

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

In the Matter of Daniels Communications)
Partners Limited Partnership dba)
HAWAIIAN CABLEVISION COMPANY)
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) Docket No. 94-10
)
Filing of Initial Basic Service Rates)
and Associated Charges (FCC Form 393))

DECISION AND ORDER NO. 164
(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 (the "FCC"), 47 C.F.R. Part 76, Subpart N (the "FCC Rules"), and by the State's Department of Commerce and Consumer Affairs, Sections 16-133-40 to 53 of the Hawaii Administrative Rules (the "Department Rules"), for the regulation of the basic service tier and associated equipment, installations, services and charges; and

WHEREAS, by letter dated May 12, 1994, the State notified Hawaiian Cablevision Company (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 7, 1994,¹ and submitted supplemental rate information on August 27, 1994 and October 28, 1994 (sometimes hereinafter collectively referred to as the "Rate Filing"); and

WHEREAS, on July 1, 1994, pursuant to 47 C.F.R. Section 76.933(a)-(b) and Section 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

¹The FCC Form 393 submitted for the Company's system at Lahaina, Maui covers Community Unit Identification number CUID HI0002.

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 Section 16-133-42(a) of the Department's Rules; and

WHEREAS, pursuant to 47 C.F.R. Section 76.933(c) and Section 16-133-44(c) of the Department's Rules, the State issued a written order on October 3, 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 financial report, and the State prepared a proposed rate order, copies of which were provided to the Company prior to the issuance of this rate order; and

WHEREAS, the State has reviewed the Rate Filing and other evidence and information; has received and considered the Company's comments dated January 9, 1995 on the proposed rate order in accordance with Section 16-133-50(a) of the Department's Rules; and 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, FCC Rules state that "installation charges shall be either: (1) the [hourly service charge] multiplied by the actual time spent on each individual installation; or (2) the [hourly service charge] multiplied by the average time spent on a specific type of installation," 47 C.F.R. Section 76.932(e); and

WHEREAS, the Company has chosen to charge an average rate for installations; and

WHEREAS, the FCC has stated that for average installation charges, "there must be several averages: one for unwired, another for prewired installations, one for additional connections at the time of initial installation, and finally one average for installation of additional connections after initial service installation. In addition, an operator might wish to develop over average installation rates, such as one for installation involving extra long drops,"²; and

² Report and Order, 8 FCC Rcd. 5631, 5817, paragraph 296 n. 721.

WHEREAS, the Company's September 1, 1993 rate card indicates that the Company imposes a charge for "Install Converter at Time of Initial Install" (\$7.88) and for "Customer Accommodation Charge" (\$7.88), which charge the Company states is imposed "if the subscriber requests that we locate a neighbor, manager or other agent of the subscriber to gain entry or access to the subscriber's premises, or if we must wait for the subscriber to arrive at home for a scheduled appointment,"³ and

WHEREAS, the Company did not impose these Incidental Installation Charges prior to September 1, 1993; and

WHEREAS, the Company in its written comments dated January 9, 1995 on the proposed rate order stated that the Company "established its Customer Accommodation Charge to comply with the Commission's explicit requirement to unbundle installation charges", and that the time spent by the Company is "additional to time spent by Hawaiian Cablevision on installations"; and

WHEREAS, the Company did not submit time studies, historical data or other studies meeting its burden of proof of demonstrating that it actually calculated the average time of the Incidental Installation Charges; and

WHEREAS, the Company has not submitted information demonstrating that its average times for installation of unwired homes, prewired homes, additional connections, and reconnections of additional outlets excluded the time attributable to the Incidental Installation Charges; and

WHEREAS, the FCC Rules do not contemplate that an operator would impose an additional installation charge for the installation of a converter in addition to the operator's average charge for installation of unwired homes, prewired homes, additional connections and reconnections of additional outlets; and

WHEREAS, based on the FCC Rules and the information provided by the Company, the State finds that the time attributable to "locat[ing] a neighbor, manager, or other agent of the subscriber" and "wait[ing] for the subscriber to arrive at the home for a scheduled appointment" is incidental to the installation of prewired homes, unwired homes, additional connections, and reconnections of additional outlets; and

³Company's Response to the Second Request for Supplemental Information submitted on October 28, 1994 (the "Install Converter at Time of Initial Install" and "Customer Accommodation Charge" are hereinafter collectively referred to as the "Incidental Installation Charges").

WHEREAS, therefore, the State concludes that the Company's Incidental Installation Charges are not permitted by the FCC Rules; and

WHEREAS, the Company's September 1, 1993 rate card indicates the Company imposes a charge for "Install Converter Requiring Separate Trip"; and

WHEREAS, the State finds it reasonable for a cable operator to impose a charge for the installation of converters requiring a separate trip at a particular outlet, so long as such charge is not in addition to the installation charge at such outlet for "Install Additional Outlet Requiring Separate Installation," "Reconnect Additional Outlet Requiring Separate Installation," or "Service Calls," which charges are reported on the Company's September 1, 1993 rate card, or any other charges for the installation of cable service at such outlet; and

WHEREAS, the Company's September 1, 1993 rate card indicates a price of \$65.55 for "Purchase House Amplifier and Installation," and

WHEREAS, the Company's September 1, 1993 rate card does not indicate that such home amplifier is available at a leased price for subscribers; and

WHEREAS, the FCC Rules generally do not permit a cable operator to bundle the rates for equipment and installations;⁴ and

WHEREAS, the Company has not attempted to justify the charge for home amplifiers and for the installation of such amplifiers in its Rate Filing; and

WHEREAS, home amplifiers are subject to rate regulation under the FCC Rules;⁵ and

⁴See 47 C.F.R. Section 76.923(b).

