

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

In the Matter of)
The Chronicle Publishing Company)
dba CHRONICLE CABLEVISION OF HAWAII)
(Hawaii Kai System)) Docket No. 95-04
)
)
)
Filing of Initial Basic Service Rates)
and Associated Charges (FCC Form 393))

DECISION AND ORDER NO. 169
(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 Chronicle 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 15, 1994,¹ and submitted supplemental rate information on August 26, 1994, October 21, 1994, December 23, 1994, February 22, 1995, February 24, 1995, March 8, 1995, March 10, 1995, April 12, 1995, and April 19, 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

¹The FCC Form 393 submitted for the Company's Hawaii Kai system covers Community Unit Identification number CUID HI0003.

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, based upon the financial consultant's worksheet a draft rate table, together with a description of issues/adjustments were prepared for the basic service tier and associated equipment and installation costs, copies of which were 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 April 12, 1995 on the proposed rate order in accordance with Section 16-133-50(a) of the Department's Rules; and

WHEREAS, the Company has chosen to utilize Hourly Service Charge for installations; and

WHEREAS, the Company's rate card dated December, 1993 includes a "Base Installation Charge" of \$7.88, which the Company explains that such charge "does not pertain to any particular service or job. The \$7.88 fee is equivalent to 15 minutes of the \$31.50 hourly service charge and represents related travel and set up time for technicians. This fee is listed solely to notify customers of the minimum charge required to call upon a home";²

²Company's response dated December 22, 1994 to State's third request for supplemental information.

WHEREAS, the FCC Rules provide that installation charges must be based upon a uniform installation charge that is calculated based upon the Hourly Service Charge times the person hours of the visit, or the Hourly Service Charge times the average hours spent per installation visit;³ and

WHEREAS, the Company has elected to utilize the Hourly Service Charge times the person hours of the visit ("HSC") in determining its installation charge; and

WHEREAS, the HSC permits the Company to recover all equipment basket costs including a reasonable profit except for capital costs of remotes, converter boxes and other customer equipment up to the time it is leased to the subscriber;⁴ and

WHEREAS, based upon the FCC Rules and the information provided by the Company, the State finds that the Company's "Base Installation Charge" of \$7.88, as a minimum charge for installation, is inconsistent with the use of HSC under the FCC Rules; and

WHEREAS, the Company represented that the Base Installation Charge of \$7.88 has not been actually charged to subscribers for the period covered under this rate order, but was "instead utilized as an installation rate quote for customer service presentation purposes only";⁵

WHEREAS, as part of the supplemental information for its Rate Filing the Company submitted its actual figure for rent expense of \$60,756;⁶ and

WHEREAS, the effect of \$60,756 of rent expense is an increase of the maximum permitted rate for the HSC from \$31.51 to \$31.66; and

³See In The Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order, Further Notice of Proposed Rulemaking ("First Report and Order"), MM Docket 92-266, FCC 93-177, released May, 3, 1993, at paragraph 296.

⁴See First Report and Order, at paragraph 295.

⁵See Company's letter dated March 8, 1995.

⁶See Company's response dated December 22, 1994 to State's third request for supplemental information.

WHEREAS, the Company has stated that "Other Payroll costs in Schedule B should be reduced by \$13,958 (1/2 employee or 25% of \$55,831) to agree with labor hours included in determining the HSC";⁷ and

WHEREAS, based on the Company's statement, the effect of reducing the Other Payroll costs is a \$.75 reduction of the maximum permitted rate for the HSC from \$31.51 to \$30.76, and a \$.02 increase in the maximum permitted rate for the Basic Service Tier from \$8.82 to \$8.84; and

WHEREAS, the Company did not include contract labor hours in determining its repair costs for converters in Schedule B, and according to the Company, an estimate of a total of 274 hours were excluded from its analysis;⁸ and

WHEREAS, although the inclusion of the 274 converter repair hours had no significant effect on the maximum permitted rate for the basic service tier, the inclusion of said hours reduces the maximum permitted rate for the HSC by \$.53 from \$31.51 to \$30.98; and

WHEREAS, the Company provided certain information which required adjustments to the maximum permitted rate for the Basic Service Tier, associated equipment and HSC, as more particularly described below; and

WHEREAS, the Company explained in its supplemental information dated February 24, 1995 that the additional 274 converter repair hours affect Step A, Line 2-Customer Equipment and Installation Percentage (89% rather than 87%), and that the additional hours should be added to Step D, Line 16-Total Maintenance/Service Hours; and

WHEREAS, as a result of adjusting said Percentage and Hours described above, the maximum permitted rate for the Basic Service Tier is decreased by \$.02 from \$8.84 to \$8.82, the maximum permitted rate for the HSC is increased by \$.70 from \$30.39 to \$31.09, and the maximum permitted rate for Lease of Converters is increased by \$.04 from \$2.04 to \$2.08; and

⁷See Company's response dated December 22, 1994 to State's third request for supplemental information.

