

TW NY CABLE HOLDING INC.

Form S-3ASR

June 16, 2008

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**As filed with the Securities and Exchange Commission on June 16, 2008**

**Registration No. 333-**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Form S-3**

**REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**TIME WARNER CABLE INC.  
TIME WARNER ENTERTAINMENT COMPANY, L.P.  
TW NY CABLE HOLDING INC.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b>	<b>84-1496755</b>
<b>Delaware</b>	<b>13-3666692</b>
<b>Delaware</b>	<b>20-2819687</b>
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

**One Time Warner Center  
North Tower  
New York, NY 10019-8014  
(212) 364-8200**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Marc Lawrence-Apfelbaum, Esq.  
Executive Vice President, General Counsel and Secretary  
Time Warner Cable Inc.  
One Time Warner Center  
North Tower  
New York, NY 10019-8014  
(212) 364-8200**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:  
**John C. Kennedy, Esq.**  
**Paul, Weiss, Rifkind, Wharton & Garrison LLP**  
**1285 Avenue of the Americas**  
**New York, N.Y. 10019-6064**  
**(212) 373-3000**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are to be offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Aggregate Amount to be Registered(1)	Proposed Maximum Offering Price per Unit(1)	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(1)
Senior Debt Securities and Subordinated Debt Securities (collectively, Debt Securities )(2) Guarantees of Debt Securities(3) Debt Warrants Total				

(1) Pursuant to Form S-3 General Instruction II(E) information is not required to be included. An indeterminate aggregate initial offering price or number of Debt Securities and debt warrants of Time Warner Cable Inc. is being registered as may from time to time be issued at currently indeterminable prices, along with related guarantees in certain instances. Securities registered hereunder may be sold separately or together with other securities registered hereunder. The proposed maximum initial offering prices per unit will be determined, from time to time, by Time Warner Cable Inc. in connection with the issuance by Time Warner Cable Inc. of the securities registered under this registration statement. Prices, when determined, may be in United States dollars or the equivalent thereof in one or more foreign currencies, foreign currency units or composite currencies. If

any Debt Securities are issued at an original issue discount, then the amount registered shall include the principal or liquidation amount of such securities measured by the initial offering price thereof. In reliance on Rule 456(b) and Rule 457(r) under the Securities Act, Time Warner Cable Inc. hereby defers payment of the registration fee required in connection with this registration statement. Pursuant to Rule 457(n), no separate fee will be required to be paid in respect of guarantees of the Debt Securities which are being registered concurrently.

- (2) Including Debt Securities as may from time to time be issued upon conversion or exchange of other debt securities, or upon the exercise of debt warrants, as the case may be.
  - (3) Time Warner Entertainment Company, L.P. and TW NY Cable Holding Inc. may fully, irrevocably and unconditionally guarantee on an unsecured basis the Debt Securities of Time Warner Cable Inc.
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PROSPECTUS

**Debt Securities**

**Debt Warrants**

This prospectus contains a general description of the securities which we may offer for sale. The specific terms of the securities will be contained in one or more supplements to this prospectus. Read this prospectus and any supplement carefully before you invest.

The securities will be issued by Time Warner Cable Inc. The debt securities will be fully, irrevocably and unconditionally guaranteed on an unsecured basis by each of Time Warner Entertainment Company, L.P. and TW NY Cable Holding Inc., subsidiaries of ours. See Description of the Debt Securities and the Guarantees Guarantees.

The Class A common stock of Time Warner Cable Inc. is listed on the New York Stock Exchange under the trading symbol TWC.

**Investing in our securities involves risks that are referenced under the caption Risk Factors on page 5 of this prospectus.**

**These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is June 16, 2008.

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**ABOUT THIS PROSPECTUS**

To understand the terms of the securities offered by this prospectus, you should carefully read this prospectus and any applicable prospectus supplement. You should also read the documents referred to under the heading "Where You Can Find More Information" for information on Time Warner Cable Inc. and its financial statements. Certain capitalized terms used in this prospectus are defined elsewhere in this prospectus.

This prospectus is part of a registration statement that Time Warner Cable Inc., a Delaware corporation, which is also referred to as Time Warner Cable, TWC, the Company, our company, we, us and our, has filed with the U.S. Securities and Exchange Commission, or the SEC, using a shelf registration procedure. Under this procedure, Time Warner Cable may offer and sell from time to time, any of the following securities, in one or more series:

debt securities, and

debt warrants.

