

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

In the Matter of	)	
	)	
TIME WARNER ENTERTAINMENT COMPANY, L.P.	)	DOCKET NO. 94-04
	)	
For Approval of Cable System Upgrade	)	
	)	
and For Amendment of Cable Franchise	)	
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**DECISION AND ORDER NO.158**

**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). On January 27, 1993, Order No. 153 was amended and superseded by Order No. 154.

Order No. 154 was amended and superseded by Order No. 156 issued on March 18, 1994.

By letter dated March 21, 1994, TWE requested the Director's approval of a proposed upgrade to TWE's Cable System (as defined in paragraph 1 of Order No. 154 and Hawaii Revised Statutes section 440G-3). TWE further requested approval of the following franchise amendments related to the proposed upgrade: (1) extension of TWE's franchise term to December 31, 2008 pursuant to Conditions 2.3(b) and 4.5 of Order No. 154; and (2) elimination of the Development Fund II requirement contained in Condition 4.7 of Order No. 154.

**DISCUSSION:**

**1. Cable System Upgrade**

TWE/Oceanic Cablevision's Cable System currently has a bandwidth of nearly 400 MHz and a total channel capacity of 50 channels in the forward direction. While capable of 25 MHz return, very little plant has electronics activated for return applications.

As approved by the Director on December 20, 1991 pursuant to Condition 4.1(a) of Order No. 154, Oceanic Cablevision is required to upgrade its cable system to 450 MHz and to provide a minimum of 60 available channels. The approved schedule called for upgrade work to begin in January 1994 and to be completed by December 1998.

Condition 4.5 of Order No. 154 requires TWE to conduct a further Cable System upgrade beyond the 450 MHz upgrade previously approved by the Director as follows:

- (a) No later than January 1, 2001, TWE may submit a proposal to the Director for his approval for a System upgrade to be constructed after 1998. This proposal shall contain a financial plan with detailed cost estimates, a detailed engineering plan, a schedule for construction, and such other information as the Director may require.
- (b) If in his sole discretion, the Director approves this proposal by June 30, 2001, then the term of the franchise shall be extended by an additional four years.

By letter dated March 21, 1994, TWE proposed to upgrade its Cable System to 750 MHz. Under the 750 MHz architecture proposed by TWE, TWE will deploy fiber to nodes serving roughly 500 homes. TWE will also deploy a multi-layer fiber transport architecture which will use both analog distribution hubs as well as digital hubs as geography requires. TWE proposes to feed the analog distribution hubs from a primary headend location or digital hub. The analog hubs will reside on a redundant fiber ring. For the coaxial plant fed by the fiber nodes, amplifier cascades will

typically be limited to two trunk amps and three line extenders. Finally, to facilitate future system upgrades and the possibility of additional return bandwidth between 850 MHz and 1 GHz, TWE will deploy 1 GHz taps and passives.

The proposed 750 MHz upgrade would accelerate and leapfrog the 450 MHz upgrade approved by the Director on December 20, 1991. Under the previously approved 450 MHz plan, Oceanic would have completed the 450 MHz upgrade by December 1998. By its March 21, 1994 submittal, TWE has proposed instead to complete its System upgrade to 750 MHz by December 1997.

TWE states that its proposed 750 MHz system will result in a capacity for up to 80 analog channels plus digital headroom. Oceanic will thus increase the existing 50 analog channels to between 60 and 80 channels by the end of 1997. The upgrade will also make additional capacity for hundreds of digital channels available within the bandwidth from 450 or 550 MHz to 750 MHz.

The Director has reviewed all of the information submitted by TWE concerning its proposed 750 MHz upgrade. The Director finds that the proposed 750 MHz upgrade satisfies the State's goal of ensuring that the Oceanic Cable System keep abreast of and incorporate developing technologies in view of the dynamic, evolving nature of cable system technology.

The Director further finds that the accelerated upgrade timetable will benefit Oceanic subscribers by allowing the deployment of advanced services to become available as they prove their viability.

