

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

In the Matter of the Application)	
of)	DECISION AND ORDER NO. 281
)	
)	
TIME WARNER ENTERTAINMENT)	
COMPANY, L.P.)	
)	
For Transfer and Amendment of the)	
Cable Franchises Held By)	
G FORCE, LLC dba Garden Isle)	
Telecommunications)	
_____)	

DECISION AND ORDER NO. 281

I. INTRODUCTION

On or about March 13, 2002, the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") accepted Time Warner Entertainment Company, L.P.'s ("**TWE**") applications for transfer and amendment of the cable franchises held by G Force, LLC ("**G Force**") known as Garden Isle Cablevision and Kauai Cablevision (sometimes collectively referred as "**G Force systems**").¹ For purposes of this Decision and Order ("**Order**"), the transfer shall be referred to as the "**Kauai transfer application**".

Garden Isle Cablevision covers the following areas on the island of Kauai: census tracts 402.01, 402.02, 403, 404, 405, 406, 407, and 408. Kauai Cablevision covers the following areas on the island of Kauai: census tracts 401, 407, 408, 409, and parts of 402.01, 402.02, and 406. G Force's cable franchises expire on December 31, 2008.² In connection with this transfer, the G Force systems shall be consolidated into a single system with one principal headend; and TWE shall upgrade the cable system to two-way fiber to node architecture with a minimum bandwidth of 750 Mhz.

TWE and G Force have agreed, among other things, to exchange certain assets, including cable systems and franchises pursuant to Asset Purchase Agreement dated

¹ See, Time Warner Entertainment Company, L.P.'s Application for Transfer and Amendment of Cable Franchises Held by G Force, LLC.

² By Decision and Order No. 255, the Director approved G Force's application for renewal of cable franchises known as Garden Isle Cablevision and Kauai Cablevision.

December 14, 2001, as amended and restated by that certain First Amendment to Asset Purchase Agreement dated January 18, 2002 (collectively referred as the "**Asset Purchase Agreement**"), by and between G Force, as Seller, and Time Warner Entertainment Company, L.P., as Buyer. The Asset Purchase Agreement provides that G Force shall exchange all properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, including cable franchises, that are owned, leased or otherwise possessed, by G Force used or held for use in connection with the operation of the cable television systems. TWE shall assume, pay, and perform obligations and liabilities incurred after closing arising out of TWE's ownership of the assets or operation of the cable television systems.

The closing of the Asset Purchase Agreement was originally anticipated to occur sometime prior to July 1, 2002; however, the deadline to close was extended to July 12, 2002. One of the conditions precedent for closing of the Asset Purchase Agreement is TWE and G Force obtaining the required consents from appropriate governmental authorities on the subject transfer.³

Organizationally, AOL Time Warner was formed in connection with the merger of America Online, Inc and Time Warner, which was consummated on January 11, 2001. As a result of the merger, America Online and Time Warner each became wholly owned subsidiaries of AOL Time Warner. Currently, AOL Time Warner through its wholly owned subsidiaries, owns general and limited partnership interests in 74.49% of TWE as follows: American Television & Communications Corporation, general partner, holds a 25.77% interest, Warner Communications Inc., general partner, holds a 37.50% interest, and Time Warner Companies, Inc, limited partner, holds a 5.61% interest, and TW/TAE, Inc., limited partner, holds a 5.61% interest. The remaining 25.51% limited partnership interests are held by Media One Group, Inc. Time Warner Companies, Inc., which holds a 92.20% ownership interest in American Television & Communications and 84.81% ownership interest in Warner Communications, Inc., is a wholly owned subsidiary of Time Warner Inc.

Although AOL Time Warner is the controlling entity, as the majority general and limited partner of TWE, TWE is the entity that holds the cable franchises in the State of Hawaii and the applicant in the present proceeding.⁴ Once owned or acquired by TWE, cable systems in Hawaii are designated as a part of the Time Warner Cable division of TWE. The officers of the Time Warner Cable division of TWE manage the cable systems on a day-to-day basis. Thus, the G Force systems will be owned and financed by TWE but operated as a separate operating unit of Oceanic Cable. Overall management of the G Force systems will reside in Oceanic's existing management

³ The Federal Communications Commission approval of FCC CARS license transfers from G Force to TWE is required.

⁴ See, FCC Form 394 filed by American Television and Communications Corporation.

team although separate cost structures will be maintained for operating and financial performance purposes.

In its transfer application TWE sets forth certain representations or commitments. Although all representations made by TWE in connection with its transfer application are considered material by the State, some of the major representations or commitments of TWE in its transfer application are as follows:

1. TWE shall support public, educational and government ("**PEG**") access by (a) contributing an amount equal to three percent (3%) of its annual gross revenues from the G Force systems for PEG operating funds; (b) contributing capital funds for PEG facilities and equipment; (c) continue to provide the current PEG access channels and provide two (2) additional Educational Access Channels in connection with the 750 Mhz upgrade, at no charge or cost to subscribers and the State;
2. TWE shall contribute an amount equivalent to one percent (1%) of its annual gross revenues from the G Force systems to the Hawaii Public Television Foundation (i.e., the successor to the Hawaii Public Broadcasting Authority);
3. TWE shall satisfy all existing Kauai Institutional Network ("INET") obligations as imposed on G Force, including but not limited to, providing two-way fiber optic interconnections or connections for INET sites designated by the Director and maintain and repair such interconnections or connections, all at no charge or cost to the State;
4. TWE shall consolidate the G Force systems with one principal headend and upgrade the single system to a minimum bandwidth of 750 Mhz or 75 analog channels plus digital capability using fiber to node architecture. TWE proposes to complete the upgrade by June 30, 2004;
5. TWE shall connect and provide all public schools, public libraries, the University of Hawaii and community colleges, and to the Kauai Civil Emergency Operating Center, cable broadband Internet service at no cost to the subscribers and the State;⁵ and
6. TWE shall not pass on to subscribers the costs to upgrade the cable system in its service rates, but may increase such rates for other items in accordance with applicable federal and State laws, rules, and regulations.

⁵ At any time after completion of the proposed system upgrade, the Director may require TWE to provide high speed Internet access to the main fire station, main police station, County of Kauai Building and the State hospital in Waimea, at no cost or charge to subscribers and the State.

Because the franchise for G Force's systems expires on December 31, 2008, TWE requested an extended franchise term. TWE proposes to extend the franchise term by fifteen years to December 31, 2017, and an additional two years to December 31, 2019, for an earlier completion of the proposed upgrade.

Pursuant to Hawaii Revised Statutes ("HRS") section 440G-7, public hearings on the subject transfer applications were held on April 11, 2002 at 6 p.m., at Waimea High School and on April 12, 2002, at 6 p.m. at Wilcox Elementary School. Notices of the public hearings were published on March 20 and 27, 2002, in The Garden Island. Copies of the transfer applications were available for review during normal business hours at public libraries in communities within the service areas, the office of G Force, and at the Cable Television Division, Department of Commerce and Consumer Affairs.

Prior to and during the application process, TWE agreed, inter alia, to interconnect/connect the State's INET on Kauai with the islands of Oahu, Maui, and Hawaii using TWE's submarine cabling or fiber. This would allow Kauai to participate in connectivity with the other islands via submarine fiber.

Prior to submitting the Kauai transfer application, the State's INET partners (i.e., the Department, UH, DOE, and the Information and Communication Systems Division of the Department of Accounting and General Services) had been working closely with TWE in planning the activation of the submarine INET fibers between the islands of Oahu, Maui, and Hawaii. Among other things, TWE agreed to provide the State access to the submarine fiber provided that the State reimburse TWE for TWE's reasonable equipment and connection costs, and the State purchase appropriate equipment to connect to the submarine fiber. TWE also agreed to allow the State access to the submarine fiber without any restrictions on the State's use of the fiber, and agreed that it would not charge the State a usage fee. In return, the State agreed to pay TWE's reasonable hardware maintenance costs as long as sufficient documentation was provided by TWE. TWE agreed to provide this documentation.

Based on the representations and actions of TWE's officers and employees (e.g., Mr. Mike Goodish, Vice President of Engineering at Oceanic Cable) and in reliance upon TWE's representations and actions, the State's INET partners in good faith incurred approximately \$500,000.00 in INET equipment costs required and invoiced by TWE, and incurred approximately another \$500,000.00 in equipment costs for on-island INET enhancements. TWE initially proposed to allow the State access to the submarine fiber in May 2002, and agreed that once the Kauai transfer application was approved, it would interconnect the island of Kauai.

However, a few weeks prior to the original expiration date of TWE's Asset Purchase Agreement with G Force (i.e., prior to June 30, 2002), TWE's new management reversed course and proposed that conditions/limitations be imposed on the State's use of INET and that the State now pay for certain INET costs. The State has asked TWE for more information on these costs; however, TWE has not responded. In addition, TWE's new management also proposed that TWE be allowed to

test/monitor the information that the State is transmitting through the submarine cabling. The State objected to this because some of the governmental information that will be transmitted is confidential. Furthermore, TWE's new management refused to provide any documentation to the State on TWE's hardware maintenance costs. TWE's unilateral and last minute change in position regarding access to and use of the submarine INET cabling is contrary to all of the parties' original understanding that was negotiated and relied upon in good faith.