The securities may be sold for U.S. dollars, foreign-denominated currency or currency units. Amounts payable with respect to any securities may be payable in U.S. dollars or foreign-denominated currency or currency units as specified in the applicable prospectus supplement.

This prospectus provides you with a general description of the securities we may offer. Each time we offer securities, we will provide you with a prospectus supplement that will describe the specific amounts, prices and terms of the securities being offered. The prospectus supplement may also add, update or change information contained or incorporated by reference in this prospectus.

The prospectus supplement may also contain information about any material U.S. federal income tax considerations relating to the securities covered by the prospectus supplement.

We may sell securities to underwriters who will sell the securities to the public on terms fixed at the time of sale. In addition, the securities may be sold by us directly or through dealers or agents designated from time to time, which agents may be affiliates of ours. If we, directly or through agents, solicit offers to purchase the securities, we reserve the sole right to accept and, together with our agents, to reject, in whole or in part, any offer.

The prospectus supplement will also contain, with respect to the securities being sold, the names of any underwriters, dealers or agents, together with the terms of the offering, the compensation of any underwriters and the net proceeds to us.

Any underwriters, dealers or agents participating in the offering may be deemed underwriters within the meaning of the Securities Act of 1933, as amended, which we refer to in this prospectus as the Securities Act.

**WHERE YOU CAN FIND MORE INFORMATION**

Time Warner Cable files annual, quarterly and current reports, proxy statements and other information with the SEC. You may obtain such SEC filings from the SEC's website at <http://www.sec.gov>. You can also read and copy these materials at the SEC's public reference room at 100 F Street, N.E., Washington, D.C. 20549. You can obtain information about the operation of the SEC's public reference room by calling the SEC at 1-800-SEC-0330. You can also obtain information about Time Warner Cable at the offices of the New York Stock Exchange, 20 Broad Street,



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New York, New York 10005. Time Warner Entertainment Company, L.P. ( TWE ) and TW NY Cable Holding Inc. ( TW NY ) and, together with TWE, the Guarantors ) do not file separate reports, proxy statements or other information with the SEC under the Securities Exchange Act of 1934, as amended, which we refer to in this prospectus as the Exchange Act.

As permitted by SEC rules, this prospectus does not contain all of the information we have included in the registration statement and the accompanying exhibits and schedules we file with the SEC. You may refer to the registration statement, exhibits and schedules for more information about us and the securities. The registration statement, exhibits and schedules are available through the SEC s website or at its public reference room.

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**INCORPORATION BY REFERENCE**

The SEC allows us to incorporate by reference information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. The following documents have been filed by us with the SEC and are incorporated by reference into this prospectus:

Annual report on Form 10-K for the year ended December 31, 2007 (filed February 22, 2008), including portions of the proxy statement for the 2008 annual meeting of stockholders (filed April 15, 2008) to the extent specifically incorporated by reference therein (collectively, the 2007 Form 10-K );

Quarterly report on Form 10-Q for the quarter ended March 31, 2008 (filed April 30, 2008) (the March 2008 Form 10-Q ); and

Current reports on Form 8-K filed on February 8, 2008, March 19, 2008, April 10, 2008 and May 27, 2008.

All documents and reports that we file with the SEC (other than any portion of such filings that are furnished under applicable SEC rules rather than filed) under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act from the date of this prospectus until the termination of the offering under this prospectus shall be deemed to be incorporated in this prospectus by reference. The information contained on our website (<http://www.timewarnercable.com>) is not incorporated into this prospectus.

You may request a copy of these filings, other than an exhibit to these filings unless we have specifically included or incorporated that exhibit by reference into the filing, from the SEC as described under **Where You Can Find More Information** or, at no cost, by writing or telephoning Time Warner Cable at the following address:

Time Warner Cable Inc.  
Attn: Investor Relations  
One Time Warner Center  
North Tower  
New York, NY 10019-8014  
Telephone: 1-877-4-INFO-TWC

You should rely only on the information contained or incorporated by reference in this prospectus, the prospectus supplement, any free writing prospectus that we authorize and any pricing supplement. We have not authorized any person, including any salesman or broker, to provide information other than that provided in this prospectus, any applicable prospectus supplement, any free writing prospectus that we authorize or any pricing supplement. We have not authorized anyone to provide you with different information. We are not making an offer of the securities in any jurisdiction where the offer is not permitted. You should assume that the information in this prospectus, any applicable prospectus supplement, any free writing prospectus that we authorize and any pricing supplement is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of such document incorporated by reference.

