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GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



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DIRECTOR

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FAX TRANSMITTAL

Date: January 23, 2006

To: Ms. Kealii Lopez, Olelo
→ Ms. Iris Cober, Akaku
Mr. Juergen Denecke, Na Leo
Mr. J. Robertson, Hoike

Fax Number:

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From: Clyde Sonobe

Comments:

2006 PEG payments

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January 23, 2006

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

Re: Letter Order – 2006 Access Operating Fees for Akaku

Dear Mr. Smith:

Pursuant to Decision and Order No. 261 (**D&O 261**), Time Warner Entertainment Company, L.P. (**TWE**) is directed to pay annually a fee equal to three percent (**3%**) of its annual gross revenues in the franchise areas encompassing the tri-islands of Maui County and Lahaina (hereinafter referred to collectively as **Maui County**) to an account designated by the Director of Commerce and Consumer Affairs (**Director**), or to the Director's designee. These payments, referred to as **access operating fees**, are to be used for public, educational and governmental (**PEG**) access purposes and for other public purposes as designated by the Director.

D&O 261 directs TWE to make one yearly payment for the access operating fee by January 31st of each year. The next payment of the access operating fees by TWE is scheduled for January 31, 2006. In D&O 261, the Director reserved the authority to reconsider the amount of the access operating fee at any time.

On behalf of the Department of Commerce and Consumer Affairs (**DCCA** or **Department**), the Director has historically designated that the PEG access organizations in the different franchise areas be recipients of the access operating fees. This letter order refers to the PEG access organization in Maui County: Maui Community Television, Inc., also known as Akaku Maui Community Television (**Akaku**). DCCA entered into a contract with Akaku to (among other things) manage and operate the PEG channels, train the public to use the PEG facilities and equipment to create

programs, and cablecast the programs created and submitted by the public on the cable operator's channels in Maui County.

Recently, the DCCA was informed that its contracts with the PEG access organizations were subject to the Hawaii State Procurement Code unless an exemption applies. The Department plans to conduct public meetings to obtain input and comments from interested persons on PEG access and PEG services in the State. These public meetings will be held in each county and will provide the Department with information that will assist it in determining whether to competitively bid future PEG contracts, and on what terms, or to seek an exemption from the competitive bid requirement under section 103D102(b), Hawaii Revised Statutes.

The current supplemental agreement between DCCA and Akaku expires on June 30, 2006. It is not certain at this time whether those contracts will be extended beyond June 30, 2006.

In light of this, it would be premature to cause TWE to deliver to Akaku a full year's access operating fees at this time. This observation is consistent with that made with regard to Olelo, Na Leo and Hoike, where the Department has concurrently issued a letter order to TWE directing it to pay fifty percent (50%) of the respective access operating fees for 2006 to Olelo, Na Leo and Hoike on January 31, 2006. Similarly, the Department here directs TWE to retain fifty percent (50%) of the 2006 access operating fees for Maui County and Lahaina pending further order of the Director.

Furthermore, in Maui County, Akaku and Maui Community College (MCC) and Maui Department of Education (MDOE) (collectively E-partners) entered into an agreement dated April 7, 2005, which provided for payments to the E-partners of a portion of the cable access operating fees received by Akaku. This agreement, among other things, addressed the division of the access operating fees between Akaku and the E-partners. However, this agreement has since been repudiated by some of Akaku's board members. As a result, there is disagreement between Akaku and the E-partners as to the appropriate division of the access operating fees. The Department has encouraged the different factions on the Akaku Board and the E-partners to mediate and resolve their disputed issues.

The Department finds that the E-partners are providing valuable educational programming to the people of Maui County, and that accordingly, there is a basis for allocating a portion of the Maui County cable access operating fees to the E-partners. However, the allocation of the remaining funds is a matter that would be best determined by Akaku and the E-partners. At this time, the Department will instruct that only a percentage of the first and second quarter access operating fees be distributed, while we await the results of negotiation/mediation. If efforts at negotiation/mediation fail, however, or produce no results by February 28, 2006, then the Department will determine what additional actions are appropriate.


Accordingly, there being good cause therefore and pursuant to HRS §440G-12, and Sections 4.2(d) and 12.8 of D&O 174 and Sections 4.2(d) and 12.8 of D&O 241, TWE is directed to:

1. Pay sixteen and seventy-five one-hundredths percent (16.75%) to Akaku, and eight and twenty-five one-hundredths percent (8.25%) to the E-partners of the 2006 access operating fees for Akaku that are scheduled to be paid on January 31, 2006, provided that the funds for the E-partners shall not be released until the E-partners have executed a letter in the form attached hereto as Exhibit "A."
2. Deposit and maintain the remaining seventy-five percent (75%) balance of the 2006 access operating fees in an interest bearing account in any federally insured financial institution authorized in the State of Hawaii.
3. TWE shall maintain separate accounting records for the access operating fees attributable to Akaku. Upon request of the Department, TWE shall provide DCCA with supporting documentation of the bank account and accounting records.
4. From the amounts retained in the interest bearing bank account, TWE shall pay twenty-five percent (25%) of the amounts that are scheduled to be paid on January 31, 2006 to the Director's designee(s) upon direction of the Department. The Director anticipates that payment instructions for the 25% of the 2006 access operating fees will be forthcoming by March 2006.
5. Upon further direction of the Director, TWE shall disperse the remaining amounts of access operating fees in the bank account. The Director anticipates that payment instructions for the remaining fifty percent (50%) of the 2006 access operating fees will be forthcoming by June 2006.
6. TWE may recover reasonable costs of administering the bank account, including the tax impact of any interest earned, from the interest on the account.
7. Any interest earned on the bank account shall be prorated and disbursed as further directed by the Department.

Mr. Nate Smith
January 23, 2006
Page 4

Thank you for your attention to and cooperation in this matter. Please call Clyde Sonobe, Cable Television Administrator if you have any questions.

Sincerely,



Mark E. Recktenwald
Director of Commerce and Consumer Affairs

Enc.

cc: Russell Saiki
John Komeiji, Esq.
Kealii Lopez
J Robertson
Juergen Denecke
Iris Cober
Clyde Sakamoto
Kenneth Nomura
Clyde Sonobe

January __, 2006

Mark E. Recktenwald
Director of Commerce and Consumer Affairs
335 Merchant Street, Room
Honolulu, HI 96813

Dear Director Recktenwald:

By letter order dated January 23, 2006, Maui Community College (MCC) and Maui Department of Education (MDOE) are to receive a portion of the 2006 access operating fees for the franchise areas of Maui County and Lahaina. As a condition for the receipt of these funds, MCC and MDOE agree to use these funds in accordance with the attached budgets, which were submitted to the Department of Commerce and Consumer Affairs on or about January 9, 2006.

MCC and MDOE further agree to report on the use of these funds as requested by the Department of Commerce and Consumer Affairs.

Very truly yours,

Kenneth Nomura
Central Maui Complex Area Superintendent

Clyde Sakamoto, Ed.D.
Chancellor
Maui Community College

Enc.

EXHIBIT A