

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

In the Matter of )  
GARDEN ISLE CABLEVISION, L.P., dba )  
GARDEN ISLE CABLEVISION )  
 ) Docket No. 95-01  
 )  
Filing of Initial Basic Service Rates )  
and Associated Charges (FCC Form 393) )

DECISION AND ORDER NO. 166  
(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 Garden Isle Cablevision (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 13, 1994,<sup>1</sup> and submitted supplemental rate information on August 30, 1994, December 13, 1994, and December 23, 1994 (sometimes hereinafter collectively referred to as the "Rate Filing"); and

WHEREAS, the State (including its consultant) and Company have discussed on several occasions via telephone conferences various issues and concerns in connection with the Company's Rate Filing; and

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<sup>1</sup>The FCC Form 393 submitted for the Company's system covers Community Unit Identification number CUID HI0011.

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 7, 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 which includes, among other things, a rate table showing the Company's actual charges and the maximum permitted charges for the basic service tier and associated equipment and installations, 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 February 14, 1995 on the draft financial report and 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; and

WHEREAS, as shown in the Company's rate card in effect as of September 1, 1993, the Company charges \$0.40 per month for each additional outlet; and

WHEREAS, the cost for the additional outlets is shown in the Company's Schedule C of its FCC Form 393; and

WHEREAS, the Company explains that "Additional Outlet costs are not separately identifiable but are included in CableVision's costs for house drop material. CableVision assumed, based on experience that additional outlet material is \$3.60 per unit. Additional Outlets are assigned a useful life of 15 years";<sup>2</sup> and

WHEREAS, the Company further explains that the "monthly additional connection charge does not represent any charge for the 'value' of additional connections above and beyond their actual costs ... The charge recovers only the capital costs and maintenance costs associated with additional connections";<sup>3</sup> and

WHEREAS, the Company also stated that it "recovers the costs of installations of additional connections with a separate installation charge for additional connections that is based on its HSC times the average hours spent per visit. It recovers the costs of capital and maintenance associated with Additional Outlets through its equipment charge for them";<sup>4</sup> and

WHEREAS, with respect to additional outlets or additional connections, the FCC has determined that "costs associated with additional connections will be included in the Equipment Basket. To simplify our regulation, we believe that operators should recover the costs of additional connections in the related equipment and installation charges. Thus, the installation costs would be recovered as an installation charge, as will the costs of remotes and other equipment. The installation charge for additional connections would be the HSC times the person hours of the visit or HSC times the average hours spent per visit";<sup>5</sup> and

WHEREAS, the FCC has also stated that the "statute specifically covers the 'monthly use' of additional connections. These connections are used to receive programming. Thus, if an operator incurs additional charges for programming carried on

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<sup>2</sup>See Company's response to request for supplemental information dated August 29, 1994 (received August 30, 1994) at item 25, page 6.

<sup>3</sup>Company's written comments to proposed rate order and draft financial report dated February 14, 1995, at paragraph 4.

<sup>4</sup>Company's written comments to proposed rate order issued by the State of Hawaii dated February 14, 1995, at paragraph 2.

<sup>5</sup>In the Matter of 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 ("Rate Order"), MM Docket No. 92-266, released May 3, 1993, FCC 93-177, at paragraph 306.

basic or cable programming channels that it transmit to additional outlets, those charges would be properly recovered through a monthly charge levied for additional outlets in fact receiving that programming. That monthly charge would be limited to the operator's additional programming costs... Any network costs for boosting the signal should be treated as part of general system overhead";<sup>6</sup> and

WHEREAS, the Commission has affirmed its prior determination in the Rate Order and has stated that "costs associated with additional connections should be included in the Equipment Basket and that operators should recover such costs in the related equipment and installation charges. Equipment and installation charges for additional connections are to be calculated in a manner similar to that prescribed for the primary cable outlet, although it is expected that there will be a smaller charge for installing an additional connection that does not require a separate visit to the subscriber's home";<sup>7</sup> and

WHEREAS, the Commission also stated that "[i]n paragraph (A) of Section 623(b)(3) [of the Communication Act], equipment is specifically mentioned, while in paragraph (B) of that section the relevant term is 'monthly use of connections for additional television receivers' (emphasis supplied). In light of the difference in terminology, it appears that monthly use of connections denotes the receipt of service at additional home outlets... The Rate Order determined that the best method for recovery of such costs is through related equipment and installation charges";<sup>8</sup> and

WHEREAS, based on the FCC Rules, Rate Order, First Order on Reconsideration and the information provided by the Company, the State finds that the Company's charge of \$0.40 for each additional outlet is not a permissible monthly charge; and

WHEREAS, the Company, however, has represented that the \$.40 monthly charge for each additional connection is to recover only its actual costs of capital and maintenance associated with additional outlets for purposes of its Rate Filing; and

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<sup>6</sup>Rate Order at paragraph 307.

<sup>7</sup>In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking ("First Order on Reconsideration"), MM Docket No. 92-266, released August 27, 1993, FCC 93-428, at paragraph 52.

<sup>8</sup>First Order on Reconsideration at paragraph 54.