⁸See Company's response dated December 22, 1994 to State's third request for supplemental information.

WHEREAS, changes in the Company's channel line-up occurred after September 1, 1993 which resulted in the addition of two Basic channels and the reduction of one Tier 2 channel with no corresponding changes to the number of satellite channels; and

WHEREAS, in December, 1993 "Olelo/Kaiser High School" was shifted from the Expanded Satellite Tier to the Limited Tier, and "Views" was added to the Limited Tier; and

WHEREAS, because of the timing of the Company's Rate Filing, the State reserves its right to determine the effect of the above-noted change in channel line-up in connection with the State's review of the Company's FCC Form 1200 series; 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;⁹ and

WHEREAS, by that certain letter agreement dated September 28, 1994, between the Company and the State, 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, 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;

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

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

permitted basic service rates the cable company could have charged during the applicable period of review;¹⁰ and

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 Tier:

Per Channel Rate	\$0.5882
Basic Service Tier (Assuming 15 channels)	8.82

Equipment and Installation Rates:

Hourly Service Charge	\$31.09
Base Install. Charge	Not Permitted

Changing Tiers: 1.99

Lease of Remotes: .60

Lease of Converters: 2.08

The Company shall refund that portion of actual rates paid by subscribers plus interest for the basic service tier and associated equipment and installations described in this rate order to the extent such actual rates exceeded the maximum permitted rates approved hereunder, subject to offsets of undercharges with overcharges in accordance with the Commission's rules and guidelines. 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, if any, the Company

¹⁰See 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, released December 28, 1994.

shall implement the rate refund ordered hereunder within sixty (60) days after the effective date of this rate order.

3. The Company's reported **actual rates**, exclusive of franchise fees, in effect as of September 1, 1993 for the Basic Service Tier, and associated equipment and installations were as follows:

Basic Service Tier:

Basic Tier Monthly Rate (Assuming 15 channels)	\$7.63
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Equipment and Installation Rates:

Hourly Service Charge	\$31.50
Base Install. Charge	7.88

<u>Changing Tiers:</u>	1.99
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<u>Lease of Remotes:</u>	0.55
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<u>Lease of Converters:</u>	2.05
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4. For the period commencing on September 1, 1993 and ending on the date the Company restructured its rate restructuring to comply with the Amended Rules, the initial permitted rates for the Basic Tier Monthly Rate, Lease of Remotes, Lease of Converters and Changing Tiers shall be the actual rates charged by the Company shown in paragraph 3 hereof, and the initial permitted rate for the Hourly Service Charge shall be the adjusted maximum permitted rate shown in paragraph 2 hereof.

5. As shown in paragraphs 2 and 3 hereof, the Company has undercharged its actual Basic Tier Monthly Rate from the maximum permitted rate by \$1.19; undercharged its actual Lease of Remote rate from the maximum permitted rate by \$.05; undercharged its Lease of Converters actual rate from the maximum permitted rate by \$.03, and overcharged its actual HSC rate from the maximum permitted rate by \$0.41. The Company's actual rate for Changing Tiers was equal to the maximum permitted rate for the same. Based on the Company's representation that it has not actually charged to subscribers the Base Installation Charge of \$7.88, the Company is not subject to refund liability with respect to such item.

6. The Company may not increase any of the rates set forth in paragraph 2 or 4 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, franchise fees and general excise taxes) 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; identifies the items and the rates therefor with respect to calculating the offsets of undercharges with overcharges in accordance with the Commission's rules and guidelines; 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 all rights to address the above noted change in channel line-up which resulted in the addition of two addition Basic channels and the reduction of one Tier 2 channel and to take appropriate action with respect thereto in connection with the Company's rate filing under the FCC Form 1200 series. The Company shall comply with any orders the State may issue regarding this outstanding rate-related matter, and the State reserves all rights it has under the FCC Rules, including the right to make appropriate adjustments to the Company's rates and to order refunds.

9. The State reserves the right to reopen this docket and to modify this rate order if, at any time, it determines that information the Company provided to the State is incorrect or misleading 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 fifth day of June, 1995.

DATED: Honolulu, Hawaii May 19, 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. 169 (Rate Order) in Docket No. 95-04 was duly served upon the following persons at the address shown below by mailing the same, postage prepaid, on this 19th day of May, 1995.

Mr. Ross Waggoner
Chronicle Cablevision
350 Hooana Street
Kahului, Hawaii 96732

Mr. Johnnie Giles
Western Communications
Two Rincon Center
121 Spear Street, Suite 203
San Francisco, CA 94105

Patti K. Kodama
Patti K. Kodama
Secretary