

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

In the Matter of)
TIME WARNER ENTERTAINMENT COMPANY, L.P.)
dba OCEANIC CABLEVISION)
) Docket No. 95-02
)
Filing of Initial Basic Service Rates)
and Associated Charges (FCC Form 393))

DECISION AND ORDER NO. 167
(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 Oceanic 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, 1994,¹ submitted supplemental rate information on

¹The FCC Form 393 submitted for the Company's system covers Community Identification Numbers CUID HI0001 Waianae, HI0004 Central Oahu, HI0005 Honolulu, HI0006 Honolulu, HI0007 Kailua, HI0008 Kalihi, HI0009 Kaneohe, HI0010 Palolo, HI0012 North Shore, HI0014 Ewa District, HI0057 Ahuimanu, HI0058 Aliamanu, HI0059 Enchanted Hills, HI0060 Hauula, HI0061 Iwilei, HI0062 Laie, HI0063 Kaawa, HI0064 Kaimuki, HI0065 Kahaluu, HI0066 Kaneohe Marine Corp., HI0067 Kapahulu, HI0068 Maunawili, HI0069 Moanalua, HI0070 Pearl Harbor, HI0071 Salt Lake, and HI0072 Waimanalo. Because the Company has franchise agreements with various military branches on the island of Oahu, the Company for purposes of its FCC Form 393 has submitted revised subscriber counts, revenues, and

August 4, 1994, October 20, 1994, and December 19, 1994, and submitted additional information dated January 31, 1995, February 6, 1995, and February 8, 1995 (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

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, based upon the financial consultant's worksheet a draft rate table was prepared for the basic service tier and associated equipment and installation costs, 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, if any, on the proposed rate order in accordance with Section 16-133-50(a) of the Department's Rules; and

equipment and installation costs to reflect the exclusion of military subscribers.

WHEREAS, the Company has restructured its rates as of September 1, 1993 and has chosen to charge an average rate for installations; and

WHEREAS, the Company charges \$0.40 per month for maintenance of each additional outlet, which the Company explains is to maintain each additional outlet primarily for signal leakage;² and

WHEREAS, with respect to additional outlets or additional connections, the Commission 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";³ 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";⁴ and

WHEREAS, the Commission also stated that "[i]n paragraph (A) of Section 623(b)(3) [of the Communication Act], equipment is

²See Company's Response to Supplemental Information Request dated October 19, 1994, and Company's Second Response to Supplemental Information dated December 19, 1994.

³In 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.

⁴In 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.

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. Thus, there seems to be no basis in the statute for allowing cable operators to charge for the 'value' of additional connections above and beyond their actual costs. The Rate Order determined that the best method for recovery of such costs is through related equipment and installation charges";⁵ 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's reported rate calculations for the maximum permitted charges for installations (prewired), additional outlet installation (initial), additional outlet installation (separate), and converter exchanges/upgrades, contained some discrepancies and which were resolved between the Company and the State, and the adjusted maximum permitted charges for said installation services are set forth in paragraph 2 hereof; 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;⁶ and

WHEREAS, by that certain letter agreement dated September 13, 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

⁵First Order on Reconsideration at paragraph 54.

⁶See 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 September 28, 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 the Commission's rules; and

WHEREAS, the FCC has stated that the local franchising authority must offset or reduce any refunds it may order by the difference between the actual basic service rates and the maximum permitted basic service rates the cable company could have charged during the applicable period of review;⁷ and

WHEREAS, based on the information provided by the Company with respect to offsets of undercharges and overcharges, the State finds that the Company is not subject to refund liability for its rates in effect as of September 1, 1993 and up to including July 14, 1994;

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 are as follows:

Basic Service:

Per-Channel Rate	\$ 0.5435
Basic Tier Monthly Rate (assuming 18 channel basic service tier)	9.78

Equipment and Installation Rates:

Unwired Homes	31.89
Prewired Homes	21.37
Add'l Connections (initial)	15.95
Add'l Connections (separate)	26.47
Converter Exchanges/Upgrades	10.52
Additional Outlet (monthly charge)	Not Permitted

⁷See In the Matter of TCI Cablevision of Indiana, Inc., DA 94-1604, released December 28, 1994; In the Matter of TCI Cablevision of Colorado, Inc., DA 94-1606, Order, released December 28, 1994.

