

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

In the Matter of Time Warner )  
Entertainment Company, L.P. dba )  
HAWAIIAN CABLEVISION )  
 )  
 ) Docket No. 95-10  
 )  
Filing of Basic Service Rates )  
(FCC Form 1200 Series) )

DECISION AND ORDER NO. 175  
(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 ("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 Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company (the "Company")<sup>1</sup> 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, by Decision and Order No. 164 issued on January 12, 1995, the State approved in part and disapproved in part the Company's initial rates for the basic service tier and associated equipment and installations (FCC Form 393) in effect for the period September 1, 1993 through July 14, 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

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<sup>1</sup>By Decision and Order No. 174 issued on October 2, 1995, the State approved the transfer of the cable communications franchise held by Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company to Time Warner Entertainment Company, L.P.

WHEREAS, according to the tariff issued by the Company on June 14, 1994 and effective as of July 14, 1994, the monthly basic service tier rate is listed as \$7.50, which is the rate the Company seeks to justify as its maximum permitted rate in its FCC Form 1200; and

WHEREAS, in connection with justifying the Company's rate for the basic service tier in effect after July 14, 1994, the Company submitted FCC Forms 1200, 1205, and 1215 (sometimes hereinafter collectively referred to as "Rate Filing") to the State on August 22, 1994,<sup>2</sup> and in response to the State's requests submitted supplemental rate information on November 5, 1994, July 14, 1995, September 12, 1995, and October 11, 1995; and

WHEREAS, on September 8, 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 Rate Filing; 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 December 5, 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 Company has the burden of proving by a preponderance of the evidence that its existing rates as of the date of regulation are reasonable under the FCC Rules;<sup>3</sup> and

WHEREAS, the State retained a financial consultant to assist it in the rate review process; and

WHEREAS, the State prepared a proposed rate order, a copy of which was provided to the Company prior to the issuance of this Rate Order; and

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<sup>2</sup>The Rate Filing submitted for the Company's system at Lahaina, Maui covers Community Unit Identification number CUID HI0002.

<sup>3</sup>See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

WHEREAS, the State has reviewed the Rate Filing and other evidence and information, and has received and considered the Company's initial comments dated November 17, 1995 and November 24, 1995 and the Company's additional comments dated January 11, 1996 on the proposed rate order in accordance with section 16-133-50(a) of the Department's Rules; and

WHEREAS, the FCC Form 1200 series are the forms an operator may use to justify the reasonableness of its cable rates under the Amended Rules beginning May 15, 1994, or July 14, 1994 if the operator took advantage of the maximum refund deferral period under the Amended Rules;<sup>4</sup> and

WHEREAS, the FCC Form 1200 is used to determine the Company's maximum permitted programming rates in effect as of July 14, 1994, the FCC Form 1205 is used to calculate the Company's permitted equipment and installation charges and costs, and the FCC Form 1215 is used to collect information about ala carte packages; and

WHEREAS, because the Company has not sought approval for its equipment and installation rates in its FCC Form 1205, only those sections of the Company's FCC Form 1205 which impacted the programming rates computed in the FCC Form 1200 were completed;<sup>5</sup> and

WHEREAS, as of March 31, 1994 the Company treated all twelve (12) channels on its basic service tier<sup>6</sup> as non-broadcast channels as noted in Module C, Line C2 of FCC Form 1200; and

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<sup>4</sup>As noted above, the Company gave notice to the State that it took advantage of the maximum refund deferral period under the Amended Rules.

<sup>5</sup>According to FCC Form 1205 instructions, regulated equipment and installation charges may only be updated annually. Because the Company used the FCC Form 393 in establishing its regulated equipment and installation charges as of September 1 1993, the Company may not adjust its charges for regulated equipment and installations until after September 1, 1994. Thus, in accordance with FCC Form 1205 instructions, the Company did not complete Schedule D of FCC Form 1205.

<sup>6</sup>The channels on the basic service tier include channel 2 - NBC, channel 3 - pay per view previews, channel 4 - ABC, channel 5 - KFVE, channel 7 - visitor channel, channel 9 - CBS, channel 11 - PBS, channel 12 - KIKU (formerly KHAI), channel 13 - KHNL-Fox, channel 24 - local access, channel 26 - educational access, and channel 27 - government access.

