

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

In the Matter of American Cable TV)
Investors 4, Ltd. dba SUN CABLEVISION)
OF HAWAII (Kailua-Kona System))
)
) Docket No. 94-11
)
Filing of Initial Basic Service Rates)
and Associated Charges (FCC Form 393))

DECISION AND ORDER NO. 165
(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 Sun Cablevision of Hawaii (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 its FCC Form 393 to the State on June 16, 1994,¹ and submitted supplemental rate information on August 15, 1994, October 28, 1994, and December 22, 1994

¹The FCC Form 393 submitted for the Company's system for Kailua-Kona et al. covers Community Unit Identification numbers CUID HI0023-HI0032 inclusive, HI0056, HI0075, and HI0078.

By letter dated August 12, 1994, the Company notified the State that the communities of Hawi (CUID No. HI0082), North Kohala District (CUID No. HI0083), and Kapaau (CUID No. HI0084) are considered small systems (also collectively referred to as the Kamehameha system), and that it will not submit a FCC Form 393 for such system. Thus, CUID Nos. HI0082-HI0084 inclusive are not covered in this rate order.

(sometimes hereinafter collectively referred to as the "Rate Filing"); and

WHEREAS, on July 5, 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

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 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 financial 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 evidence and information; has received and considered the Company's comments dated January 24, 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, the Company has chosen to charge an average rate for installations, including but not limited to Reassignment of Service and Minimum Charge; and

WHEREAS, the Company explains the Reassignment of Service as "reassigning service from one customer's name to another, not requiring a truck roll", and explains the Minimum Charge as "minimum service charge for problems caused by the customer which require a service call";² and

²See Company's supplemental response dated December 22, 1994 at paragraph 1.

WHEREAS, the Company further explains that although the Reassignment of Service and Minimum Charge "were not included in Schedule D of the Form 393, Sun Cablevision has always charged for those calls based on the regulated hourly service charge", and the Company has submitted a revised Schedule D for such charges;³ and

WHEREAS, because the Company has based the Minimum Charge on average hourly charges, the Minimum Charge must be the average charge for all such service calls, and that the Company may not charge an additional amount in excess of the Minimum Charge; 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;⁴ and

WHEREAS, by that certain letter agreement dated November 4, 1994, between the Company and the State (the "Letter Agreement"), the Company agreed to waive the one year refund liability limitation contained in 47 C.F.R. Section 76.942(b), and to permit the State to order refunds, with interest, for the period during which the Company's initial regulated basic service tier rates and associated equipment and installation costs set forth in the Company's FCC Form 393 were in effect; and

WHEREAS, pursuant to the Letter Agreement, the Company and the State agreed that in the event the State does not issue its rate order on or before January 3, 1995, the Company's maximum refund liability period will be reduced on a day-by-day basis commencing on January 4, 1995 and continuing until the date the State issues a final rate order on the Company's initial basic service tier rates and associated equipment and installation costs;

³See Company's supplemental response dated December 22, 1994 at paragraph 1.

⁴See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's 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	\$ 0.766
Basic Tier Monthly Rate (assuming 11 channel basic service tier)	8.43

Equipment and Installation Rates:

Prewired Homes	17.31
Add'l Connections (initial)	11.54
Add'l Connections (separate)	17.31
Move Outlet	17.31
Connect VCR Initial	5.77
Connect VCR Separate	11.54
Reassignment of Service	5.77
Minimum Charge	11.54
Lease of Converter Box (non-addressable)	.94

Changing Tiers:

Upgrade (non-addressable)	11.54
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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. The refund for the basic tier shall be the difference between the Company's actual rate of \$9.87 and the adjusted maximum permitted rate of \$8.43. Refunds may be offset only by undercharges for: (i) installations for unwired homes; (ii) changing tiers downgrade (non-addressable); (iii) lease of addressable converter boxes; and (iv) lease of remote controls. 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, as adjusted pursuant to the Letter Agreement. 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 actual 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
Actual Rates

Equipment and Installation:

Hourly Service Charge	\$23.08
Installation of Unwired Homes	39.32
Lease of Remote Control	0.12
Lease of Converter Box (addressable)	1.47

Changing Tiers:

Downgrade (non-addressable)	6.55
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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. The Minimum Charge the Company imposes for problems caused by the customer which require a service call, shall be the average rate charged to all subscribers for such service calls.


6. 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.

7. 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.

8. 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.

9. This rate order becomes effective on the 9th day of February, 1995.

DATED: Honolulu, Hawaii January 26, 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. 165 (Rate Order) in Docket No. 94-11 was duly served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 26th day of January, 1995.

Mr. Robert Trott
Sun Cablevision
P.O. Box 819
74-5605 Luhia Street
Kailua-Kona, Hawaii 96740

Beth Fujimoto, Esq.
Watanabe, Ing & Kawashima
Hawaii Tower, 5th & 6th Floors
745 Fort Street
Honolulu, Hawaii 9613



Patti K. Kodama
Secretary