Any statement contained in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any other subsequently filed document that is deemed to be incorporated by reference into this

prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

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**STATEMENTS REGARDING FORWARD-LOOKING INFORMATION**

This prospectus contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act, particularly statements anticipating future growth in revenues, Operating Income before Depreciation and Amortization, cash provided by operating activities and other financial measures. These statements may be made directly in this prospectus referring to us and they may also be made a part of this prospectus by reference to other documents filed with the SEC, which is known as incorporation by reference. Words such as anticipates, estimates, expects, projects, intends, plans, believes and words and terms of similar substance used in connection with any discussion of future operating or financial performance identify forward-looking statements. All of these forward-looking statements are based on management's current expectations and beliefs about future events. As with any projection or forecast, they are inherently susceptible to uncertainty and changes in circumstances that could cause actual results to differ materially from those described in the forward-looking statements. None of us, TWE or TW NY is under any obligation to, and each expressly disclaims any obligation to, update or alter any forward-looking statements whether as a result of such changes, new information, subsequent events or otherwise.

Various factors could adversely affect our operations, business or financial results in the future and cause our actual results to differ materially from those contained in the forward-looking statements, including those factors discussed under Risk Factors or otherwise discussed in the 2007 Form 10-K and the March 2008 Form 10-Q and in our other filings made from time to time with the SEC after the date of the registration statement of which this prospectus is a part. In addition, we operate in a highly competitive, consumer and technology-driven and rapidly changing business. Our business is affected by government regulation, economic, strategic, political and social conditions, consumer response to new and existing products and services, technological developments and, particularly in view of new technologies, our continued ability to protect and secure any necessary intellectual property rights. Our actual results could differ materially from management's expectations because of changes in such factors.

Further, lower than expected valuations associated with our cash flows and revenues may result in our inability to realize the value of recorded intangibles and goodwill. Additionally, achieving our financial objectives could be adversely affected by the factors discussed in detail in the Risk Factors section of the 2007 Form 10-K, as well as:

economic slowdowns;

the impact of terrorist acts and hostilities;

changes in our plans, strategies and intentions;

the impacts of significant acquisitions, dispositions and other similar transactions;

the failure to meet earnings expectations; and

decreased liquidity in the capital markets, including any reduction in our ability to access the capital markets for debt securities or bank financings.

For additional information about factors that could cause actual results to differ materially from those described in the forward-looking statements, please see the documents that we have filed with the SEC, including quarterly reports on Form 10-Q, our most recent annual report on Form 10-K, current reports on Form 8-K and proxy statements.

All subsequent forward-looking statements attributable to us, TWE or TW NY or any person acting on our or their behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section.

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**THE COMPANY**

We are the second-largest cable operator in the U.S., with technologically advanced, well-clustered systems located mainly in five geographic areas New York State (including New York City), the Carolinas, Ohio, southern California (including Los Angeles) and Texas. As of March 31, 2008, we served approximately 14.7 million customers who subscribed to one or more of our video, high-speed data and voice services, representing approximately 33.0 million revenue generating units ( RGUs ).

We principally offer three services video, high-speed data and voice over our broadband cable systems. We market our services separately and in bundled packages of multiple services and features. As of March 31, 2008, 50% of our customers subscribed to two or more of our primary services, including 18% of our customers who subscribed to all three primary services. Historically, we have focused primarily on residential customers, while also selling video, high-speed data and commercial networking and transport services to commercial customers. Recently, we have begun selling voice services to small- and medium-sized businesses as part of an increased emphasis on our commercial business. In addition, we earn revenues by selling advertising time to national, regional and local businesses.

For a description of our business, financial condition, results of operations and other important information regarding us, see our filings with the SEC incorporated by reference in this prospectus. For instructions on how to find copies of the filings incorporated by reference in this prospectus, see Where You Can Find More Information.

Our principal executive office, and that of TWE and TW NY, is located at One Time Warner Center, North Tower, New York, NY 10019-8014, Telephone (212) 364-8200.