On or about July 5, 2002 TWE informed the Department that discussions on the INET submarine cabling were no longer productive and has refused to discuss the issue. In addition, there are other open remaining issues that have not been resolved because of TWE's refusal to meet. Nevertheless, despite the change in position on the Kauai INET interconnection via submarine cabling and the unresolved issues, TWE has asked the Department to approve the transfer prior to the expiration of the Asset Purchase Agreement (i.e., prior to July 12, 2002) and has stated that the issuance of an Order approving the transfer is a precondition to the closing of the Asset Purchase Agreement.

The Department has carefully considered TWE's application, representations, and actions regarding the transfer. Although the Department has concerns regarding TWE's suitability, as detailed in section II.B. herein and is concerned with TWE's new management's recent change in position on the Kauai INET interconnection via submarine fiber that was negotiated and relied upon in good faith, the Department is inclined to approve the transfer because it is in the best interests of the Kauai subscribers; provided that the Department's approval shall be subject to certain terms and conditions that the Director deems the public interest requires under HRS section 440G-8, and the franchise shall also be subject to certain terms and conditions (including but not limited to G Force's original franchise terms and conditions) that the Director deems the public interest requires under HRS section 440G-8.

II. APPLICABLE LAW

A. Federal Law

The transfer of a cable franchise is made under the authority of State law and is consistent with the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 (the "**Cable Act**").

Section 624 of the Cable Act allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, system configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental access use. Section 622 allows the assessment of a franchise fee up to five percent (5%) of annual gross revenues, any portion of which may be used for public, educational, and governmental access.

B. State Law

The regulatory powers of the Director regarding the transfer of a cable franchise are set forth in HRS sections 440G-7, 440G-8, 440G-10.1, and 440G-12, as amended ("**Hawaii Cable Law**").

In general, HRS § 440G-10.1 states that a cable television franchise may only be transferred upon written application to and approval by the Director, and that HRS § 440G-8 applies to the transfer. HRS § 440G-8 provides in relevant part as follows:

"(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, . . . and any other matters as the director deems appropriate in the circumstances.

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(d) In issuing a cable franchise under this chapter, the director is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the cable franchise terms, limitations, and conditions which the director deems the public interest may require . . ."
(Emphases added).

See also, HAR §§ 16-133-16 and 17.

C. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a right to use and occupy public places, highways and easements that are of a limited and scarce nature. Substantial economic benefits may flow to the recipient as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is reliable, responsive, and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, and enhancing communications capabilities for its communities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

III. STATUTORY CRITERIA

A. Public Need for Proposed Service

There is a continuing public need for extending cable service within G Force's franchise areas. The Director understands that G Force and its predecessors have taken great strides in extending cable service to most areas on the island of Kauai. However, the Director remains concerned with a few remaining isolated and remote rural areas that continue to be without cable service. To address the State's concern, TWE proposes to maintain G Force's line extension policy, which is also consistent with TWE's current line extension policy for its Hawaii systems of 25 homes per mile minimal density requirement.

In response to the State's request for supplemental information, TWE submitted information stating that the few remaining unserved areas include Kahili Mountain Park, Mana, and Kokee State Park. With respect to Mana, TWE states that there are no residents currently in the area. Although Kahili Mountain Park and Kokee State Park have residents in the area, neither location satisfies the 25 homes per mile line extension policy. However, it should be noted that the Director may require the extension of service to any unserved area in accordance with HRS section 440G-8.1(c), ("The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.").

TWE shall work with the Director or the Director's staff and shall prepare a report regarding the feasibility of extending cable service to all communities that remain unserved, which report shall be submitted to the Director in connection with the system upgrade plans. The Director reserves the right to require TWE to extend cable service to any unserved area in the report.

Furthermore, the public need for cable service demands that the cable systems not only extend to rural outlying areas, but also to adequately serve the future community needs. TWE proposed to meet the public need for cable service by meeting the increasing demands for service generated by population growth. TWE anticipates 5,100 new residential units on the island of Kauai. Consistent with TWE's line extension policy, TWE will extend the existing Kauai cable system to these new subdivisions and other developments to meet the increasing demands for cable service.

B. Suitability of the Applicant

In evaluating the suitability of TWE, the State considered, among other things, TWE's operation of its current Hawaii systems and its dealings with State agencies. Although the G Force systems will be owned by TWE, the systems serving Kauai County will operate as a separate operating unit of Oceanic Cable with its own profitability and capital spending measurements and regulatory and service standards.

TWE states that G Force systems will be treated consistently with TWE's current systems where senior personnel at Oceanic Cable direct operations. Oceanic Cable will maintain the overall management of the G Force systems providing technical, accounting, administrative, and other necessary operational support.

Based upon TWE's prior representations and actions, as detailed in section I, that induced various State agencies to expend substantial sums of money in reliance thereon and because of TWE's sudden reversal of position, there is a concern regarding TWE's suitability and reliability. If TWE persists in its reversal of position, TWE's prior representations may be considered to be false and misleading statements. However, these concerns would be resolved by TWE's acceptance of and compliance with the conditions of this Order.

TWE also plans to retain existing G Force's staff necessary to operate the G Force systems on a day-to-day basis to ensure continuity, and preserve the expertise that has been developed over the years. With the retention of former G Force personnel staff sufficient to operate the system, a smooth transition of ownership with little or no operational interruptions is anticipated. Therefore, based upon the foregoing, TWE's proposed management and personnel retention plan is acceptable.

C. Operational Ability of the Applicant

TWE has operated a cable system in Hawaii since 1992. The history of TWE demonstrates its ability to operate its cable systems in accordance with franchise obligations. Testimony presented on the subject application did not question TWE's ability to operate cable systems. Moreover, TWE recently conducted an annual customer satisfaction survey, within TWE's franchise areas. The survey results indicated that for the most part subscribers were satisfied with TWE's customer and product service performance. Therefore, TWE's ability to operate the G Force systems is acceptable.

D. Technical Ability of the Applicant

G Force's franchise agreement required G Force to consolidate and upgrade its systems to a minimum bandwidth of 750 Mhz by June 30, 2002. With this pending transfer proceeding, G Force and TWE unilaterally agreed to discontinue work on the upgrade of the systems. TWE reaffirms the commitment to complete the consolidation and upgrade of the G Force systems to a minimum bandwidth of 750 Mhz using fiber and digital technology standards equivalent to that of TWE's other cable systems in Hawaii that have either been or in the process of being completed. TWE will upgrade the G Force systems to a total bandwidth of 750 Mhz or approximately seventy-five (75) analog channels plus digital headroom for digital channel capacity, utilizing a "fiber to node" architecture. Digital compression technology will also be employed to meet the demand for increased channel capacity. TWE will also utilize standby power to minimize power outages thereby decreasing potential service interruptions.

Upon the completion of the 750 Mhz upgrade, Kauai subscribers will benefit in terms of greater system reliability, reduced service outages, improved picture quality, and more diverse program offerings. Enhanced program offerings may include local niche programs, increased pay-per-view, multiplexed premium pay-TV, and new product tiers. TWE also states that the upgrade will allow the deployment of TWE's advanced interactive services such as high-speed Internet access, digital services, and other services as they become available and economically feasible. The upgrade will technically standardize system capacity throughout the State of Hawaii's franchise areas resulting in the opportunity to provide equivalent services to all subscribers in the State.

Therefore, it appears that TWE has the requisite expertise to execute the technical requirements of the franchise and to incorporate technological developments in delivering services desired by subscribers.

E. Ability to Provide Service at Reasonable Cost and Financial Capability

TWE states that it is committed to offering safe, adequate, and reliable services at a reasonable cost to subscribers. TWE proposes to accomplish this by maintaining the continuity of existing cable programming currently provided on Kauai by G Force to prevent any service disruptions. TWE states that it has national programming contracts with vendors, which provide video programming for all TWE cable systems, including cable systems newly acquired. TWE has assured the State that the transition will be without interruption in programming or service as demonstrated in prior acquisitions of Hawaii cable systems by TWE. In addition, technically, the widespread deployment of fiber with the upgrade of microwave and cable facilities should also provide reliable service with decrease outages, enhance system reliability, and improve picture quality.

TWE further acknowledges that adequate and reliable service demands responsive customer service. TWE commits to minimizing the number of customer-related problems and to respond quickly and efficiently if problems do arise. TWE states that it is committed to meet or exceed all State and federal customer service standards and where technically and economically feasible, TWE will utilize a "customer friendly" technical configuration that allows subscribers to fully utilize their electronics equipment.

With respect to providing service at a reasonable cost, testimony on the subject transfer included concerns of possible increases in cable service rates. TWE's financial plan indicates approximately 3% and 5% annual increases for the basic and cable programming services tiers, respectively, on a 10 year projection.

The Director recognizes that rising costs of cable service is a concern for all, particularly in a limited competitive environment. With respect to cable rates, the FCC no longer regulates the rates for the cable programming services tier or upper tier since March 31, 1999, as a result of the 1996 Telecommunications Act. Local franchising

authorities may elect to regulate the basic service tier and associated equipment and installation charges. TWE's Hawaii systems' lowest tier of cable programming - basic cable service and equipment and installation rates are regulated in accordance with rate regulations adopted by the FCC. Accordingly, the State will continue its efforts in reviewing whether TWE's charges for basic service and equipment and installation charges are consistent with applicable law.

For purposes of rate regulation, G Force is considered a small cable operator and grandfathered as a small system. Once acquired, TWE will not be eligible for small system and operator rate relief. TWE has agreed to comply at all times with applicable FCC rate regulations. It is also noted that cable rates were different between the two systems of G Force primarily because of differing system capacities, associated costs, and subscriber base. By this transfer proceeding, the G Force systems will consolidate subjecting TWE to uniform geographic rate requirements respective to services requested by subscribers for all of Kauai's franchise areas. Additionally, to prevent further cable rate increases, TWE has committed not to pass on to subscribers the cost to upgrade the G Force systems.