Accordingly, TWE's 750 MHz upgrade as proposed in its submittal to the Director dated March 21, 1994 is hereby approved. Paragraph 4.5 of Order No. 154 shall be amended and superseded by this Decision and Order.

## **2. Term of Franchise**

Under paragraph 2.3(a) TWE's current cable franchise term expires on December 31, 2004 unless earlier terminated. If the Director has approved TWE's proposal for a further System upgrade pursuant to paragraph 4.5, however, Order No. 154 provides that

TWE's cable franchise term shall be extended automatically by an additional four (4) calendar years to December 31, 2008.<sup>1</sup>

Pursuant to paragraph 2.3(b) of Order No. 154, as the Director has approved TWE's proposal for a further system upgrade pursuant to paragraph 4.5 in this Decision and Order, TWE/Oceanic Cablevision's cable franchise term shall be automatically extended by four (4) calendar years upon completion of the 750 MHz upgrade described herein. Thus, upon completion of the 750 MHz upgrade, TWE's franchise term shall expire on December 31, 2008.

### **3. Director's Proposed Upgrade and Development Fund II**

Alternatively, if TWE elected not to propose an upgrade to its Cable System the Director could propose an upgrade to which TWE could agree pursuant to Paragraph 4.6 of Order No. 154 as follows:

The Director may propose at any time a plan for a System upgrade to be constructed after 1998. If TWE agrees to this proposal, then the term of the franchise shall be extended by an additional five years.

TWE could also elect, alternatively, to contribute to a Development Fund II under Conditions 4.7 and 4.8 as follows:

No later than January 1, 2003, TWE may notify the Director in writing that it has elected to contribute Thirty Million Dollars (\$30,000,000) to the Development Fund as specified in paragraph 4.7(b). . . .

If the Director and TWE agree, any balance in the Development Fund provided for in

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<sup>1</sup> Paragraph 2.3(b) of Order No. 154 states the following, in pertinent part:

The term of the franchise shall be extended automatically for an additional four calendar years in the event that . . . [t]he Director approves TWE's proposal for a further System upgrade pursuant to paragraph 4.5[.] . . . In the event that the franchise is extended by four years, the termination date of the term of the franchise shall be December 31, 2008.

[paragraph] . . . 4.7 will be spent on constructing, operating, and/or maintaining any alternative system architecture or upgrade proposed under this section.

Because the Director has herein approved TWE's proposed 750 MHz upgrade pursuant to paragraph 4.5 of Order No. 154, the Director will not propose a System Upgrade pursuant to paragraph 4.6 of Order No. 154. For the same reason, the Development Fund II requirement contained in paragraphs 4.7 and 4.8 shall be eliminated upon completion of the 750 MHz upgrade.

**4. Further system upgrade**

Under Order No. 154, TWE was required to conduct three system upgrades spread out over the entire twenty-year franchise term. Assuming that the 750 MHz upgrade is completed by 1997 as planned, the upgrade will be completed more than 10 years prior to the end of the franchise term in 2008. For the reasons discussed above, the Director finds that this accelerated timetable will benefit Oceanic Cablevision subscribers.

The State of Hawaii's regulatory policy for cable television, however, has required periodic system upgrade reviews over the course of franchise terms. Cable system technology is dynamic and constantly evolving. The State's underlying policy goal has been to assure that Hawaii cable systems keep abreast of and incorporate developing technologies as appropriate.

To ensure that these goals are met, the Director in 2003 will address the need for an additional upgrade and may require TWE to complete an additional upgrade of its Cable System prior to the expiration of TWE's franchise on December 31, 2008, assuming that TWE's franchise is extended upon completion of the 750 MHz upgrade.

**ORDER:**

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 2.3, 4.5, 4.6, 4.7, 4.8, and 4.9 which are incorporated by reference herein.

DATED: Honolulu, Hawaii, June 30, 1994.