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Investing in our securities involves risk. You should carefully consider the specific risks discussed or incorporated by reference in the applicable prospectus supplement, together with all the other information contained in the prospectus supplement or incorporated by reference in this prospectus and the applicable prospectus supplement. You should also consider the risks, uncertainties and assumptions discussed under the caption "Risk Factors" included in the 2007 Form 10-K, which are incorporated by reference in this prospectus, and which may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future.

**RATIO OF EARNINGS TO FIXED CHARGES**

The ratio of earnings to fixed charges for Time Warner Cable is set forth below for the periods indicated.

For purposes of computing the ratio of earnings to fixed charges, earnings were calculated by adding:

- (i) pretax income,
- (ii) interest expense,
- (iii) preferred stock dividend requirements of majority-owned companies,
- (iv) minority interest in the income of majority-owned subsidiaries that have fixed charges, and
- (v) the amount of undistributed losses (earnings) of our less than 50%-owned companies.

The definition of earnings also applies to any unconsolidated 50%-owned affiliated companies referred to on Exhibit 12.1 to the registration statement of which this prospectus is a part as "Adjustment for partially-owned subsidiaries and 50%-owned companies."

Fixed charges primarily consist of interest expense.

Earnings as defined include significant noncash charges for depreciation and amortization primarily relating to the amortization of intangible assets recognized in business combinations.

	<b>Three Months Ended March 31,</b>		<b>Year Ended December 31,</b>			
	<b>2008</b>	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
Ratio of earnings to fixed charges	3.1x	3.1x	3.1x	3.3x	3.0x	2.5x

**USE OF PROCEEDS**

We will use the net proceeds we receive from the sale of the securities offered by this prospectus for general corporate purposes, unless we specify otherwise in the applicable prospectus supplement. General corporate purposes may include additions to working capital, capital expenditures, repayment of debt, the financing of possible acquisitions

and investments or stock repurchases.



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**DESCRIPTION OF THE DEBT SECURITIES AND THE GUARANTEES**

**General**

The following description of the terms of our senior debt securities and subordinated debt securities (together, the debt securities ) sets forth certain general terms and provisions of the debt securities to which any prospectus supplement may relate. Unless otherwise noted, the general terms and provisions of our debt securities discussed below apply to both our senior debt securities and our subordinated debt securities. The particular terms of any debt securities and the extent, if any, to which such general provisions will not apply to such debt securities will be described in the prospectus supplement relating to such debt securities. In the following description, the term Guarantors refers to TWE and TW NY, as the guarantors of the debt securities.

Our debt securities may be issued from time to time in one or more series. The senior debt securities will be issued from time to time in series under an indenture dated as of April 9, 2007, among us, TWE, TW NY and The Bank of New York, as Senior Indenture Trustee (as amended or supplemented from time to time) (the senior indenture ). The subordinated debt securities will be issued from time to time under a subordinated indenture to be entered into among us, TWE, TW NY and The Bank of New York, as Subordinated Indenture Trustee (the subordinated indenture and, together with the senior indenture, the indentures ). The Senior Indenture Trustee and the Subordinated Indenture Trustee are both referred to, individually, as the Trustee. The senior debt securities will constitute our unsecured and unsubordinated obligations and the subordinated debt securities will constitute our unsecured and subordinated obligations. A detailed description of the subordination provisions is provided below under the caption Ranking and Subordination Subordination. In general, however, if we declare bankruptcy, holders of the senior debt securities will be paid in full before the holders of subordinated debt securities will receive anything.

The statements set forth below are brief summaries of certain provisions contained in the indentures, which summaries do not purport to be complete and are qualified in their entirety by reference to the indentures, each of which is incorporated by reference as an exhibit or filed as an exhibit to the registration statement of which this prospectus forms a part. Terms used herein that are otherwise not defined shall have the meanings given to them in the indentures. Such defined terms shall be incorporated herein by reference.

The indentures do not limit the amount of debt securities which may be issued under the applicable indenture and debt securities may be issued under the applicable indenture up to the aggregate principal amount which may be authorized from time to time by us. Any such limit applicable to a particular series will be specified in the prospectus supplement relating to that series.