TWE purports to fund future system upgrades and improvements through its available working capital and unused long term debt capacity.⁶ Although, TWE states that funding of specific future capital needs have not yet been committed, TWE expects its capital requirements to be approved and funded through its annual capital budgeting process. Because TWE has recently upgraded or nearly completed upgrades of numerous TWE systems in Hawaii and with the uncommitted nature of capital funds, the Director is concerned about the availability of sufficient capital and other sources for TWE to complete the proposed G Force systems' upgrade and technological improvements when required.

Therefore, in order to provide adequate assurances that the proposed upgrade will be completed at the time required, the Director may require TWE to deposit an amount equal to the total construction cost of the proposed upgrade in a Development Fund, in the event circumstances arise that significantly affect TWE's ability to complete the upgrade within the time frame required. The Development Fund requirement shall be extinguished upon the satisfactory completion of the G Force systems upgrade.

IV. FRANCHISE AND OTHER MATTERS

A. Control

The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the

⁶ As of December 31, 2001, TWE reported a total of \$3,213 billion of TWE Cable Division available for funding capital needs.

threshold requirements for holding a cable franchise, and is responsible and accountable to the State. Therefore, the Director's prior written consent shall be required for any change in control of TWE's ownership of the former G Force systems as provided in the attached terms and conditions, and as provided by applicable law.

B. Upgrade

A key consideration in the State's review of cable franchises in Hawaii is to assure that they are technically capable of meeting the existing and future needs and desires of the communities they serve.

TWE proposes to upgrade the G Force systems by June 30, 2004 to a minimum bandwidth of 750 Mhz, with digital capability, using fiber to node architecture. The system upgrade is to have an equivalent engineering design, redundancy, and proportionate capital requirements as Oceanic's 750 Mhz system upgrade, as well as TWE's pending 750 Mhz upgrades on the Big Island and Maui County. The upgrade method will be node by node with work beginning in Hanalei and Barking Sands and converging upon Lihue as the final objective. According to TWE, the upgrade is anticipated to progress at 23 miles per month.

With the system upgrade, TWE will be able to provide subscribers with advance interactive services, such as on-line connection to the Internet via cable modems, and digital services in areas when such services become technically and economically feasible. With respect to on-line connection to the Internet, on December 14, 2000, the FTC issued a Consent Decree that imposes certain requirements that TWE must follow in providing its subscribers with a choice of multiple Internet Service Providers ("ISP") as part of its cable modem service.⁷ The Consent Decree terminates after five years. The Consent Decree provides that TWE cannot make available an affiliated broadband ISP, other than "Road Runner", until "Earthlink", an unaffiliated ISP, is made available. Once an affiliated ISP, such as "AOL", is made available, TWE must enter into two additional agreements with unaffiliated ISPs within 90 days.

To this end, in the fourth quarter of 2001, Oceanic launched multiple ISP service, providing subscribers with a choice between affiliated and unaffiliated ISPs. The availability of multiple ISP service similarly followed on the Big Island and most of Maui County. Thus, it is anticipated that high-speed Internet access via cable modem with multiple ISP services shall be available to TWE subscribers on Kauai upon completion of the system upgrade regardless of the delivery system (i.e., fiber or microwave or both).

⁷ America Online, Inc., and Time Warner, Inc., Federal Trade Commission, Docket No. C-3989, file No. 001 0105, Decision and Order ("FTC AOL Time Warner Merger Order") (December 14, 2000).

In addressing the various legal, regulatory, or technical matters regarding cable modem service, the FCC adopted its Declaratory Ruling on March 14, 2002 that cable modem service is an interstate information service.⁸ The FCC's decision is currently being challenged in the Ninth Circuit Court of Appeals. With its Declaratory Ruling, the FCC concurrently adopted a Notice of Proposed Rulemaking to examine, as one of the issues, the regulatory authority of state and local government in regulating cable modem service.⁹ With the present regulatory uncertainty surrounding cable modem service, the Director shall closely monitor the pending rulemaking and court proceeding.

Also, in connection with TWE's 750 Mhz upgrade, TWE shall be required to provide capacity and access for the State's INET, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available in the future. Although the manner in which access shall be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through TWE's upgraded cable system is advanced by enhancing the capabilities of the State's INET.

The Director, in general, accepts TWE's proposal to increase channel capacity of its cable system, and shall require TWE to complete the proposed upgrade by June 30, 2003, and submit its construction plan for review and approval by September 30, 2002. It is noted that the Director, after completion of the 750 Mhz upgrade, may address the need for and may require TWE to complete additional upgrades of the cable system. It is contemplated that any future upgrade that may be required by the Director shall be first discussed with TWE. At that time, the Director may also review public, educational, and government access, INET interconnect requirements, new technologies and services, and any other matter related to the cable system and franchise areas.

C. Public, Educational, and Governmental Access

PEG access has been and continues to be an important issue for the State. In establishing PEG access in Hawaii, the State viewed it as a means for cable subscribers to receive informational and educational programming that in general reflect the communities in which they reside. The Director also values PEG access for providing a forum where people can voice concerns to the community and encourage community dialogue. It generally offers nondiscriminatory access to electronic media on a first-come, first-serve basis free of charge. The Director notes, however, that funding for PEG access via cable companies' contributions should not be viewed as an

⁸ Declaratory Ruling and Notice of Proposed Rulemaking In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, GN Docket No. 00-185 (rel. March 15, 2002).

⁹Id. See also, FCC News Release, FCC Classifies Cable Modem Service as "Information Service" Initiates Proceeding to Promote Broadband Deployment and Examine Regulatory Implications of Classification, March 14, 2002.

entitlement. Rather, PEG access entities and organizations should be developing short and long term alternative funding strategies with the objective of becoming self-sufficient.

The Director has, through the requirements of this Order balanced the need for access resources expressed by the community and the current economic and financial crises confronting the State and private sectors. The Director accepts TWE's proposal to contribute an amount equal to 3% of annual gross revenues from the G Force systems for PEG access operating funds. Contributions of capital funds for PEG facilities and equipment shall be as set forth in the attached "Terms and Conditions".

It is noted that capital fund contributions provided by this Order should be sufficient for Ho'ike to find a facility that adequately serves the needs of the community, transition the playback functions from Kauai Community College to Ho'ike, upgrade production equipment, obtain additional captioning equipment, and replace old equipment over the next three to four years.¹⁰ There is a reopening period during which Ho'ike and TWE will be able to review and agree upon subsequent capital fund contributions taking into account any technological advances or developments relative to communities' needs and interest.¹¹

In order to make the most effective use of available, if not limited, resources, TWE in consultation with Ho'ike shall establish a planning process for Kauai County in bringing together interested parties to create and implement a coordinated plan for access activities. Specific concerns with respect to equipment and facilities, channel time, and other matters shall be addressed in the development of such plan. In addition, two-way capability for live cablecasting of government meetings (e.g., county council and county agency meetings or hearings, and State government and legislative hearings or meetings) shall be addressed in the plan. According to TWE, G Force has installed fiber optic cabling connecting most government buildings, and live cable casting of county government hearings or meetings can be implemented via Ho'ike.¹²

¹⁰ According to Ho'ike, playback and programming functions -- institutional programming -- for the educational channel shall remain primarily with Kauai Community College. The signal for the educational channel shall be sent from Kauai Community College to Ho'ike, and Ho'ike shall then be responsible for sending all three PEG access channels to G Force systems' headend. Ho'ike states that this arrangement shall allow it to insert local educational programming on the channel in available time slots.

¹¹ See, section 4.5(b) of the attached "Terms and Conditions".

¹² Live broadcast capability over designated channel(s) originating from Kauai Civil Defense Emergency Operating Center (KCD EOC) may be accommodated through the cable infrastructure. The County of Kauai has requested a connection to the new County building, which will house KCD EOC. Upon connection and activation, KCD EOC may connect directly to the PEG access channels. KCD EOC will need video

The cost to implement and maintain live cablecasting of government hearings and meetings (e.g., necessary user electronic equipment) shall be borne by Kauai County and the PEG access entity or entities. TWE shall provide technical assistance and other non-monetary assistance when requested by the PEG access entity or the Director.

Several testimonies raised concern with PEG access channel placement. The Director notes the current PEG access channels of the G Force's systems are as follows: Education access on channel 10; Public access on channel 12; and Government access on channel 13. With the completion of the system upgrade, TWE anticipates adopting a channel lineup that is relatively consistent Statewide. For the majority of TWE's current Hawaii systems, TWE places PEG access channels contiguously from channels 52 through 56. The Director notes that cable operators are required to place, among other programming, PEG access channels within the cable operators' lowest tier of service or basic service tier for purposes of rate regulation.¹³ The Director understands that actual placement of such channels within the basic service tier lies with the cable operator. However, to avoid subscriber confusion it would not be unreasonable for TWE to continue its general present practice of placing PEG access channels contiguously and any additional channels, as described below, to also be placed contiguously with already activated PEG access channels. This would provide consistency and eliminate subscriber confusion as to PEG access programming within Kauai County.