WHEREAS, although the Company's method of recovering its cost for the additional outlets i.e., charging \$.40 per month for each additional outlet, is not permissible as discussed above, the Company should be able to recover its actual costs of capital and maintenance associated with additional outlets in the related equipment and installation charges in accordance with applicable law or regulation, including the Amended Rules as described below; and

WHEREAS, the Company did not include in its FCC Form 393 installation services for Reconnect Non-Pay at the retail rate of \$31.08 and VCR Installation at the retail rate of \$15.54, which were, however, listed on the Company's rate cards in effect as of September 1, 1993 and March 1, 1994; 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;<sup>9</sup> and

WHEREAS, by that certain letter agreement dated October 11, 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, in accordance with the Letter Agreement the State's Extended Deadline for the issuance of its rate order was January 24, 1995; 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 the State's Extended Deadline or January 24, 1995, the Company's maximum refund liability period will be reduced on a day-by-day basis commencing on January 25, 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; and

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<sup>9</sup>See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

WHEREAS, by that certain letter agreement dated October 11, 1994, the Company and the State agreed that the Company may balance any overcharges with any undercharges for the basic tier rate and associated equipment and installation costs with respect to the Company FCC Form 393 when computing the Company's refund liability consistent with 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 associated equipment and installations shall have been as follows:

Basic Service:

Per-Channel Rate	\$ 0.6593
Basic Tier Monthly Rate (assuming 16 channel basic service tier)	10.55

Equipment and Installation Rates:

Hourly Service Charge	30.60
Unwired Homes	53.55
Prewired Homes	45.90
Add'l Connections (initial)	15.30
Add'l Connections (separate)	22.95
Reconnect	22.95
Relocate Outlet	22.95
Disconnect	7.65
Cable Buries	30.60
Pay Upgrade	15.30
Monthly Charge for Additional Outlets	Not Permitted

Changing Tiers: 15.30

Lease of Remotes: .15

Lease of Converters: 1.20

The Company shall refund that portion of actual rates paid by subscribers plus interest for the basic service equipment and installations described above to the extent such actual rates exceeded the maximum permitted rates approved herein, except that the Company is not required to refund its \$.40 monthly charge for additional outlets. The Company's rates for the basic service tier and lease of remotes were equal to the maximum permitted rates of \$10.55 and \$.15, respectively, and all other rates except the rate for Lease of Converters were in excess of the maximum permitted rates. Therefore, the Company may offset the refunds ordered herein only with its undercharge of \$.01 for Lease of Converters, which undercharge is the difference between the Company's actual rate of \$1.20 and the maximum permitted rate of \$1.21. 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 begin to implement the rate refunds ordered herein within fifteen (15) days after the effective date of this rate order.

3. The Company's monthly charge of \$.40 for each additional outlet is not permitted under applicable law or regulation. However, based upon the Company's representation that its monthly charge of \$.40 for each additional outlet is to recover only its actual costs of capital and maintenance associated with such additional outlets, the Company is not required to refund the \$.40 monthly charge for additional outlets with respect to the period covered by this rate order. The Company may recover its actual costs of capital and maintenance associated with additional outlets in accordance with applicable law or regulation, including the Amended Rules.

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 paragraph 2 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 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.

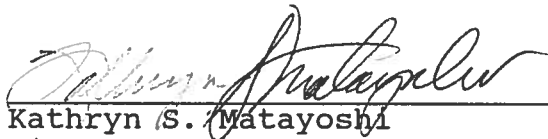
6. The Company shall justify its rates for Reconnect Non-Pay and VCR Installation in its submittal under the Amended Rules i.e., the FCC Form 1200 or 1220 series. The State reserves all rights to address the reasonableness of the Company's rates for Reconnect Non-Pay (\$31.08) and VCR Installation (\$15.54) which were not computed for purposes of the Company's Rate Filing, and to take appropriate action with respect thereto, and the Company shall comply with any orders the State may issue regarding such rate related matters. The State also reserves all rights it has under the FCC Rules, including the right to establish reasonable rates and to order refunds from September 1, 1993 up to and including July 14, 1994, as adjusted to the date of issuance of this rate order pursuant to the Letter Agreement, in the event the State determines that the Company's rates for Reconnect Non-Pay and VCR Installation are unreasonable under the FCC Rules, including any modifications or amendments to such regulations. The reservations of rights in this paragraph 6 are provided in the event the FCC does not approve or grant the State's petition for special relief and request for assistance in the Company's cost of service showing, filed with the FCC on November 10, 1994.

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 13th day of March, 1995.

DATED: Honolulu, Hawaii February 27, 1995.

  
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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. 166 (Rate Order) in Docket No. 95-01 was duly served upon the following persons at the address shown below by mailing the same, postage prepaid, on this 27th day of February, 1995.

Mr. William Harkins  
Garden Isle Cablevision  
Box 1028  
4-1526 Kuhio Highway  
Kapaa, Hawaii 96746

Mr. Dan Ryan  
Rifkin & Associates  
360 S. Monroe Street  
Denver, Co 80209

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

*Patti K. Kodama*  
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Patti K. Kodama  
Secretary