Changing Tiers: 2.00

Lease of Remotes: .20

Lease of Converter Boxes:

Converter Box (Non-addressable) .53

Converter Box (Addressable) 2.50

3. The Company's reported actual rates in effect as of September 1, 1993 for the above-mentioned services and lease of equipment were as follows:

Basic Service:

Per-Channel Rate \$ 0.5435
Basic Tier Monthly Rate (assuming 9.75
18 channel basic service tier)

Equipment and Installation Rates:

Unwired Homes 32.00
Prewired Homes 21.00
Add'l Connections (initial) 16.00
Add'l Connections (separate) 26.00
Converter Exchanges/Upgrades 10.00
Additional Outlet (monthly charge) .40

Changing Tiers: 2.00

Lease of Remotes: .25

Lease of Converter Boxes:

Converter Box (Non-addressable) .20

Converter Box (Addressable) 2.50

4. As shown in paragraphs 2 and 3 hereof, the Company has undercharged its actual Basic Tier Monthly Rate from the maximum permitted rate by \$.03; undercharged its actual Prewired Homes installation rate from the maximum permitted rate by \$.37; undercharged its actual Additional Connection (separate) rate from the maximum permitted rate by \$.47; undercharged its actual Converter Exchanges/Upgrades rate from the maximum permitted rate by \$.52; and undercharged its actual lease of Converter Box (Non-addressable) rate from the maximum permitted rate by \$.33.

5. As shown in paragraphs 2 and 3 hereof, the Company has overcharged its actual Unwired Homes installation rate from the maximum permitted rate by \$.11; overcharged its actual Additional Connection (initial) installation rate from the maximum permitted rate by \$.05; and overcharged its actual lease of Remote rate from the maximum permitted rate by \$.05.

6. Because the Company's monthly charge of \$.40 for each Additional Outlet is not a permissible charge under the FCC Rules, the Company may not charge its subscribers such monthly charge for each additional outlet.

7. Based on the information submitted by the Company regarding the offsets of undercharges and overcharges from the Company's actual rates for its basic service tier and associated equipment and installations (including the monthly charge for additional outlets) and the maximum permitted rates for its basic service tier and associated equipment and installations it could have charged from September 1, 1993 up to and including July 14, 1994, the Company is not subject to refund liability for said period.

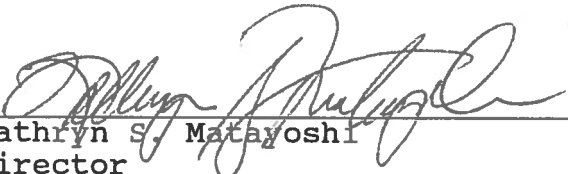
8. The Company may not increase the rates for any of the items listed in paragraph 2 hereof, nor may it institute charges for any other types of service, equipment or installation associated with the basic service tier which are not listed in paragraph 2 hereof, without first complying with applicable law or regulation, including the Amended Rules. With respect to the Company's actual equipment and installation rates that are below the maximum permitted rates, the Company may (but it is not obligated to) increase such rates up to the maximum permitted rates set forth in paragraph 2 hereof in accordance with applicable FCC Rules and guidelines.

9. 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.

10. 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.

11. This rate order becomes effective on the 8th day of March, 1995.

DATED: Honolulu, Hawaii February 23, 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. 167 (Rate Order) in Docket No. 95-02 was duly served upon the following persons at the address shown below by mailing the same, postage prepaid, on this 23th day of February, 1995.

Mr. Don Carroll
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Patti K. Kodama

Patti K. Kodama
Secretary