As mentioned above, TWE shall provide at no cost to subscribers two additional PEG channels (one educational and one government/public) on its upgraded cable system. This should be sufficient to accommodate expanded educational, public, and government programming for the next several years. TWE, at the request of the Director, shall provide the additional channels as the system upgrade progresses (i.e., as additional channels become available on a node-by-node basis in connection with the system upgrade, TWE shall reserve two of the newly available channels for PEG purposes for activation at the request of the Director).

The Director has designated Ho'ike: Kauai Community Television, Inc., a Hawaii nonprofit corporation, as the access entity for the management of PEG access resources for Kauai County. Its board members are appointed by the Director and the cable company providing service within Kauai. Prior to the acquisition of the cable systems by G Force, the G Force systems were under separate ownership, and each cable operator appointed two board members. Once acquired by G Force, G Force became the only franchised cable operator serving Kauai. G Force has agreed to not fill two seats that expired December 31, 2000 and December 31, 2001. TWE also agrees

camera(s) and other equipment as an override switch to allow live broadcast on any PEG access channels.

¹³ See, 47 U.S.C. section 543 (b)(7)(A).

to maintain the board composition subsequent to December 31, 2001, of nine members – seven members appointed by the Director and two members appointed by TWE.

D. Public Broadcasting

The continued viability of public broadcasting is in the public interest. The Hawaii Public Television Foundation ("HPTF"), successor to Hawaii Broadcasting Authority, provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts TWE's commitment to contribute an amount equal to one percent (1%) of its system's annual gross revenues to HPTF.

E. Institutional Network

INET is used for educational and governmental purposes, and INET requirements are standard components of all franchises approved by the Department.

1. Two-way fiber optic INET interconnections/connections

TWE shall maintain and repair the State's existing two-way fiber optic INET lines on Kauai at no charge or cost to the State, and replace the same at TWE's actual cost of labor and materials.

The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Thus, except as otherwise provided in this Order, payment or reimbursement to TWE for its actual cost of labor and materials for INET interconnections or connections shall be the sole responsibility of the requesting agency, department, or other governmental entity.

According to TWE, G Force has installed two-way fiber optic cabling connecting the following government sites: the State Building, Judiciary Building, Kauai County Building, Kauai Community College, Civic Center, and Wilcox School. Coordination among the various governmental agencies is necessary to activate the INET connections.

At the request of the Director, TWE shall provide two-way fiber optic INET interconnections or connections to West Kauai Visitor & Technology Center, and to the main fire station, main police station, State hospital in Waimea, and public schools and libraries, all at no additional cost to subscribers and the State. TWE shall maintain and repair the fiber optic lines at no charge or cost, and shall replace the same at TWE's actual cost of labor and materials, which cost shall be the responsibility of the affected government agency or agencies.

In addition, at the request of the Director, TWE shall provide over the term of the franchise two-way fiber optic INET interconnections or connections to ten (10) additional

sites to be determined by the Director or the Director's designee all at no cost or charge to the State or subscribers. The ten additional sites shall be selected from within TWE's Hawaii franchise areas. TWE shall maintain and repair the two-way fiber optic lines at no charge or cost, and shall replace the same at TWE's actual cost of labor and materials, which cost shall be the responsibility of the affected government agency or agencies.

2. High-speed cable Internet service

TWE has also agreed to provide, at the request of the Director, high-speed cable Internet service to all public schools, public libraries, the University of Hawaii and community colleges on Kauai, and to the Kauai Civil Defense Emergency Operating Center, all at no cost or charge to subscribers and the State. At any time after completion of the proposed system upgrade, the Director may require TWE to provide high speed cable Internet access to the Main fire station, main police station, the State hospital in Waimea, and the Kauai County Building at no cost or charge to subscribers and the State.

3. Interconnecting the Kauai INET with the INETs on the islands of Oahu, Maui, and Hawaii via submarine cabling or fiber

The Department believes that the public on Kauai will greatly benefit from the interconnection between the Kauai INET and the INETs on the islands of Oahu, Maui, and Hawaii through TWE's submarine cabling or fiber. The submarine fiber will make the Kauai INET's access to the other INETs more effective and efficient for the residents on Kauai. As an example, students on Kauai will be able to participate more in the distance learning/remote educational programs of the DOE and UH on the other islands. In addition, government services on Kauai will also be enhanced and will potentially allow more residents to gain easier access. Thus, the Department believes that including the Kauai INET interconnection via the submarine fiber (that was originally proposed by TWE, and accepted and relied upon by the State (through its INET partners)) in this Order is clearly in the public's interest and is an appropriate term, limitation, or condition under HRS section 440G-8.

Accordingly, TWE shall interconnect/connect the State's INET on Kauai with the State's INETs on the islands of Oahu, Maui, and Hawaii using TWE's submarine cabling or fiber in accordance with its original proposal. The interconnection shall be completed within ninety (90) days from the date of this Order. TWE may request an extension of time to complete the interconnection for good cause; provided that the Director shall have the sole discretion to grant or deny the request. To allow the State's INET on Kauai to interconnect with the State's INETs on the islands of Oahu, Maui, and Hawaii, TWE shall activate the interconnection for the State's INETs on the islands of Oahu, Maui, and Hawaii via submarine cabling within thirty (30) days from the date of this Order.

TWE shall not impose any restrictions on the State's use of the submarine cabling (i.e., TWE shall allow the State access to the submarine fiber without any restrictions on the State's use of the fiber), shall not test or monitor the information in the fiber, and shall not charge the State a usage fee. TWE shall also provide the State detailed documentation on its hardware maintenance costs for the submarine cabling interconnection.

The State shall reimburse TWE for TWE's reasonable equipment and connection costs, and the State shall purchase appropriate equipment to connect to the submarine fiber. In addition, the State shall pay TWE's reasonable hardware maintenance costs as long as sufficient documentation is provided by TWE.

F. Interconnection with Hawaii Interactive Television

TWE shall provide and maintain a fiber interface with the Hawaii Interactive Television System (HITS) at no charge or cost to the State.

G. Consolidation of Garden Isle and Kauai Cablevision

The Director recognizes that the consolidation of the G Force systems is in the public interest. Once consolidated, there should be no disparity among Kauai subscribers in their ability to receive cable services regardless of the means by which the services are transmitted. TWE shall provide the same technical capabilities with respect to the number of channels and types of services subscribers are capable of receiving throughout Kauai. Upon the effective date of this Order, the G Force systems shall be consolidated into one cable system with a single principal headend. For all intents and purposes, Garden Isle Cablevision and Kauai Cablevision systems will no longer exist. TWE shall be the holder of a single cable franchise for the service areas of the former G Force systems.

H. Developing Technologies

Notwithstanding any other provision to the contrary, the Director, at any time after completion of the 750 Mhz system upgrade, may address the communities' need for additional upgrades relative to advanced services such as digital programming and related matters. In connection therewith, the Director may also review public, educational, and government access, INET interconnect or connect requirements, new technologies and services, and any other matter related to the cable system and franchise areas. The Director may impose additional or new terms and conditions, and may extend the term of the franchise for any number of years as the Director deems just and reasonable, taking into consideration the costs of meeting such new terms and conditions.

I. Financial Information

Financial information regarding the condition of the cable company, financial reports, and franchise fee payments are required to be submitted to the Director pursuant to administrative rules and franchise orders. In order to provide for a streamlined and consolidated approach to such financial reporting, the Director reserves the right to require financial information to be submitted by TWE to be in the form and schedule approved by the Director. TWE shall work cooperatively with the Director and the Director's staff on this matter. Until such time as directed by the Director, TWE shall continue to submit the financial information as required by administrative rule and franchise orders.

J. Late Fee

The Director is concerned about notice and imposition of a late fee for subscribers' delinquent payment for cable services, particularly when services are billed in advance.¹⁴ The Director understands that advanced billing for monthly cable services is an industry practice not prohibited by the Federal Communications Commission. However, sufficient notice and adequate time before a late fee is assessed are both fair and reasonable to subscribers and the cable operator.

TWE has agreed to continue the practice, implemented by G Force and consistent with TWE's current Hawaii cable systems, to provide subscribers with prior notice of the imposition of a late fee for delinquent payment as follows:

Billing Period 1. Subscriber's bill for Billing Period 1 is generated;

Billing Period 2. If the subscriber has not paid his/her bill for Billing Period 1 by the date that TWE prints the bill for Billing Period 2, the Billing Period 2 bill shall include a notice to the subscriber stating that an Administrative Fee shall be charged if the Billing Period 1 bill is not paid in full by the date that the Billing Period 3 bill is generated. This notice shall also specify the amount of the Administrative Fee; and

Billing Period 3. If TWE has not received the Subscriber's payment for Billing Period 1 by the date that TWE prints the Subscriber's bill for Billing Period 3, TWE may include the Billing Period 1 Administrative Fee assessment on the Subscriber's bill for Billing Period 3.

The above-procedure is a method to resolve subscriber's concerns, and commends TWE on its efforts to maintain such practice. Accordingly, TWE shall apply the above administrative fee procedure for the G Force systems as of the effective date of this Order. The Director reserves the right to revisit this matter in the event subscriber complaints regarding this new procedure are received by the Director or the Cable Television Division.

¹⁴ "Late fee" is also used interchangeably with "administrative fee" by TWE.

K. Franchise Fee Calculation

TWE shall implement a procedure, equivalent to that implemented by Oceanic Cable on Oahu, 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 this Order. Franchise fees include without limitation the State's annual fee pursuant to the Department's rules, and PEG access operating fee and Hawaii Public Television Foundation Fee pursuant to this Order.

