

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

In the Matter of Kauai Cablevision L.P.
(Kalaheo, et al)

Filing of Initial Basic Service Rates and
Associated Charges (FCC Form 393)

Docket No. 94-08

DECISION AND ORDER NO. 162
(Rate Order)

WHEREAS, the Cable Television Division, Department of Commerce and Consumer Affairs of the State of Hawaii (the "State") became certified to regulate basic cable service rates and associated charges as of May 12, 1994, and has followed regulations prescribed by the Federal Communications Commission ("FCC"), 47 C.F.R. Part 76, Subpart N (the "FCC Rules"), and by the State's Department of Commerce and Consumer Affairs, Hawaii Administrative Rules §§ 16-133-40 to -53 (the "Department Rules"), for the regulation of the basic service tier and associated equipment, installation, services and charges; and

WHEREAS, by letter dated May 12, 1994, the State notified Kauai Cablevision L.P. (the "Company") that the Company's rates for the basic service tier and associated charges for equipment and installation for its cable system were subject to regulation by the State; and

WHEREAS, the Company submitted an FCC Form 393 to the State on June 24, 1994,¹ submitted supplemental rate information and an amended FCC Form 393

¹ The FCC Form 393 submitted for the Company's system for Kalaheo et al covers Community Unit Identification numbers HI0044 to HI0055 inclusive, HI0076, HI0076, HI0094, HI0095, and HI0098.

on September 2, 1994, and submitted supplemental information on November 15, 1994 (sometimes hereinafter collectively referred to as the "Rate Filing"); and

WHEREAS, on July 5, 1994, pursuant to 47 C.F.R. § 76.933(a)-(b) and § 16-133-44(b) of the Department's Rules, the State issued a written order to extend the rate review period to consider additional information from the Company and from interested parties and to complete its review of the Company's FCC Form 393; and

WHEREAS, the State provided public notice of the Company's Rate Filing and afforded all interested persons an opportunity to submit written comments, data, views, or arguments pursuant to § 16-133-42(a) of the Department Rules; and

WHEREAS, pursuant to 47 C.F.R. § 76.933(c) and § 16-133-44(c) of the Department's Rules, the State issued a written order on October 10, 1994, directing the Company to keep an accurate account of all amounts received by reason of the rates in issue and on whose behalf such amounts were paid; and

WHEREAS, the State retained a financial consultant to assist it in the rate review process; and

WHEREAS, the financial consultant prepared a draft report, a copy of which was made available to the Company prior to the issuance of this rate order; and

WHEREAS, the State has reviewed the Rate Filing and other information and evidence; has received and considered the Company's comments dated January 31, 1995, on the draft financial report and proposed rate order in accordance with § 16-133-50(a) of the Department's Rules; has reviewed and hereby adopts (and by this reference incorporates herein), as appropriate and to the extent not inconsistent with this rate order, the findings, reasoning, assumptions and other information set forth in the financial consultant's final report; and

WHEREAS, the Company's rate card indicates that it currently charges subscribers \$1.00 per month for "Wiring Maintenance Service;" and

WHEREAS, the Company did not include in its Rate Filing any basis for the \$1.00 charge for the "Wiring Maintenance Service;" and

WHEREAS, the FCC has stated that "operators cannot now charge for services previously provided without extra charge (e.g., routine service calls, program guides) unless the value of that service, as now reflected in the new charges, was removed from the base rate number when calculating the reduction in rates necessary to establish reasonable rates;"² and

WHEREAS, the FCC also has stated that cable operators may offer service contracts to subscribers for maintenance and repair of equipment that subscribers purchase from cable operators, but that the "price of [service] contracts shall be based on the [hourly service charge] times the estimated average number of hours required for maintenance and repair over the expected life of the equipment;"³ and

WHEREAS, home wiring is defined as "equipment" under the FCC Rules, 47 C.F.R. § 76.923(a); and

WHEREAS, the Company's Rate Filing did not propose certain rates for installation, equipment or other service which the Company may have been charging during the refund period; and

WHEREAS, the Company gave the State notice that effective as of July 14, 1994, the Company would restructure its rates to comply with revised rate regulation rules adopted by the FCC that became effective on May 15, 1994 (the "Amended Rules"); and

² See In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Buy-Through Prohibition, Third Order on Reconsideration, MM Dkt. Nos. 92-262, 92-266, FCC 94-40 at ¶ 135 (released March 30, 1994).

³ See In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Dkt. No. 92-266, FCC 93-177 at ¶ 298 (released May 3, 1993).

WHEREAS, the Company has the burden of proving by a preponderance of evidence that its existing rates as of the date of initial regulation are reasonable under the FCC Rules, see 47 C.F.R. § 76.937(a), and § 16-133-46 of the Department Rules;⁴ and

WHEREAS, the State filed a petition on December 27, 1994 with the FCC requesting that the FCC permit the State to require the Company to pay subscribers refunds from September 1, 1993 up to and including July 14, 1994, the date the Company restructured its rates under the Amended Rules;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's initial rates for the basic service tier and associated equipment and installation charges are disapproved in part and approved in part as set forth below.

