

BEFORE THE
DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS
OF THE STATE OF HAWAII

In the Matter of)

TIME WARNER ENTERTAINMENT COMPANY, L.P.)

For Amendment of Cable Franchise)

Docket No. 93-03

DECISION AND ORDER NO. 156

INTRODUCTION:

On November 30, 1988 and December 30, 1988, the Director issued Decision and Order (Order) No. 135 and Order No. 137, respectively, granting Oceanic Cablevision, Inc., a cable franchise subject to certain terms and conditions. Order No. 151, issued by the Director on June 28, 1991, amended Order No. 135.

On September 25, 1992, the Director issued Order No. 153 approving the transfer of the cable permit from Oceanic Cablevision, Inc. to Time Warner Entertainment Company, L.P. (TWE). TWE does business in the State of Hawaii as Oceanic Cablevision (Oceanic). On January 27, 1993, Order No. 153 was amended and superseded by Order No. 154.

By letter dated March 29, 1993, TWE requested a waiver of the four additional fiber requirement set out in Condition 4.1(a) of Order No. 154. Decision and Order No. 156 memorializes the Director's approval of the waiver request by letter dated July 20, 1993.

DISCUSSION:

Condition 4.1 (a) of Order No. 154 reads:

"(a) TWE shall construct, reconstruct, rebuild, reconfigure or upgrade its System to a minimum bandwidth of 450 MHz by December 31, 1998, and provide a minimum of sixty available Channels. Additionally, the entire fiber optic portion of this upgrade shall contain a minimum of four additional fibers which shall be reserved for future uses to be determined by the Director. For purposes of this section, this upgrade shall be referred to as the '450 MHz upgrade.'"

Condition 4.1(a) has been one of Oceanic's franchise obligations since the Director issued Oceanic Cablevision, Inc.'s renewed cable franchise in 1988. Notwithstanding the amendments to Order No. 135 and the subsequent franchise transfer to TWE, the obligation to increase system capacity to 450MHz and include four fibers for the State wherever Oceanic extends fiber has remained constant.

On December 20, 1991, the Director approved Oceanic Cablevision, Inc.'s engineering plan and schedule of construction for the 450 MHz upgrade. The plan creates a fiber trunk with fiber extensions to the node, and reduces amplifier cascades to four amplifiers throughout Oceanic's plant. The approved schedule calls for upgrade work to begin January 1994 and be completed by December 1998. The Director's approval recognized that the time between the approval of the upgrade plan and commencement of work on the upgrade allowed an opportunity to "identify and evaluate improvements in fiber optic and alternate technologies which might be incorporated in the upgrade plan. The Director also specifically reiterated Oceanic's obligation to provide a minimum of four additional fibers for the entire fiber optic portion of the upgrade.

The four fiber requirement was part of the State's goal of having dedicated capacity on a technologically advanced telecommunications infrastructure, an infrastructure which would possibly extend all the way to the home. The State's goal is in part served by TWE's obligation to construct an institutional network (I-net) for governmental use. Pursuant to Section 8 of the Terms and Conditions of Order No. 154, Oceanic is linking government sites with fiber in order to allow two-way broadband video, voice, and data transmissions between sites.

The I-net trunk runs from Kapiolani Community College through the University of Hawaii at Manoa and the Honolulu Civic Center to Kapolei. The I-net will eventually ring the island to tie in sites on the Windward side and North Shore of the island. The number of specific governmental sites to be linked to the I-net is potentially unlimited.

Condition 4.1(a), however, is distinct from Oceanic's I-net obligations and would extend the State's dedicated communications system more widely throughout Oceanic's system and would make two-way interaction between the State and Oceanic's subscribers a possibility. In addition, the four fibers guaranteed the State unlimited capacity for future uses, not yet determined.

In lieu of providing four additional fibers over the entire fiber optic portion of the upgrade, TWE proposes to:

- (a) provide access through its cable system for all of its subscribers to the State's institutional network, described in section 8.1 of Order 154 to the extent that TWE's cable system permits two-way capabilities;
- (b) interconnect future institutional network sites using fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities as determined by the Director and at actual cost of labor and materials provided TWE has the necessary infrastructure and rights of way to receive the fibers;
- (c) maintain and repair the institutional network's fiber optic lines installed under section 8.1 of Decision and Order No. 154 up to the terminating points of each respective governmental building designated by the Director at no charge or cost to the State; and
- (d) replace institutional network fiber optic lines at actual cost of labor and materials.

TWE proposal to provide capacity and access for cable subscribers to the State's I-net preserves the two-way interactive capability the four fibers provide. The manner in which access will be provided is not certain. However, the State's objective of capacity and access to an advanced telecommunications infrastructure is not diminished if Oceanic creates a means for cable subscribers to link with the State's I-net.

In addition, TWE has expressed a desire to interconnect its cable facilities with the State's institutional network to utilize the State's Civic Center telecommunications conduit system to more effectively fulfill its institutional network responsibilities. It has also expressed its willingness to compensate the State for such use by maintaining the State's institutional network. Upon the State's request, TWE will also replace or expand the State's Civic Center facilities at actual cost to the State. In exchange for TWE's agreement to maintain and repair its institutional network, the State has agreed to allow TWE to utilize its Civic Center telecommunication conduit system.

Upon review of Condition 4.1 and 8.1 of Decision and Order No. 154, the Director believes that it is in the public interest to amend the Franchise Term requirements. Term and Condition 4.1 and 8.1 of Decision and Order No. 154 is hereby amended and superseded by this Decision and Order. Except as amended, the provisions of Decision and Order No. 154 and the Terms and Conditions of Decision and Order No. 154 that were incorporated therein are hereby ratified and approved and shall remain in full force and effect.