In order to effectively monitor TWE's financial position in the collection and disbursement of franchise fees, TWE shall provide the Director with a cash flow analysis worksheet to be submitted quarterly on January 31, April 30, July 31, and October 31, throughout the remainder of the franchise term beginning on January 31, 2003. The Director reserves the right to require TWE to submit the franchise fee cash flow analysis worksheet in the form and schedule approved by the Director. TWE shall work cooperatively with the Director and the Director's staff on this matter.

L. Discount for Senior Citizens

Under 47 U.S.C. section 543(e) (1), cable operators may offer reasonable discounts for cable service to senior citizens. TWE has agreed to implement reasonable discounts for bulk customers serving senior citizens, such as retirement communities and long term care facilities located on Kauai.

M. Customer Service

The Director agrees with TWE that adequate and reliable service demands responsive customer service. Therefore, the Director remains concerned that with new service offerings there may be greater demands placed on TWE. In order to monitor progress in addressing customer service concerns, TWE shall submit a customer service progress report addressing customer service concerns beginning on October 15, 2002, and submitted to the Director on the 15th day of each month thereafter. The customer service progress report shall detail customer service performance and include TWE's telephone responsiveness, as set forth in the attached "Terms and Conditions". TWE shall submit the customer service progress report in the form requested by the Director. The customer service progress report may be submitted on a confidential basis in sealed envelopes, subject to provisions of the Hawaii Uniform Information Practices Act, HRS chapter 92F, as amended.

Additionally, under other current franchise Orders, TWE is required to conduct an annual customer satisfaction survey throughout its current franchise areas and submit the results to the Director on December 31st of each year. The Director would also like to monitor the satisfaction level of Kauai subscribers. Therefore, TWE shall incorporate the island of Kauai in the annual customer satisfaction survey. Beginning on December 31, 2002, TWE shall include the results of the survey conducted on Kauai, which results may also be submitted on a confidential basis in sealed envelopes, subject to provisions

of HRS chapter 92F. Prior to conducting the survey, TWE shall submit the proposed questionnaire/survey to the Director for review and approval.

Notwithstanding any other provision to the contrary, the Director reserves the right to take any action deemed necessary and appropriate regarding TWE's customer service franchise obligations at any time; provided that before any action is taken, the Director shall discuss such action with TWE.

N. Local Help Desk Support for High-Speed Internet Access Service

The Director commends TWE for providing local help desk support for users of high speed Internet access services to subscribers of its current Hawaii cable systems, and requests that TWE expand such service to Kauai County. Accordingly, TWE shall provide the Director with quarterly progress reports regarding its efforts to provide local help desk support for high speed Internet access service for Kauai County. Beginning January 1, 2003, TWE shall submit quarterly progress reports to the Director regarding its efforts to provide local help desk support for high speed Internet access services for Kauai County.

O. Local Origination Programming

Much of the testimony received on the proposed transfer raised concerns regarding local origination commercial programming. Local producers expressed the desire to maintain local origination programming as currently provided by G Force.

The Director recognizes that local origination programming is a significant benefit to the community, providing for diversity in programming with emphasis on local issues and concerns. TWE recognizes the uniqueness of Kauai's local community and has made a commitment to continue local origination programming. The Director commends TWE in its efforts to deliver a broad range of diverse entertaining, informative, and educational programming by supporting local origination programming.

P. Extension of Franchise Term

In connection with its transfer application, TWE has requested that the franchise term for the G Force systems be extended for 15 years or to December 31, 2017. Although TWE has made some commitments, the Director believes that a shorter franchise term, together with an additional period contingent upon the satisfactory completion of the 750 Mhz upgrade on Kauai is in the public's interest. Accordingly, the franchise term for TWE's Kauai cable system shall be initially extended to December 31, 2009; provided that if TWE completes the 750 Mhz system upgrade by June 30, 2003 to the satisfaction of the State, the franchise term shall be extended by Decision and Order to December 31, 2013; and provided further that if TWE does not satisfactorily complete the 750 Mhz upgrade by June 30, 2003, the franchise shall automatically expire on December 31, 2009, and the Director (in addition to other rights and remedies available to the Director under applicable law or as provided in this Order) shall have the right to

impose any term or condition deemed necessary or appropriate to serve or protect the public's interest.

V. CONCLUSION

Based on the above, the Director concludes that it is in the public interest to approve TWE's application for transfer of the cable franchises held by G Force subject to all of the following terms and conditions.

VI. ORDER

NOW, THEREFORE, the application for transfer of the cable franchises held by G Force to TWE is hereby APPROVED, subject to the following:

- A. TWE and G Force shall consummate/finalize the sale of G Force's assets (i.e., the Asset Purchase Agreement shall be closed) by July 12, 2002; provided that:
 - 1. There has been no material change (e.g., G Force's system is not a part of the transaction) to the Asset Purchase Agreement subsequent to the Agreement that was reviewed by the State. TWE shall immediately notify the Director in writing of the closing of the Asset Purchase Agreement, and whether any material changes were made to said Agreement prior to or at closing; and
 - 2. If the sale is not consummated/finalized by July 12, 2002, the approval shall be automatically withdrawn, this Order shall be null and void, and Decision and Order 255 shall continue in full force and effect;
- B. TWE shall acknowledge in writing by July 12, 2002 that it agrees to:
 - 1. The terms and conditions herein and the attached "Terms and Conditions". The attached "Terms and Conditions" are hereby incorporated into and made a part of this Order.
 - 2. Interconnect/connect the State's INET on Kauai with the State's INETs on the islands of Oahu, Maui, and Hawaii using TWE's submarine cabling or fiber in accordance with its original proposal, representations and actions, and the terms and conditions of this Order (i.e., TWE agrees to interconnect the Kauai INET via the submarine fiber within ninety (90) days from the date of this Order);

3. Activate the interconnection for the State's INETs on the islands of Oahu, Maui, and Hawaii via submarine fiber within thirty (30) days from the date of this Order (to allow the State's INET on Kauai to interconnect with the State's INETs on the other islands;

provided that if TWE's acknowledgement to all of the above is not received by the Department by 4:30 p.m. on July 12, 2002, this approval shall be automatically withdrawn, this Order shall be null and void, and Decision and Order 255 shall be in full force and effect;.

- C. If TWE consummates the above sale and provides the above written acknowledgement by July 12, 2002, TWE shall comply with the terms and conditions provided in this Order. If TWE fails to comply with any of the terms and conditions of this Order, the State reserves and shall have the right to pursue any legal remedy against TWE, including but not limited to the imposition of a fine, the suspension of TWE's Kauai franchise, and the revocation of TWE's Kauai franchise;
- D. TWE shall obtain Federal Communications Commission approval of FCC CARS license transfers from G Force to TWE, and shall comply with any conditions, obligations, and requirements imposed by the Federal Communications Commission in connection therewith; and
- E. For purposes of this transfer, the franchises and service areas of the G Force systems are hereby consolidated into a single franchise for the service areas set forth in this Order upon the effective date of this Order.

DATED: Honolulu, Hawaii, July 10, 2002.



KATHRYN S. MATAYOSHI
Director of Commerce and Consumer Affairs

TERMS AND CONDITIONS OF D&O NO. 281

Section One Definitions

For purposes of the "Terms and Conditions" of this Order, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

"Access Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"Access Channel" means any Channel on the System made available for public, educational, or governmental (hereinafter sometimes referred to as "**Access**" or "**PEG**") use.

"Access Facilities and Equipment" means (a) channel capacity designated for public, educational, or governmental use; and (b) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by TWE to the Director or Director's designee for public, educational, or governmental uses pursuant to section 4.2 hereof.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to Subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee required to be paid by TWE pursuant to HRS section 440G-15, as amended.

"Basic Service" means the lowest cost tier of cable service offered by TWE to all of its Subscribers which includes, at a minimum, the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. section 521 et seq.), as amended.

"Cable Drop" means the cable from the feeder line to the Subscriber's premises.

"Cable Service" shall have the meaning set forth in HRS section 440G-3, as amended.

"Cable System" or "System" shall have the meaning set forth in HRS section 440G-3, as amended.

"Channel" means a minimum of six megahertz (6 Mhz) in the electromagnetic spectrum that is capable of carrying any type of transmission which TWE is authorized to provide to Subscribers.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs or the director's representative.

"Director of Civil Defense" means the Director of Civil Defense of the State of Hawaii.

"Educational Access Channel" means any channel of the System that is made available by TWE for use by educational authorities (e.g., the University of Hawaii and State Department of Education), and accredited educational institutions in Hawaii for noncommercial educational purposes.

"Emergency Authority" means the Director of Civil Defense, County of Kauai, Deputy Director of Civil Defense, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5.2 hereof.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act, as amended.

"G Force" means G Force, LLC, a North Carolina limited liability company, dba Garden Isle Telecommunications.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" subject to applicable federal and State law includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of

the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body.

"Order" means Decision and Order No. 281 issued by the Director and includes these "Terms and Conditions" and any attached exhibits.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

"Public Access Channel" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

"Public Highways" shall have the meaning set forth in HRS section 264-1, as amended.

"Public Place" includes any property, building, structure, or water to which the public has a right of access and use.

"Service Area" means those areas described in section 2.2 hereof.

"State" means the State of Hawaii including its political subdivisions.

"Subscriber" means any Person lawfully receiving any Cable Service.

"System" sometimes collectively referred to as the former Garden Isle Cablevision and Kauai Cablevision cable systems, and shall have the same meaning as the term "Cable System" as defined above.