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CLIFFORD K. HIGA  
Director of Commerce and  
Consumer Affairs

**AMENDED TERMS AND CONDITIONS 2.3, 4.5, 4.6, 4.7 AND 4.8**  
**NEW CONDITION 4.9**

Terms and Conditions 2.3, 4.5, 4.6, 4.7 and 4.8 of Decision and Order No. 154 are hereby amended and superseded, and a new Condition 4.9 added, to read as follows:

**2.3 Term of Franchise**

- (a) The term of the franchise shall be the balance of the fifteen-year franchise term granted to Oceanic Cablevision, Inc. under Order No. 135, as amended by Decision and Order Nos. 137 and 151, effective January 1, 1989, plus one (1) additional calendar year granted under Decision and Order No. 154. The term expires December 31, 2004 unless terminated as provided herein or by applicable law.
- (b) The term of the franchise shall be extended automatically for an additional four (4) years upon completion of the 750 MHz Upgrade described in paragraph 4.5 herein. If extended under this paragraph, the franchise term shall expire on December 31, 2008 unless terminated as provided herein or by applicable law.

**4.5 750 MHz System Upgrade**

TWE shall construct, reconstruct, rebuild, reconfigure, or upgrade its System to a minimum bandwidth of 750 MHz by December 31, 1997 and provide a minimum of eighty (80) available Channels. For purposes of this Order, this upgrade shall be referred to as the "750 MHz Upgrade."

Upon completion of the 750 MHz Upgrade, TWE's franchise term shall be automatically extended by four (4) additional calendar years to December 31, 2008, as provided under paragraph 2.3(b) herein.

**4.6 Director's Proposed Upgrade**

Paragraph 4.6 of Order No. 154 is hereby deleted.

#### **4.7 Development Fund II**

(a) No later than January 1, 2003, TWE may notify the Director in writing that it has elected to contribute Thirty Million Dollars (\$30,000,000) to the Development Fund as specified in paragraph 4.7(b).

(b) For each calendar year commencing with 2003, TWE shall set aside the greater of Ten Million Dollars (\$10,000,000) or ten percent of Oceanic's annual gross revenues as defined in Section One herein for a further system upgrade. The total amount set aside under this paragraph shall not exceed Thirty Million Dollars (\$30,000,000) and contributions to this fund shall not commence prior to 2003.

(c) Amounts set aside pursuant to paragraph 4.7(b) and all accrued interest shall be held in a bank or money market account or other investment vehicle approved by the Director which is designated as the "Development Fund." Deposits in the Development Fund shall be made no later than March 31st of each year for which a deposit is required.

(d) Amounts in the Development Fund including interest thereon shall not be commingled with other funds of TWE or any other entity. TWE shall have sole authority to draw on the Development Fund for the sole purpose of financing a further system upgrade. TWE shall not make any withdrawals from the Development Fund without the prior approval of the Director. The Development Fund shall not be pledged as collateral for any purpose other than financing an upgrade, except upon written application to and prior written approval of the Director.

(e) This paragraph shall be deleted upon completion of the 750 MHz Upgrade required under Paragraph 4.5 herein and TWE shall have no obligation to contribute to the Development Fund described in this paragraph thereafter.

#### **4.8 Uses of Development Fund**

(a) If the Director and TWE agree, any balance in the Development Fund provided for in paragraphs 4.3 or 4.7 will be spent on constructing, operating, and/or maintaining any



alternative system architecture or upgrade proposed under this section.

(b) This paragraph shall be deleted upon completion of the 750 MHz Upgrade required under Paragraph 4.5 herein.

**4.9 Further System Upgrade**

If TWE's franchise term is extended pursuant to paragraph 2.3(b), to the extent commercially and technologically reasonable, the Director in 2003 will address the need for an additional upgrade and may require TWE to complete an additional System upgrade after 1998 and prior to expiration of TWE's franchise on December 31, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order No. 158 in Docket No. 94-04 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 5th day of July, 1994:

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Patti K. Kodama  
Secretary