The prospectus supplement related to any series of debt securities in respect to which this prospectus is being delivered will contain the following terms, among others, for each such series of debt securities:

the designation and issue date of the debt securities;

the date or dates on which the principal of the debt securities is payable;

the rate or rates (or manner of calculation thereof), if any, per annum at which the debt securities will bear interest, if any, the date or dates from which interest will accrue and the interest payment date or dates for the debt securities;

any limit upon the aggregate principal amount of the debt securities which may be authenticated and delivered under the applicable indenture;

the period or periods within which, the redemption price or prices or the repayment price or prices, as the case may be, at which and the terms and conditions upon which the debt securities may be redeemed at the Company's option or the option of the Holder of such debt securities;

the obligation, if any, of the Company to purchase the debt securities pursuant to any sinking fund or analogous provisions or at the option of a Holder of such debt securities and the period or periods within which, the price or prices at which and the terms and conditions upon which such debt securities will be purchased, in whole or in part, pursuant to such obligation;

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if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the debt securities will be issuable;

provisions, if any, with regard to the conversion or exchange of the debt securities, at the option of the Holders of such debt securities or the Company, as the case may be, for or into new securities of a different series, the Company's Class A common stock or other securities and, if such debt securities are convertible into the Company's Class A common stock, Class B common stock or other Marketable Securities (as defined in the indentures), the conversion price;

if other than U.S. dollars, the currency or currencies or units based on or related to currencies in which the debt securities will be denominated and in which payments of principal of, and any premium and interest on, such debt securities shall or may be payable;

if the principal of (and premium, if any) or interest, if any, on the debt securities are to be payable, at the election of the Company or a Holder of such debt securities, in a currency (including a composite currency) other than that in which such debt securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

if the amount of payments of principal of (and premium, if any) or interest, if any, on the debt securities may be determined with reference to an index based on a currency (including a composite currency) other than that in which such debt securities are stated to be payable, the manner in which such amounts shall be determined;

provisions, if any, related to the exchange of the debt securities, at the option of the Holders of such debt securities, for other securities of the same series of the same aggregate principal amount or of a different authorized series or different authorized denomination or denominations, or both;

the portion of the principal amount of the debt securities, if other than the principal amount thereof, which shall be payable upon declaration of acceleration of the maturity thereof as more fully described under the section "Events of Default, Notice and Waiver" below;

whether the debt securities will be issued in the form of global securities and, if so, the identity of the depository with respect to such global securities;

with respect to subordinated debt securities only, the amendment or modification of the subordination provisions in the subordinated indenture with respect to the debt securities; and

any other specific terms.

We may issue debt securities of any series at various times and we may reopen any series for further issuances from time to time without notice to existing Holders of securities of that series.

Some of the debt securities may be issued as original issue discount debt securities. Original issue discount debt securities bear no interest or bear interest at below-market rates. These are sold at a discount below their stated principal amount. If we issue these securities, the prospectus supplement will describe any special tax, accounting or other information which we think is important. We encourage you to consult with your own competent tax and financial advisors on these important matters.

Unless we specify otherwise in the applicable prospectus supplement, the covenants contained in the indentures will not provide special protection to Holders of debt securities if we enter into a highly leveraged transaction, recapitalization or restructuring.

Unless otherwise set forth in the prospectus supplement, interest on outstanding debt securities will be paid to Holders of record on the date that is 15 days prior to the date such interest is to be paid, or, if not a business day, the next preceding business day. Unless otherwise specified in the prospectus supplement, debt securities will be issued in fully registered form only. Unless otherwise specified in the prospectus supplement, the principal amount of the debt securities will be payable at the corporate trust office of the Trustee in New York, New York. The debt securities may be presented for transfer or exchange at such office unless otherwise specified in the prospectus supplement, subject to the limitations provided in the applicable

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indenture, without any service charge, but we may require payment of a sum sufficient to cover any tax or other governmental charges payable in connection therewith.