"TWE" means Time Warner Entertainment Company, L.P., a Delaware limited partnership.

Section Two Grant of Franchise

2.1 Franchise Term

(a) The term of the franchise for the System shall be initially extended to expire **on December 31, 2009**, unless extended as provided in paragraph (b) below, or unless terminated as provided in sections 3.1(d) or 10 hereof, or the Order, or by applicable law.

(b) The term of the franchise shall be extended for an additional four (4) years only upon satisfactory completion of the 750 Mhz system Upgrade described in section 3.1 hereof, in which case the term of the franchise shall expire on December 31, 2013 unless terminated as provided in sections 3.1(d) or 10 hereof, or the Order, or by applicable law.

2.2 Service Area

The franchise shall cover the island of Kauai including census tracts 401, 402.01, 402.02, 403, 404, 405, 406, 407, 408, and 409.

2.3 Consideration

(a) In consideration of the award of the franchise granted herein which permits TWE to use and occupy Public Places and Public Highways to operate a Cable System, TWE shall pay all fees required by HRS chapter 440G, as amended, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of Franchise Fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the HPTF Fee, shall not exceed five percent (5%) of the System annual Gross Revenues or the maximum amount permitted by applicable provisions of federal or State law, as amended.

2.4 Audit or Financial Review

The Director may require TWE to submit to an audit or financial review by the Director's accountant or auditor for purposes of reviewing TWE's annual Gross Revenues and payment of Franchise Fees, cross-subsidization between cable and non-cable service, and other matters deemed necessary by the Director. TWE shall be responsible for any and all underpayment of Franchise Fees during TWE's operation of the System. The total cost of the audit or financial review shall be paid by TWE, and TWE shall cooperate fully with the conduct of the audit or financial review.

2.5 Ownership of Facilities and Plant

(a) TWE shall maintain legal and equitable title to the present System and all future additions to the System; provided that TWE may lease or permit the use of a portion of the System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use shall result in savings to Subscribers; (2) the arrangement does not result in a loss of TWE's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.

2.6 Antitrust

(a) This Order shall not be construed as exempting TWE and any affiliated or controlling entities from any antitrust law.

(b) This Order does not constitute adjudication upon any antitrust issues which may be involved in this proceeding.

2.7 HPTF Fee

(a) For each and every year of the franchise, TWE shall pay to the Hawaii Public Television Foundation, successor to Hawaii Public Broadcasting Authority, or its designee as approved by the Director an amount equal to one percent (1%) of the System annual Gross Revenues ("HPTF Fee"(previously referred to as "HPBA Fee")). The HPTF Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) G Force shall be responsible for payment covering the period January 1, 2002 up to the closing date of that certain Asset Purchase Agreement dated December 14, 2001, as amended January 18, 2002, as more particularly described in this Order, and TWE shall be responsible for payment due on January 31, 2003, covering the period remaining for the calendar year 2002. G Force's payment shall be due within thirty (30) days from the date of closing and submitted directly to the Hawaii Public Television Foundation or its approved designee with a verified copy of payment to the Director. In the event G Force does not pay its full amount when due, TWE shall be responsible for making said payment within ten (10) days after the Director provides TWE with notice of G Force's underpayment.

(c) Except as otherwise provided in paragraph (b) above, the one percent (1%) HPTF Fee shall be paid annually on January 31, and TWE's Gross Revenues from the System for the preceding calendar year shall be used to calculate the HPTF Fee.

(d) TWE shall submit the HPTF Fee directly to the Hawaii Public Television Foundation or its approved designee.

(e) In connection with the HPTF Fee required to be paid by TWE under this section 2.7, TWE shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

Section Three System Upgrades

3.1 750 Mhz System Upgrade

(a) By June 30, 2003, TWE shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the System to a minimum bandwidth of 750 Mhz plus digital capability, and provide a minimum of 75 activated Channels. For purposes of this Order, this upgrade shall be referred to as the **"750 Mhz Upgrade."**

(b) TWE shall provide capacity for and access through its Cable System for the State's INET described in section 5 hereof, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available pursuant to the 750 Mhz Upgrade described herein.

(c) No later than September 30, 2002, TWE 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 750 Mhz Upgrade including the incremental deployment of fiber to node architecture in a manner that will allow network sites to be connected easily and economically to the State's INET and activation of the completed portions of the upgraded system to specific communities or areas, the interconnection of cable systems within Kauai County, and such other information as the Director deems necessary.

(d) In the event the 750 Mhz Upgrade is not satisfactorily completed by June 30, 2003, the franchise shall expire on December 31, 2009 unless terminated sooner as provided in Section 10 hereof or the Order or by applicable law, and all interest paid or accrued on the amount deposited by TWE into the Development Fund as provided in Section 3.3. hereof shall belong solely to the State. The Director, in addition to all other rights and remedies the Director may have as provided by law or as provided by this Order, shall have the right to impose any term and condition deemed necessary or appropriate to serve or protect the public interest.

3.2 Further System Upgrades

At any time after completion of the 750 Mhz upgrade as described in section 3.1 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require TWE to complete additional system upgrades as determined by the Director. In connection therewith, the Director may review other matters relating to the System including, but not limited to, public, educational, and governmental access requirements under section 4 hereof, INET requirements under section 5 hereof, and the provision of new technologies and services.

3.3 Development Fund

In the event circumstances arise that significantly affect TWE's ability to complete the 750 Mhz Upgrade as described in section 3.1 hereof, the Director, in the Director's sole discretion, may require TWE to set aside an amount equal to the total cost of construction of the 750 Mhz Upgrade. Within thirty (30) days after receipt of written notification by the Director, TWE shall deposit an amount equal to the total cost of construction of the 750 Mhz Upgrade in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii ("**Development Fund**").

All amounts in the Development Fund including all interest paid or accrued thereon shall not be commingled with other funds of TWE or any related entity. TWE shall have the authority to draw on the Development Fund for purposes of financing and constructing the 750 Mhz Upgrade; provided that TWE shall not make any withdrawals from the Development Fund without the prior written approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the 750 Mhz Upgrade, except upon written application to and prior written approval by the Director. The provisions of this section 3.3 shall terminate upon satisfactory completion of the 750 Mhz Upgrade.

Section Four Public, Educational and Governmental Access

4.1 Access Plan and Implementation

TWE shall work cooperatively with the access entity or entities, which shall be designated by the Director for the management, operation and use of public, educational, and governmental access facilities and equipment for the County of Kauai. TWE shall also work cooperatively with the designated access entity or entities, the Director's staff, and others designated by the Director to develop a coordinated plan for the use of public, educational, and governmental access resources and facilities and equipment for the County of Kauai ("**Access Plan**"). The Access Plan shall at a minimum address the following:

- (a) Resources available in the County of Kauai for access use;
- (b) User needs and interests including two-way live cablecasting of government access programming to provide access to and participation in government hearings and meetings;
- (c) Models for providing public, educational and governmental access;
- (d) Management of access facilities and equipment, including the need for additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;
- (e) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) and any other interconnects; and
- (f) Funding requirements for public, education and government access including long and short term alternative financial strategies.

TWE, in coordination with the designated access entity or entities, shall prepare and submit the Access Plan to the Director for review and approval by January 31, 2003 or at such other date as the Director may designate. Any and all costs associated with the preparation of the Access Plan including the cost of consultant services shall be the sole responsibility of the designated access entity or entities. Implementation of the Access Plan shall be at the direction of the Director.

4.2 Access Operating Fee

(a) During each and every year of the term of the franchise, TWE shall pay to an account designated by the Director or the Director's designee an amount equivalent to three percent (3%) of TWE's annual Gross Revenues from the System. These payments shall be used for PEG access purposes and for other public purposes as designated by the Director. Such payments shall be hereinafter referred to as the **"Access Operating Fee."**

(b) For the year ending December 31, 2002, G Force shall be responsible for payment covering the period January 1, 2002 up to the closing date of that certain Asset Purchase Agreement dated December 14, 2001, as amended January 18, 2002, as more particularly described in this Order, and TWE shall be responsible for payment due on January 31, 2003, covering the period remaining for the 2002 calendar year. G Force's payment shall be due within thirty (30) days from the date of closing to an account designated by the Director or the Director's designee with a verified copy of payment to the Director. In the event G Force does not pay its full amount when due, TWE shall be responsible for making said payment within ten (10) days after the Director provides TWE with notice of G Force's underpayment. The payments due under this paragraph (b) shall be based on actual System Gross Revenues for the preceding calendar year.

(c) Except for the payment required under paragraph (b) above, the Access Operating Fee shall be paid annually on the 31st day of January for each year of the franchise. TWE's annual Gross Revenues from the System for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(d) In connection with Access Operating Fees required to be paid by TWE under this section 4.2, TWE shall submit to the Director verified copies of all such payments, together with the revenue statement, and other supporting documentation requested by the Director.

(e) Notwithstanding any other provision to the contrary, the Director may reconsider the amount of the Access Operating Fee at any time.

4.3 Access Channels

(a) TWE shall designate and make available to the Director or the Director's designee a total of three (3) full-time activated Access Channels for public, educational, and governmental access over the System.

(b) At the direction of the Director, TWE shall designate and reserve for activation to the Director or the Director's designee, at least two (2) additional full-time Access Channels, comprising of one full-time Educational Access Channel and one full-time Public/Government Access Channel, or as otherwise designated by the Director, as the system 750 Mhz upgrade progresses i.e., as additional channels become available on a node-by-node basis in connection with the system upgrade, TWE shall reserve two of the newly available channels one each for Educational Access and Public/Government purposes for activation at the request of the Director).

