Immediately pay 33.25% of the 2006 Access Operating Fee to Akaku. Once Akaku receives this payment, Akaku shall have received 50% of the 2006 Access Operating Fee and this will be consistent with the amounts paid to the other PEG access organizations (i.e., Olelo Community Television on Oahu, Na Leo ‘O Hawaii, Inc. on Hawaii, and Hoike: Kauai Community Television on Kauai) based on their current contracts with the Department.

2. Continue to maintain the remaining 50% of the 2006 Access Operating Fee in an interest-bearing account in any federally insured financial institution authorized in the State of Hawaii pending further instruction from the Department.

3. Except as otherwise provided in this Letter Order No. 2, continue to comply with the provisions of the Letter Order. The terms and conditions of the Letter Order are hereby incorporated into and made a part of this Letter Order No. 2.

If you have any questions on the above, please do not hesitate to contact Mr. Clyde Sonobe, the Cable Television Administrator, at (808) 586-2620. Thank you for your attention to and cooperation in this matter.

Sincerely,

Mark E. Recktenwald
Director of Commerce and Consumer Affairs

cc: Russell Saiki
John Komeiji, Esq.
Kealii Lopez
J. Robertson
Juergen Denecke
Iris Cober
Clyde Sakamoto
Kenneth Nomura
Nadine Ando, Esq.
Lance Collins, Esq.
Cable Television Division