⁵See Report and Order, 8 FCC Rcd. at 5824-25, paragraph 307.

WHEREAS, equipment sold to subscribers is subject to rate regulation if the equipment is not also leased to subscribers;⁶ 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

WHEREAS, the Company has the burden of proving by a preponderance of the evidence that its existing rates as of the date of initial regulation are reasonable under the FCC Rules;⁷ and

WHEREAS, on December 12, 1994, the State filed a petition with the FCC requesting that the FCC permit the State to require the Company to pay subscribers refunds back to September 1, 1993, the effective date of the FCC 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 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	\$ 0.676
Basic Tier Monthly Rate (assuming 12-channel basic service tier)	8.11

⁶See 47 C.F.R. Section 76.923(i); First Order on Reconsideration, 9 FCC Rcd. 1164, 1192, paragraph 51 (1993) ("equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates").

⁷See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

Equipment and Installation Rates:

Hourly Service Charge	20.35
Unwired Homes	30.53
Prewired Homes	15.26
Add'l Connections (initial)	10.18
Add'l Connections (separate)	15.26
Connect VCR Initial	5.09
Connect VCR Separate	15.26
Reconnect A/O (initial)	5.09
Reconnect A/O (separate)	10.18
Install Converter (initial)	No Rate Permitted
Install Converter (separate)	15.26
Service Call	10.18
Customer Accommodation	No Rate Permitted

Changing Tiers:

Charge for changing tier
(non-addressable/requiring service call) 10.18

The Company shall refund that portion of actual rates paid by subscribers plus interest for the basic service tier, equipment, and installations described above to the extent such actual rates exceeded the maximum permitted rates approved herein, except that the Company shall refund to subscribers the full amount subscribers paid for the "Customer Accommodation" and "Install Converter (Initial)" charges. Subscribers shall also be entitled to a refund of the total amount paid (\$23.64) for the installation of converter requiring a separate trip if such charge was imposed for the installation of service at a particular outlet in addition to the following charges for installation of service at such outlet: (a) additional connections (separate trip); (b) reconnect additional outlet (separate trip); or (c) service call. Refunds may be offset only by undercharges for: (i) lease of addressable converter boxes; (ii) lease of remote controls; and (iii) upgrade/downgrades (addressable). The refund period shall run from September 1, 1993 through July 14, 1994, the date the Company restructured its rates to comply with the Amended Rules. With respect to each affected subscriber entitled to a refund, the Company shall implement the rate refunds ordered herein within fifteen (15) days after the effective date of this rate order.

3. For the period commencing on September 1, 1993, and ending on the date the Company implemented its rate restructuring to comply with the Amended Rules, the initial permitted rates for the equipment and services listed below shall be the actual rates charged by the Company as of the effective date of initial regulation:

Initial
Permitted Rates

Equipment:

Lease of Remote Control	\$0.09
Lease of Converter Box (addressable)	1.25

Changing Tiers:

Upgrade/downgrade (addressable)	1.95
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4. 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 paragraphs 2 and 3 hereof, without first complying with applicable law or regulation, including the Amended Rules.

5. Within seven (7) days after the effective date of this rate order, the Company shall submit a written statement, along with supporting documentation, demonstrating that the \$64.55 purchase price for a home amplifier is consistent with the FCC Rules for the cost of equipment and installations.⁸ Such justification shall indicate the portion of the purchase price attributable to the home amplifier, and the portion of the purchase price attributable to installation of the home amplifier. Such justification also shall indicate whether the value to subscribers of the home amplifier, as reflected in the \$65.55 rate, was removed from the base rate number when the Company calculated the maximum permitted per channel rate in its FCC Form 393.

6. The State reserves all rights to address the reasonableness of the rates for the home amplifier and for the installation of the home amplifier, and to take appropriate action with respect thereto, and the Company shall comply with any orders the State may issue regarding this outstanding rate-related matter. The State also reserves all rights it has under the FCC Rules, including the right to establish reasonable rates for the home amplifier and the installation of such amplifier and to order rate refunds, in the event the State determines that such rates are unreasonable under the FCC Rules, including any modifications or amendments to such rules.

⁸See 47 C.F.R. Section 76.923.

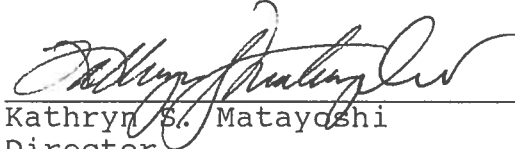
7. Within seven (7) days after the effective date of this rate order, the Company shall submit a written plan to the State which, at a minimum, sets forth the Company's method of providing refunds to subscribers (plus interest) ordered in paragraph 2 hereof; identifies the basis for the calculation of 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 herein shall be implemented. Such plan is subject to the State's review and approval. The Company's obligations 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.

9. Public notice of this rate order shall be provided in accordance with Section 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 26th day of January, 1995.

DATED: Honolulu, Hawaii January 12, 1995.



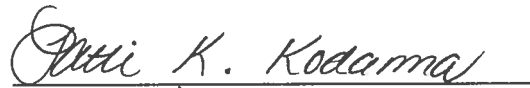
Kathryn S. Matayoshi
Director
Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 164 in Docket No. 94-10 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 13th day of January, 1995:

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