(c) All Access Channels shall be made available by TWE at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all Subscribers on TWE's basic service tier or the most widely available service tier.

(e) TWE may use the two (2) additional Access Channels required to be made available under paragraph (b) above until such time as the Director or the Director's designee gives sixty (60) days prior written notice to TWE that an Access Channel or portion thereof shall be made available. TWE's use of any Access Channel after it has received such notice from the Director or the Director's designee shall be subject to the fallow time provisions in section 4.4 hereof.

(f) The Director or Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and

Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

(g) KHET or any successor broadcast television channel operated by the Hawaii Public Television Foundation or its successor shall not be deemed an Access Channel and shall not be counted or included among the Channels required by paragraphs (a) and (b) hereof.

4.4 Fallow Time on Access Channels

(a) TWE shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system (whether or not activated) and whenever such Access Channel(s) are not scheduled for use at least seventy-two (72) hours in advance of such time or times desired by TWE; provided that any use of such Access Channel(s) by TWE shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least seventy-two (72) hours in advance.

(b) All non-access programming on Access Channels shall be identified as such by an appropriate announcement made prior to and following each non-access use.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, at such time as any Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of Access Cablecast Days (whichever is less) during any ninety (90) day period, use of such Channel by TWE shall be suspended for such time as the minimum access use of the Channel is maintained. The provision of this paragraph (c) may be waived by the Director for good cause.

4.5 Facilities and Equipment

(a) For the years ending December 31, 2002 through December 31, 2006, TWE shall contribute to an account designated by the Director or the Director's designee capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 2002	\$75,000.00
December 31, 2003	\$75,000.00
December 31, 2004	\$75,000.00
December 31, 2005	\$75,000.00
December 31, 2006	\$75,000.00

(b) By April 30, 2006, TWE, in consultation with the designated access entity or entities, shall submit to the Director a schedule for the payment of capital for public, educational, and governmental access facilities and equipment for years ending 2007, 2008, and 2009. The Director, in the Director's sole discretion, may approve, deny, or modify the payment schedule.

(c) Unless authorized by the Director in writing, no PEG capital provided pursuant to this section 4.5 shall be credited to or commingled with the Access Operating Fee, and no Access Operating Fee shall be credited to or commingled with PEG capital.

(d) Any transfer of the System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and governmental access required to be provided in this section 4.5 before the effective date of the transfer.

(e) The capital funds for the provision of facilities and equipment required to be provided by TWE under this section 4.5 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(c) of the Cable Act.

4.6 Access Organization

The Director or the Director's designee may designate one or more entities to manage and operate Access Facilities and Equipment.

4.7 Termination of Access Payments

(a) TWE may suspend making payments under sections 4.2 and 4.5 hereof if any of the following events occur, provided that the Director is convinced of the occurrence of any such event:

- (1) A minimum of seventy-five percent (75%) of the current number of original hours of access programming is not produced; or
- (2) Such payments are used for non-access purposes.

(b) TWE's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

4.8 Interconnection for Access Purposes

(a) TWE shall effect interconnections with other cable systems within Kauai County in accordance with a schedule and in a manner determined by the Director. Within six (6) months after the request of the Director, TWE shall submit to the Director for approval the construction plan and schedule. TWE shall work cooperatively with the

Director's staff and others designated by the Director in developing a construction plan and schedule for the required interconnections.

(b) The cost of the interconnections to be constructed shall be allocated among each cable franchise within Kauai County. For costs of construction allocated to the areas served by the System, TWE shall receive a credit for its actual cost of labor and materials to be applied against its requirement to pay the Access Operating Fee described in section 4.2 hereof or PEG capital funds described in section 4.5 hereof. The taking of any credit by TWE shall require the Director's prior approval. TWE shall provide documentation sufficient to verify the construction cost as requested by the Director.

4.9 Reopening of Access Requirements.

The Director, at any time during the term of the franchise, may commence informal or formal proceedings for the purpose of addressing future public, educational, and governmental access, and cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate.

4.10 Reporting Requirements

To the extent local origination and access programming are provided by TWE, by April 30 of each year TWE shall submit to the Director a report of the System local origination expenses and a report for access programming expenses for the previous calendar year.

Section Five Networks

5.1 Institutional Network

(a) Two-way fiber optic INET interconnections/connections

- (1) Within six (6) 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 between the System and the following government sites all at no cost or charge to the State or Subscribers, 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 and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof:

Kauai Main Police Stations
Kauai Main Fire Stations

Public Libraries
State Hospital in Waimea
West Kauai Visitor and Technology Center

- (2) TWE shall interconnect all schools and libraries within the Service Area to its System and provide a cable drop and basic service all at no cost or charge to the State or Subscribers. TWE shall maintain and repair the fiber optic lines up to the termination points of each site at no charge or cost to schools or libraries, and shall replace any such fiber optic lines at TWE's actual cost of labor and materials which costs shall be borne solely by the connected school or library.
- (3) Within six (6) 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 as determined by the Director at TWE's actual cost of labor and materials; provided that the sites at which TWE shall install fiber optic cables have the necessary infrastructure and rights of way to receive the fibers.
 - (a) When requesting such interconnections, the State shall be cognizant of TWE's scheduling, manpower, and resource limitations.
 - (b) TWE shall repair and maintain, but not replace, the fiber optic lines up to the termination points of each network site at no charge or cost to the State or Subscribers. TWE shall replace any such fiber optic lines at TWE's actual cost of labor and materials.
 - (c) The requesting agency, department or other governmental entity shall be solely responsible for reimbursing TWE its actual cost of labor and materials for interconnections installed and replaced. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department or governmental entity shall promptly reimburse TWE for the costs of such interconnections, which shall include 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; rental value of equipment and machinery; and a diagram showing the fiber optic route and terminating points.

- (4) All interconnections shall be two-way via fiber optic lines and capable of carrying broadband multimedia, data, voice, and video, and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof.
- (5) TWE shall work with the Director's staff, consultants, and others designated by the Director to design the INET and to develop and implement coordinated plans for their use.
- (6) TWE may construct the institutional networks required under this section 5.1(a) in a manner it deems appropriate, consistent with the provisions hereof. TWE may utilize contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.
- (7) In addition to the above identified sites, TWE (at the request of the Director) shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the System and ten (10) additional sites, selected within TWE's franchise areas, to be determined by the Director all at no cost or charge to the State or Subscribers during the term of the franchise.
- (8) TWE shall maintain and repair the fiber optic lines up to the termination point of each network site at no charge or cost to the State or Subscribers, and shall replace any such fiber optic lines at TWE's actual cost of labor and materials which costs shall be borne solely by the connected government agency or agencies. In the event TWE's access to conduits is not obtainable for interconnecting any of the sites, TWE shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director, TWE shall work cooperatively with the governmental agency or agencies affected and others designated by the Director, and shall develop and submit a plan for any such interconnection including but not limited to construction timetables and costs within sixty (60) days after receipt of the Director's request. In order to defray the cost of such construction for the requesting government agency or agencies, TWE agrees, at no cost to the Subscribers, to contribute an amount to be determined by TWE and the Director.

(b) High-speed cable Internet service

At the direction of the Director, TWE shall provide high-speed cable Internet service to the Kauai Civil Defense Emergency Operating Center, University of Hawaii

and community colleges, and to all public schools and public libraries, all at no cost or charge to subscribers and the State. The Director shall have the authority to require TWE to provide high speed Internet access to the State hospital in Waimea, Kauai County Building, main fire station, and main police station, all at no cost or charge to the State or Subscribers.

(c) Interconnecting the Kauai INET with the INETs on the islands of Oahu, Maui, and Hawaii via submarine cabling or fiber

- (1) The Department believes that the public on Kauai will greatly benefit from the interconnection between the Kauai INET with the INETs on the islands of Oahu, Maui, and Hawaii through TWE's submarine cabling or fiber, and that this provision is an appropriate term, limitation, or condition of this Order under HRS section 440G-8.
- (2) TWE shall interconnect/connect the State's INET on Kauai with the State's INETs on the islands of Oahu, Maui, and Hawaii using TWE's submarine cabling or fiber in accordance with its original proposal. The interconnection shall be completed within ninety (90) days from the date of this Order. TWE may request an extension of time to complete the interconnection for good cause; provided that the Director shall have the sole discretion to grant or deny the request. To allow the State's INET on Kauai to interconnect with the State's INETs on the islands of Oahu, Maui, and Hawaii, TWE shall activate the interconnection for the State's INETs on the islands of Oahu, Maui, and Hawaii via submarine cabling within thirty (30) days from the date of this Order.

TWE shall not impose any restrictions on the State's use of the submarine cabling (i.e., TWE shall allow the State access to the submarine fiber without any restrictions on the State's use of the fiber), shall not test or monitor the information in the fiber, and shall not charge the State a usage fee. TWE shall also provide the State detailed documentation on its hardware maintenance costs for the submarine cabling interconnection.

- (3) The State shall reimburse TWE for TWE's reasonable equipment and connection costs, and the State shall purchase appropriate equipment to connect to the submarine fiber. In addition, the State shall pay TWE's reasonable hardware maintenance costs as long as sufficient documentation is provided by TWE.

- (d) Upon written request by TWE, the Director may grant an extension for the installation of the interconnections required under this section 5.1 for good cause.