**Guarantees**

Under the Guarantees (as defined below), each of TWE and TW NY, as primary obligor and not merely as surety, will fully, irrevocably and unconditionally guarantee to each Holder of the debt securities and to the applicable Trustee and its successors and assigns, (1) the full and punctual payment of principal and interest on the debt securities when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of ours under the indentures (including obligations to the applicable Trustee) and the debt securities and (2) the full and punctual performance within applicable grace periods of all other obligations of ours under the indentures and the debt securities (the Guarantees ). Such Guarantees will constitute guarantees of payment, performance and compliance and not merely of collection. The obligations of each of TWE and TW NY under the indentures will be unconditional irrespective of the absence or existence of any action to enforce the same, the recovery of any judgment against us or each other or any waiver or amendment of the provisions of the indentures or the debt securities to the extent that any such action or similar action would otherwise constitute a legal or equitable discharge or defense of a guarantor (except that any such waiver or amendment that expressly purports to modify or release such obligations shall be effective in accordance with its terms). The obligations of TWE and TW NY to make any payments may be satisfied by causing us to make such payments. Each of TWE and TW NY shall further agree to waive presentment to, demand of payment from and protest to us and shall also waive diligence, notice of acceptance of its Guarantee, presentment, demand for payment, notice of protest for non-payment, filing a claim if we complete a merger or declare bankruptcy and any right to require a proceeding first against us. These obligations shall be unaffected by any failure or policy of the Trustee to exercise any right under the indentures or under any series of security. If any Holder of any debt security or the Trustee is required by a court or otherwise to return to us, TWE or TW NY, or any custodian, trustee, liquidator or other similar official acting in relation to us, TWE or TW NY, any amount paid by us or any of them to the Trustee or such Holder, the Guarantees of TWE and TW NY, to the extent theretofore discharged, shall be reinstated in full force and effect.

Further, each of the Guarantors agrees to pay any and all reasonable costs and expenses (including reasonable attorneys' fees) incurred by the Senior Indenture Trustee or the Subordinated Indenture Trustee, as applicable, or any Holder of debt securities in enforcing any of their respective rights under the Guarantees. The indentures provide that each of the Guarantees of TWE and TW NY is limited to the maximum amount that can be guaranteed by TWE and TW NY, respectively, without rendering the relevant Guarantee voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Although we believe the Guarantees of TWE and TW NY are valid and enforceable, under certain circumstances, a court could find a subsidiary's guarantee void or unenforceable under fraudulent conveyance, fraudulent transfer or similar laws affecting the rights of creditors generally.

The indentures provide that any Guarantor shall be automatically released from its obligations under its Guarantee upon receipt by the Trustee of a certificate of a Responsible Officer of ours certifying that such Guarantor has no outstanding Indebtedness For Borrowed Money, as of the date of such certificate, other than any other Guarantee of Indebtedness For Borrowed Money that will be released concurrently with the release of such Guarantee. In addition, TW NY will be released from its Guarantee under such circumstances only if it is also a wholly owned direct or indirect subsidiary of ours. Also, if any of these conditions are satisfied, the applicable Guarantor may not guarantee a new issuance of debt securities. However, there is no covenant in the indentures that would prohibit any such Guarantor from incurring Indebtedness For Borrowed Money after the date such Guarantor is released from its Guarantee.

The indentures further provide that we and the Trustee may enter into a supplemental indenture without the consent of the Holders to add additional guarantors in respect of the debt securities.

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**Ranking and Subordination**

*Ranking*

The senior debt securities will be our unsecured, senior obligations, and will rank equally with our other unsecured and unsubordinated obligations. The Guarantees of the senior debt securities will be unsecured and senior obligations of each of TWE and TW NY, and will rank equally with all other unsecured and unsubordinated obligations of TWE and TW NY, respectively. The subordinated debt securities will be our unsecured, subordinated obligations and the Guarantees of the subordinated debt securities will be unsecured and subordinated obligations of each of TWE and TW NY.

The debt securities and the Guarantees will effectively rank junior in right of payment to any of our or the Guarantors existing and future secured obligations to the extent of the value of the assets securing such obligations. The debt securities and the Guarantees will be effectively subordinated to all existing and future liabilities, including indebtedness and trade payables, of our non-guarantor subsidiaries. The indentures do not limit the amount of unsecured indebtedness or other liabilities that can be incurred by our non-guarantor subsidiaries.

Furthermore, we and TW NY are holding companies with no material business operations. The ability of each of us and TW NY to service our respective indebtedness and other obligations is dependent primarily upon the earnings and cash flow of our and TW NY's respective subsidiaries and the distribution or other payment to us or TW NY of such earnings or cash flow.

