

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

In the Matter of)
JONES SPACELINK OF HAWAII, INC.)
(Hilo System))
) Docket No. 95-06
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)
)
Filing of Initial Basic Service Rates)
and Associated Charges (FCC Form 393))

DECISION AND ORDER NO. 171
(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 Jones Spacelink of Hawaii, Inc. (the "Company")¹ 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 for its Hilo system and submitted its FCC Form 393 for its Volcano system on July 5, 1994;² and

¹The Company's FCC Form 393s for its Hilo and Volcano systems were submitted by Jones Spacelink, Ltd. and subsequent information in connection therewith were submitted by Jones Intercable, Inc. The Company was a wholly owned subsidiary of Jones Spacelink, Ltd. On or about December, 1994 Jones Intercable, Inc. acquired all of the assets of Jones Spacelink, Ltd. including the Company.

²By letter dated October 11, 1994, the Company notified the State that the Volcano headend was collapsed with its Hilo headend, and that there is no revised FCC Form 393 for Volcano. Consequently, for purposes of this rate order, the communities and

WHEREAS, the Company submitted supplemental information on August 16, 1994, submitted its revised FCC Form 393 (dated September 30, 1994) on October 12, 1994, and submitted supplemental information on April 18, 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 an accounting 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 review of the Company's Rate Filing; and

WHEREAS, based upon the financial consultant's worksheet a draft rate table and an open issues/request for supplemental information 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 comment dated May 16, 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 use an average rate for installations; and

CUID Nos. HI0022 (Hilo), HI0044 (Pahoa) and HI0096 (Volcano) are treated as within the Company's Hilo system.

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

WHEREAS, the Company's calculations for Federal Income Tax expenses in Schedules A and C of the FCC Form 393 were based on the application of a flat 34% corporate tax rate; and

WHEREAS, the FCC in its Question and Answer dated July 30, 1993 (Question 14) noted that "federal tax expense(s) should be based upon a pre-tax return on investment ... (and) the rate applied to amounts in Column F (Schedules A and C) should be a grossed-up rate which would be $\text{Tax Rate}/(1-\text{Tax Rate})$. For a federal tax rate of .34, the grossed-up rate would be .515 (calculated as $.34/(1-.34)$ "); and

WHEREAS, an adjustment to Schedules A and C of the Company's FCC Form 393 is required to reflect the application of the grossed-up federal tax rate; and

WHEREAS, the effect of the adjustment is a reduction of the maximum permitted rate for the Basic Service Tier from \$8.13 to \$8.12, and an increase of the maximum permitted hourly service charge from \$23.62 to \$23.79; and

WHEREAS, based upon the Company's accumulated depreciation figures, the deferred tax balances in Schedule C of the Company's FCC Form 393 should be negative; and

WHEREAS, an adjustment of the Company's reported figures for Deferred Taxes is required to reflect the negative deferred tax balances; and

WHEREAS, the effect of the adjustment is a reduction of the maximum permitted rate for the Basic Service Tier from \$8.13 to \$8.11, and there is no effect on the maximum permitted hourly service charge; and

WHEREAS, in its FCC Form 393 the Company calculated an Inflation Adjustment Factor (1.0455) as of the end of April, 1994 using the GNP-PI factor for the fourth quarter of 1993 (126.9); and

WHEREAS, the U.S. Department of Commerce released revised inflation data including GNP-PI figures of 122.3 for the third quarter of 1992 and 127.5 for the first quarter of 1994; and

WHEREAS, using the updated figures from the U.S. Department of Commerce the Company's Inflation Adjustment Factor of 1.0455 is adjusted to 1.0449 for the period ending April, 1994; and

WHEREAS, the effect of the adjustment is a reduction of the maximum permitted rate for the Basic Service Tier from \$8.13 to \$8.12, and there is no effect on the maximum permitted hourly service charge; and

WHEREAS, the State requested clarification as to why the Company's "Transfer Service", "Relocate Outlet(s)" and "VCR/Trouble Call" are shown in the Company's rate sheet in effect as of September 1, 1993 but were not included in the Company's FCC Form 393;³ and

WHEREAS, the Company's responses were as follows:⁴

Transfer Service was included in the subsequently filed FCC Form 393. For an initial wiring of a home, transfer service entails the same installation procedures and time as an installation of an unwired home, i.e. "Install 1st Outlet". For the hook-up of a prewired home, transfer service entails the same installation procedures and time as an installation of a pre-wired home, i.e. "Reconnect Service". In both cases we elected to charge a much smaller rate of \$15.00 as we desired to charge a reduced installation rate to an existing customer, yet still recover a portion of our total cost to complete the installation.