5.2 Emergency Override System

(a) TWE shall configure and maintain the System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Kauai Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the Emergency Override System.

(b) The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) TWE shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) TWE shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) TWE shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System, and shall at all times comply with all applicable laws and regulations.

5.3 Interconnection with Hawaii Interactive Television System (HITS)

TWE shall support and provide carriage of the Hawaii Interactive Television System (HITS) programming on the System at no cost or charge to the State. TWE shall provide and maintain a direct interconnect with the Hawaii Interactive Television System (HITS) at points to be designated by the Director at no charge or cost to the State or Subscribers.

5.4 Non-Franchise Fee/Capital Contribution

The items and services required to be provided under section 5 hereof at no charge or cost to the State and Subscribers shall not be deemed to be franchise fees under section 622(g) or capital contributions under section 622(g)(2)(C) of the Cable Act.

Section Six Programming Services

6.1 Mix, Quality, and Level of Service

TWE shall not alter its current mix, quality, and level of programming services for its System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

6.2 Broad Categories of Programming

(a) Subject to availability, TWE shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) No changes may be made by TWE in broad categories of video programming without the prior approval of the Director.

(c) TWE shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

Section Seven Management

7.1 Books and Records

TWE shall maintain at its local office(s) a complete set of books and records including, but not limited to, subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in the State. All books and records not maintained and available for review at the local office(s) shall, upon request, be made available locally within five (5) working days.

7.2 Tariff

TWE shall amend its schedule of service rates and other information as required by the rules promulgated pursuant to HRS chapter 440G, as amended, at least thirty (30) days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law. Notwithstanding any

other provision to the contrary, TWE shall submit a fully revised tariff for the operation and management of the System upon completion of the 750 Mhz Upgrade, and when necessary or required to submit updated tariffs for rates and other matters following activation of the upgraded system.

7.3 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, TWE shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that TWE proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, TWE shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that TWE proposes to take with respect to the violation.

(c) By April 30 of each year, TWE shall submit to the Director a statement to the effect that no violation of this Order has occurred and that TWE has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if TWE has not observed or performed all of the terms and conditions contained in this Order, it shall specify the nature and period of the violation and what action(s) TWE has taken or proposes to take with respect to the violation(s).

7.4 Other Reports

In addition to the reports required to be submitted under this Order, TWE shall timely submit to the Director all other reports required by applicable State and federal law, rules and regulations.

7.5 Change in Ownership

Any change in the general ownership of five percent (5%) or more of TWE shall require the prior approval of the Director.

7.6 Annual Financial Statements

(a) By April 30 of each year, TWE shall submit to the Director its audited annual financial statements for the preceding calendar year in accordance with HAR chapter 16-131. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its System operation on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph (a) above shall be accompanied by a statement showing the basis for computing and the amounts paid by TWE or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations

Section Eight Collateralization of System Assets

8.1 Collateralization of System Assets

(a) In the event the assets of the System will be or has been pledged by TWE as collateral for additional borrowing or other purposes, TWE shall notify the Director in writing no later than fifteen (15) days after the closing of the loan or credit facility. TWE shall inform the Director of the parties to the loan agreement or credit facility, the total amount borrowed, the term of loan, any restrictions or limitations on the borrowed amount, and any other information the Director may require.

(b) During the term of the franchise, TWE is not required to seek pre-approval of any change in an existing loan agreement or credit facility which encumbers or pledges the assets of the System; provided that the Director shall have the right to pre-approve any financing plan during a franchise renewal or transfer proceeding. Within thirty (30) days after closing, TWE shall notify the Director in writing of changes to any existing loan agreement or credit facility or any new loan agreement or credit facility. The Director shall have the right to request further information or to determine whether the change(s) to the loan agreement or credit facility affect the continued financial viability of the system and to require corrective measures if necessary.

(c) Notwithstanding any other provision to the contrary, in the event TWE receives notice indicating that it is in default under any of its loan agreements, TWE shall (1) promptly notify the Director in writing of such event, (2) describe in sufficient detail the nature of default and TWE's actions to cure such default, and (3) promptly notify the Director in writing of the final resolution of such default.

Section Nine Subscriber Service

9.1 Customer Service Office

(a) For Service Areas within the island of Kauai, TWE shall maintain and operate within its Service Areas at least one customer service office to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints including without limitation, those regarding service, equipment malfunctions, or billing

and collection disputes. TWE shall maintain a staff adequate to provide such services in a timely, efficient, professional, and courteous manner.

(b) For each customer service office, TWE shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that shall be most convenient for its Subscribers.

9.2 Telephone Service

(a) TWE shall have a publicly listed local customer service telephone number which shall be open for telephone business for at least ten (10) hours each weekday and for at least six (6) hours on Saturdays as determined by TWE to be most convenient for its Subscribers. The customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, TWE shall have at a minimum an answering service to take calls.

(b) Beginning on October 15, 2002, as part of the Customer Service Performance Report, TWE shall submit to the Director on the 15th day of each month, all available information regarding the adequacy of its telephone response capability including the following matters:

- (1) The average length of time, which it takes a human operator to answer a Subscriber telephone call;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers;
- (3) The number and percentage of busy signals received by callers;
- (4) The percentage of telephone calls answered within thirty (30) seconds when a connection is made;
- (5) The percentage of telephone calls when calls require it to be transferred, in which the transfer time is within thirty (30) seconds; and
- (6) The effectiveness of any new computer equipment in decreasing response time.

The information shall be submitted by TWE in a form prescribed by the Director.

(c) The Director may require TWE to perform further analyses of its telephone service and to make such information available to the Director. Based upon such review, the Director may require TWE to improve its telephone service.

9.3 Installation and Repair Service

(a) TWE shall provide installation service for at least eight (8) hours each weekday and Saturdays, except for legal holidays. The specific hours of service shall be determined by TWE to be most convenient for its Subscribers.

(b) TWE shall provide repair service for at least eight (8) hours each weekday and Saturdays. At all other times, TWE shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

9.4 Compliance

Notwithstanding any provision to the contrary, TWE shall comply with all applicable customer service standards prescribed by the State and the Federal Communications Commission.

Section Ten Termination

10.1 Cumulative Termination Rights

The termination provisions set forth in this section 10 shall be in addition to (and not in derogation of) any other rights or remedies the Director may have with respect to the subject matter of this Order.

10.2 Six Month Termination

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of section 3 (System Upgrades), section 4 (Public, Educational and Governmental Access), or section 5 (Networks) of these terms and conditions invalid or (2) requires or allows TWE either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six (6) months from the date of such event.

(b) Notwithstanding the provisions in paragraph (a) above, in no event shall the franchise be terminated under said paragraph prior to December 31, 2003.

(c) The provisions of paragraph (a) above shall be suspended for such period of time as TWE may elect to voluntarily perform its obligations under such sections; provided that TWE provides prior written notice to the Director of such voluntary performance.

10.3 New Franchise Application Not Excluded

In the event that TWE's franchise is terminated pursuant to section 10.2 hereof, nothing herein shall prevent TWE from applying for a new franchise.

Section Eleven Miscellaneous Provisions

11.1 Headings

The headings or titles of sections and contained in these "Terms and Conditions" are for reference purposes only, and shall not in any way affect the construction or interpretation hereof.

11.2 Successors

All of the provisions of this Order and these terms and conditions shall apply to TWE and its permitted successors and assigns.

11.3 Notices

All required notices to the Director under this Order shall be made in writing and shall be submitted to the Cable Television Administrator, 1010 Richards Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

11.4 Leased Commercial Access

Consistent with the Cable Act, on or before December 31, 2002, TWE shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of the System Channels for commercial use.

11.5 Laws

TWE, its employees, and agents, shall be familiar with all federal, State, and local laws, ordinances, rules and regulations that in any manner affect the System. If TWE discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, TWE shall promptly report it to the Director in writing. TWE, its employees, and agents, shall comply with all applicable federal, state, and local laws, and rules and regulations issued pursuant thereto, and shall indemnify the State against any and all loss, liability or damage occasioned by reason of a violation of this section by TWE and its officers, employees and agents.

11.6 Performance

The failure of the Director or the State at any time to require performance by TWE of any obligation or condition of this Order shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

11.7 Hold Harmless

TWE shall hold the State and its officials, agents, and employees free and harmless from any loss, expense, injury, or damage to person or property arising out of or resulting from any provision or requirement of the franchise or exercising its rights or performing its duties under this franchise.

11.8 Waiver

The Director reserves the right to waive any condition of this Order for good cause.

11.9 Authority

The State, from time to time, may adopt or issue such rules, orders or other directives governing TWE as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing TWE as the Director shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or state law, as said law may be amended throughout the term of this Order. TWE shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

11.10 Test Results

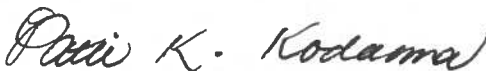
As soon as available, but in no event more than thirty (30) days after the date of the test, TWE shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 281 was served upon the following party at the address shown below by mailing the same, postage prepaid, on this 10th day of July 2002.

JOHN T. KOMEIJI, ESQ.
BETH K. FUJIMOTO, ESQ.
Watanabe, Ing & Kawashima
First Hawaiian Center 23rd Floor
999 Bishop Street
Honolulu, HI 96813

Attorneys for Applicant Time Warner Entertainment Company,
L.P.



Patti K. Kodama
Secretary