*Subordination*

If issued, the indebtedness evidenced by the subordinated debt securities is subordinate to the prior payment in full of all our Senior Indebtedness (as defined below). During the continuance beyond any applicable grace period of any default in the payment of principal, premium, interest or any other payment due on any of our Senior Indebtedness, we may not make any payment of principal of, or premium, if any, or interest on the subordinated debt securities. In addition, upon any payment or distribution of our assets upon any dissolution, winding up, liquidation or reorganization, the payment of the principal of, or premium, if any, and interest on the subordinated debt securities will be subordinated to the extent provided in the subordinated indenture in right of payment to the prior payment in full of all our Senior Indebtedness. Because of this subordination, if we dissolve or otherwise liquidate, Holders of our subordinated debt securities may receive less, ratably, than Holders of our Senior Indebtedness. The subordination provisions do not prevent the occurrence of an event of default under the subordinated indenture.

The subordination provisions also apply in the same way to each Guarantor with respect to the Senior Indebtedness of such Guarantor.

The term "Senior Indebtedness" of a person means with respect to such person the principal of, premium, if any, interest on, and any other payment due pursuant to any of the following, whether outstanding on the date of the subordinated indenture or incurred by that person in the future:

all of the indebtedness of that person for borrowed money, including any indebtedness secured by a mortgage or other lien which is (1) given to secure all or part of the purchase price of property subject to the mortgage or lien, whether given to the vendor of that property or to another lender, or (2) existing on property at the time that person acquires it;

all of the indebtedness of that person evidenced by notes, debentures, bonds or other similar instruments sold by that person for money;

all of the lease obligations which are capitalized on the books of that person in accordance with generally accepted accounting principles;

all indebtedness of others of the kinds described in the first two bullet points above and all lease obligations of others of the kind described in the third bullet point above that the person, in any



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manner, assumes or guarantees or that the person in effect guarantees through an agreement to purchase, whether that agreement is contingent or otherwise; and

all renewals, extensions or refundings of indebtedness of the kinds described in the first, second or fourth bullet point above and all renewals or extensions of leases of the kinds described in the third or fourth bullet point above;

*unless*, in the case of any particular indebtedness, lease, renewal, extension or refunding, the instrument or lease creating or evidencing it or the assumption or guarantee relating to it expressly provides that such indebtedness, lease, renewal, extension or refunding is not superior in right of payment to the subordinated debt securities. Our senior debt securities, and any unsubordinated guarantee obligations of ours or any Guarantor to which we and the Guarantors are a party, including the Guarantors' Guarantees of our debt securities and other indebtedness for borrowed money, constitute Senior Indebtedness for purposes of the subordinated indenture.

Pursuant to the subordinated indenture, the subordinated indenture may not be amended, at any time, to alter the subordination provisions of any outstanding subordinated debt securities without the consent of the requisite holders of each outstanding series or class of Senior Indebtedness (as determined in accordance with the instrument governing such Senior Indebtedness) that would be adversely affected.

## **Certain Covenants**

### *Limitation on Liens*

The indentures provide that neither we nor any Material Subsidiary of ours shall incur, create, issue, assume, guarantee or otherwise become liable for any Indebtedness For Borrowed Money that is secured by a lien on any asset now owned or hereafter acquired by us or it unless we make or cause to be made effective provisions whereby the debt securities will be secured by such lien equally and ratably with (or prior to) all other indebtedness thereby secured so long as any such indebtedness shall be secured. The foregoing restriction does not apply to the following:

liens existing as of the date of the applicable indenture;

liens issued, created or assumed by Subsidiaries of ours to secure indebtedness of such Subsidiaries to us or to one or more other Subsidiaries of ours;

liens affecting property of a Person existing at the time it becomes a Subsidiary of ours or at the time it merges into or consolidates with us or a Subsidiary of ours or at the time of a sale, lease or other disposition of all or substantially all of the properties of such Person to us or our Subsidiaries;

liens on property or assets existing at the time of the acquisition thereof or incurred to secure payment of all or a part of the purchase price thereof or to secure indebtedness incurred prior to, at the time of, or within 18 months after the acquisition thereof for the purpose of financing all or part of the purchase price thereof, in a principal amount not exceeding 110% of the purchase price;

liens on any property to secure all or part of the cost of improvements or construction thereon or indebtedness incurred to provide funds for such purpose in a principal amount not exceeding 110% of the cost of such improvements or construction;

liens on shares of stock, indebtedness or other securities of a Person that is not a Subsidiary of ours;

liens in respect of capital leases entered into after the date of the applicable indenture provided that such liens extend only to the property or assets that are the subject of such capital leases;