2. For the period commencing on September 1, 1993, and ending on the date that the Company implemented its rate restructuring to comply with the Amended Rules (i.e., July 14, 1994), the maximum permitted rates, exclusive of franchise fees, for the basic service tier, and certain equipment and installations shall have been as follows:

Basic Service:	
Per-Channel Rate	\$.5930
Basic Tier Monthly Rate	7.12
Equipment and Installation Rates:	
Hourly Service Charge	31.08
Unwired Homes	46.62
Prewired Homes	31.08
Add'l. Connections (initial)	15.54
Add'l. Connections (separate)	15.54

⁴ In the event an operator has taken advantage of the refund deferral period, the maximum permitted rates determined under FCC Form 393 also applies from May 15, 1994 until the operator implemented its restructured rates as determined under the FCC form 1200 series. See In the Matter of TCI of Seattle, Inc., DA 94-1605, released December 28, 1994.

Changing Tiers:		
Charge for changing tier (addressable)		2.00
Lease of Remote Controls:		
Remote Control Basic		.19
Remote Control Addressable		.20
Lease of Converter Boxes:		
Converter Basic		1.72
Addressable Converter		3.19

The Company shall refund that portion of actual rates paid by subscribers plus interest for the basic service tier to the extent such actual rates exceeded the maximum permitted rates approved herein. The refund for the basic service tier shall be the difference between \$8.08 and \$7.12. The Company shall not offset the refunds ordered herein because the actual rates charged by the Company for equipment and installation were equal to the maximum permitted rates for equipment and installation established hereunder. The refund period shall run from January 10, 1994 through July 14, 1994, the date the Company restructured its rates to comply with the Amended Rules; subject, however, to adjustment by adding to said refund period the days from September 1, 1993 up to and including January 9, 1994, in the event the FCC grants the State's petition dated December 27, 1994. The Company shall keep an accurate account of all amounts received, and on whose behalf such amounts were paid, for basic service and associated equipment and installation, for purposes of such adjustment. With respect to each affected subscriber entitled to a refund, the Company shall implement the rate refunds ordered hereunder within fifteen (15) days after the effective date of this Order.

3. Within seven (7) days after the effective date of this rate order, the Company shall submit to the State a written statement, along with supporting documentation, as to why the \$1.00 Wiring Maintenance Service rate is permissible under the FCC Rules. Such justification shall indicate, at a minimum, whether subscribers own their home wiring and, if so, when such ownership was transferred to subscribers; whether the value to subscribers of the Wiring Maintenance Service,

as reflected in the \$1.00 rate, was removed from the base rate number when the Company calculated the maximum permitted per-channel rate in its Rate Filing; and whether the price of the Wiring Maintenance Service is based on the Company's costs, as provided under the FCC Rules.

4. Within seven (7) days after the effective date of this rate order, the Company shall submit to the State proposed rates, together with supporting documentation, for other types of equipment, installation or other services (including, but not limited to, the rate for changing tiers when a service call is required) associated with the basic service tier for which the Company may have been charging during the refund period.

5. The State reserves all rights to address the reasonableness of the Company's rates for equipment, installation or other service not included in the Company's Rate Filing and the Wiring Maintenance Service, and to take appropriate action with respect thereto, and the Company shall comply with any orders the State may issue regarding such outstanding rate related matters. The State reserves all rights it has under the FCC Rules, including the right to establish reasonable rates and to order rate refunds, in the event the State determines that the rates in the submissions required by paragraphs 3 and 4 hereof are unreasonable under the FCC Rules, including any modifications or amendments to such regulations.

6. The Company may not increase the rates for any of the items listed in paragraph 2 hereof, nor may it institute charges for any other types of service, equipment or installation associated with the basic service tier which are not listed in paragraph 2 hereof, without first complying with applicable law or regulation, including the Amended Rules.

7. Within seven (7) days after the effective date of this rate order, the Company shall submit a written plan to the State which, at a minimum, sets forth the Company's method of providing refunds to subscribers (plus interest) ordered in

paragraph 2 hereof; identifies the basis for the calculation of the amount of refunds; identifies the amount of the refund; identifies the applicable interest rate and explains how it was calculated; and explains how the rate refunds ordered hereunder shall be implemented. Such plan is subject to the State's review and approval. The Company's obligation to submit such a plan shall not affect the Company's obligation to implement rate refunds, as set forth in paragraph 2 hereof.

8. The State reserves the right to modify this rate order if, at any time, it determines that information the Company provided to the State is incorrect in any material manner, or to implement any adjustment to the refund period as described in paragraph 2 hereof including, but not limited to, requiring the Company to submit a supplemental refund plan containing the information described in paragraph 7 hereof for review and approval.

9. Public notice of this rate order shall be provided in accordance with § 16-133-45(b) of the Department's Rules. A copy of this rate order shall be mailed to the Company.

10. This rate order becomes effective on the 24th day of February, 1995.

DATED: Honolulu, Hawaii, February 14, 1995.


Kathryn S. Matayoshi
Director of Commerce and
Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 162 (Rate Order) in Docket No. 94-08 was duly served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 14th day of February, 1995.

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