NOW, THEREFORE, it is hereby ordered that the amendment to the Franchise Term required by the Terms and Conditions of Decision and Order No. 154 incorporated in Decision and Order No. 154 be APPROVED, subject to the attached Amended Terms and Conditions 4.1 and 8.1 which are incorporated by reference herein.

DATED: Honolulu, Hawaii, March 18, 1994.



CLIFFORD K. HIGA
Director of Commerce and
Consumer Affairs

AMENDED TERMS AND CONDITIONS 4.1 & 8.1

Terms and Conditions 4.1 and 8.1 of D&O 154 are amended and superseded to read as follows:

4.1 Fiber Optic Upgrade to 450 MHz System

(a) TWE shall construct, reconstruct, rebuild, reconfigure, or upgrade its System to a minimum bandwidth of 450 MHz by December 31, 1998, and provide a minimum of sixty available Channels. For purposes of this section, this upgrade shall be referred to as the "450 MHz Upgrade."

(b) TWE shall provide capacity for and access through its cable system for all of its subscribers to the State's institutional network described in section 8.1 of this Order No. 156, (to the extent that two-way broadband video, voice, and data capabilities are available pursuant to the upgrade referred to in this section).

(c) No later than April 1, 1994, Oceanic shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the 450 MHz Upgrade, and such other information as the Director deems necessary. The upgrade shall utilize fiber optic cable for all trunk and distribution lines and, (1) extend as close to the homes as is commercially and technologically reasonable; and (2) allow two-way broadband video, voice, and data capabilities available pursuant to the upgrade referred to in this section.

8.1 Institutional Networks

(a) TWE shall provide, repair and maintain interconnections by installing fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities at no charge or cost to the State between the following points:

- (1) The State government complex in downtown Honolulu (hereinafter the "Civic Center" and Oceanic's master headend);
- (2) The Civic Center and the University of Hawaii at Manoa;
- (3) The Civic Center and Kapiolani Community College at Diamond Head; and
- (4) The Civic Center and Kapolei/Ewa second city complex.

(b) Within twelve months of a request by the Director, TWE shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites determined by the Director, at the actual cost for labor and materials provided that the sites at which TWE shall install the fiber optic lines have the necessary infrastructure and rights of way to receive the fibers.

- (1) Upon submission of invoices for the cost of such interconnections, together with supporting documentation as may be required, and approval by the Director, the State shall promptly reimburse TWE for the

cost of such interconnections. Supporting documentation may include, but is not limited to, the cost of materials utilized, including applicable taxes and shipping charges; cost of labor, including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes, and rental value of equipment and machinery.

- (2) The State when requesting such interconnection shall be cognizant of TWE's scheduling, manpower, and resource requirements.
- (3) Upon written request by TWE, the Director may grant an extension for the installation of an interconnection requested under paragraph 8.1(b) for good cause.
- (4) TWE shall repair and maintain, but not replace, the institutional network's fiber optic lines installed under this section up to the terminating points of each network site designated by the Director at no charge or cost to the State.

(c) TWE shall maintain and repair, at no charge or cost to the State, the State's fiber optic cabling contained within State-owned communication conduits in the Capitol complex, up to the termination point within each State building.

- (1) TWE is relieved from responsibility for maintenance, repair or replacement of the State's fiber optic cabling which are: (1) installed deficiently or defectively as of a date determined by the Director of the Department of Commerce and Consumer Affairs (DCCA) or (2) deficiently or defectively installed by parties other than TWE subsequent to said date determined by the Director of DCCA.
- (2) Upon request by the State, TWE shall: (1) replace the State's fiber optic cabling contained in State-owned communication conduits or (2) correct the State's deficient or defective fiber optic cabling at actual cost of labor and materials. Upon replacement or correction of the deficient or defective fiber optic cabling, TWE shall be responsible for its maintenance and repair at no charge or cost to the State.
- (3) Upon request by the State, TWE to install new fiber optic cabling in State-owned communication conduits and terminate in State buildings at actual cost of labor and materials. Upon installation and termination of the fiber optic cabling, TWE shall be responsible for its maintenance and repair at no charge or cost to the State.

(d) Upon request by the State, TWE shall terminate in the respective State buildings the State's unterminated fiber optic cabling in State-owned communication conduits at actual cost for labor and materials.

- (1) Upon completing termination of the fiber optic cabling, TWE shall be responsible for its maintenance and repair at no charge or cost to the State.
- (2) TWE is relieved from responsibility for terminating the State's fiber optic cabling which are: (1) installed deficiently or defectively as of a date determined by the Director of DCCA or (2) deficiently or defectively

installed by parties other than TWE subsequent to said date determined by the Director of DCCA.


- (3) Upon request by the State, TWE shall replace or correct said deficient or defective fiber optic cabling at actual cost for labor and materials. Upon replacement or correction of the deficient or defective fiber optic cabling, TWE shall complete the termination as requested by the State and be responsible for its maintenance and repair at no charge or cost to the State.
- (4) TWE shall reinstall and/or correct deficient terminations of the State's fiber optic cabling existing as of a date determined by the Director of DCCA in the Kalanimoku Building and State Office Tower at no charge or cost to the State.
- (e) TWE together with the Director's staff, consultants, and designees shall design, develop, and implement coordinated plans for the institutional network's construction.
- (f) In order to maintain the management of the State's communication infrastructure, TWE understands that all accesses to specific conduits, and quantities and types of cabling to be installed within them, shall be approved by the Information and Communication Services Division (ICSD).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 156 in Docket No. 93-03 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on March 18, 1994.

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