Relocate Outlet requires the same installation procedures and time, on average, as the installation of an additional outlet on a separate trip to the customer's home. Therefore, this rate was included on the subsequently filed FCC Form 393, but for clarity to the customer, the type of service is reflected as a "Relocate Outlet" on the rate card.

VCR/Trouble call was reflected under FCC Form 393, Part 1, Other Installations, Item 1, but the description was erroneously omitted. This installation task is generally referred to as "Installation/trouble shoot

³See State's letter dated April 6, 1995 (re: Jones Spacelink of Hawaii, Inc. (FCC Form 393), Open Issues/Request for Supplemental Information).

⁴See Company's letter dated April 18, 1995 (re: Open Issues/Request for Supplemental Information - Form 393, Hilo, Paho, Volcano and Honokaa). It is noted that "Transfer Service", "Relocate Outlet" and "VCR/Trouble Call" were not separately listed on the revised FCC Form 393 (dated September 30, 1994 but submitted on October 12, 1994) Part 1, page 2, Step B of Part III (installation charges), and on Schedule D of Part III.

customer equipment". On the average, it takes our installation or service technician one hour to drive to the customer's home, trouble shoot and correct the problem, explain the proper use of the equipment and complete the service call. Therefore, the allowable charge at one hour with an hourly service charge of \$23.57 is a rate of \$23.57. This charge is only made if the problem is customer related and not caused by our service.

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;⁵ 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; 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;⁶ and

⁵See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

⁶See e.g. 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.

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 **adjusted 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	\$0.7360
Basic Tier Monthly Rate (Assuming 11 channels)	8.10

Equipment and Installation Rates:

Install of Unwired Homes	\$35.69
Install of Prewired Homes	29.74
Additional Outlet (initial)	17.84
Additional Outlet (separate trip)	23.79
Reconnect Additional Outlet (new trip)	23.79
Reconnect Additional Outlet (same trip)	17.84
Transfer Service	29.74
Relocate Outlet	23.79
VCR/Trouble Call	23.79

Changing Tiers: 11.78

Lease of Remotes: .28

Lease of Converters:

Addressable	1.19
Non-addressable	.86

The Company shall refund that portion of actual rates paid by subscribers plus interest, franchise fee and general excise taxes for the Basic Service Tier to the extent such actual rate exceeded the adjusted maximum permitted rate 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 shall implement the rate refund ordered hereunder within sixty (60) days after the effective date of this rate order.

3. The Company's reported initial **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 11 channels)	\$8.27
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Equipment and Installation Rates:

Install of Unwired Homes	\$33.98
Install of Prewired Homes	28.16
Additional Outlet (initial)	16.50
Additional Outlet (separate trip)	22.33
Reconnect Additional Outlet (new trip)	22.33
Reconnect Additional Outlet (same trip)	16.50
Transfer Service	14.56
Relocate Outlet	22.33
VCR/Trouble Call	22.33

<u>Changing Tiers:</u>	11.17
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<u>Lease of Remotes:</u>	0.00
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Lease of Converters:

Addressable	1.00
Non-addressable	.73

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 rate for the Basic Service Tier shall be \$8.10 (adjusted maximum permitted rate), the initial permitted rate for Lease of Remotes shall be \$.28 (adjusted maximum permitted rate), and the initial permitted rates for Equipment and Installation,

Changing Tier, and Lease of Converters shall be the initial actual rates charged by the Company shown in paragraph 3 hereof.

5. 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 FCC orders, law or regulation, including the Amended Rules.


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, 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.

7. 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.

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 second day of June, 1995.

DATED: Honolulu, Hawaii May 18, 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. 171 (Rate Order) in Docket No. 95-06 was duly served upon the following persons at the address shown below by mailing the same, postage prepaid, on this 18th day of May, 1995.

Ms. Carol Fanning
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Hilo, Hawaii 96721

Mr. Brad Amman
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Englewood, Colorado 80112

Patti K. Kodama

Patti K. Kodama
Secretary