WHEREAS, FCC Form 1200 defines "non-broadcast channels" as channels other than broadcast signals that are receivable off-the-air by the cable system, or stated another way "broadcast signals received via satellite or relayed to the cable system via microwave and not receivable off-the-air by the cable system are considered non-broadcast channels";<sup>7</sup> and

WHEREAS, the State requested supplemental rate information regarding whether any of the designated non-broadcast channels noted in Line C2 of the Company's FCC Form 1200 were available directly off-the-air in the community, and the Company responded that its cable system does not receive any channels off-air;<sup>8</sup> and

WHEREAS, in response to the State's further inquiry, the Company later informed the State that seven (7) of the twelve (12) channels on its basic service tier are receivable off-the-air by the Company's cable system;<sup>9</sup> and

WHEREAS, the Company, however, in its written comments dated November 17, 1995 on the proposed rate order, asserts that the Local Broadcasts were not receivable off-the-air as of April 16, 1993 and continuing throughout the period at issue in this proceeding because (a) the signal quality of the broadcast stations at the Company's headend has "electrical interference and low signal strength off-the-air", (b) the Local Broadcasts' off-the-air visual signals "do not comply with Federal and State technical standards"<sup>10</sup>, and (c) the Local Broadcasts' do not qualify as "must carry" stations under Federal law because of "poor signal quality" notwithstanding the Company's must carry

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<sup>7</sup>In the Matter of Sammons Communications, Inc., Memorandum Opinion and Order, DA 95-1748 at page 2 (Cable Services Bureau rel. August 15, 1995) (emphasis in original).

<sup>8</sup>See Company's response to question 4 of State's second request for supplemental information filed on July 14, 1995.

<sup>9</sup>The seven (7) local broadcast television stations are channel 2 - NBC, channel 4 - ABC, channel 5 - KFVE, channel 9 - CBS, channel 11 - PBS, channel 12 - KIKU, and channel 13 - FOX (hereinafter sometimes collectively referred to as "Local Broadcasts").

<sup>10</sup>It is noted that the Company's reliance on 47 C.F.R. section 605(a)(4) and section 16-131-40(3), HAR, is misplaced. Said sections are not directly applicable with respect to testing of television broadcast off-air signal quality.

notification letters of May 3, 1993 to the Local Broadcasts stations;<sup>11</sup> and

WHEREAS, the Company further asserts that because of the Local Broadcasts' poor signal quality at the Company's principal headend located in Lahaina, Maui, the Company uses its receiver on the island of Molokai to receive and transmit via microwave the Local Broadcasts to its principal headend; and

WHEREAS, the Company submitted additional information in support of its assertion that the Local Broadcasts are not receivable off-the-air at the Company's principal headend for purposes of Line C2 of the FCC Form 1200;<sup>12</sup> and

WHEREAS, the Company states that although "some local broadcasters have placed translators or receivers at the 10,000 foot elevation of Mount Haleakala located at South Central Maui ... These repeater signals serve South, Central, and parts of East Maui, ... West Maui, however, is blocked from these signals by the West Maui Mountains which are more than 5,000 feet high";<sup>13</sup> and

WHEREAS, it is noted that the distance between the Local Broadcasts' transmitters located on Oahu, Hawaii and the Company's principal headend is approximately 80 miles, that the location of the principal headend site is at near sea level, and that the Company does not have very high gain receiving antennas at its principal headend; and

WHEREAS, in light of such circumstances it appears that the Company's utilization of a microwave system to enhance the reception of the Local Broadcasts' signals at its principal headend is reasonable, and thus the seven (7) television broadcast channels should be classified as "non-broadcast" for purposes of Line C2 of the Company's FCC Form 1200; and

WHEREAS, by that certain letter agreement dated August 30, 1995, between the Company and the State, the Company agreed to waive the one-year refund liability limitation 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 regulated

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<sup>11</sup>Notwithstanding anything to the contrary, this Rate Order does not address nor shall it be deemed to affect the "must-carry" status of the Local Broadcast's carriage on the Company's cable system.

<sup>12</sup>See Company's written comments filed on January 11, 1996.

<sup>13</sup>Id.

basic service rates described in the Company's Rate Filing were effective; and

WHEREAS, this Rate Order does not apply to the Company's FCC Form 1210 filed with the State on August 2, 1995<sup>14</sup> and the Company's FCC Form 1205 filed with the State on March 2, 1995;<sup>15</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted rate of \$7.50 per month for the basic service tier is approved.

2. The Company's maximum permitted monthly rate, exclusive of franchise fees, for the basic service tier (assuming a 12-channel basic service tier) as of July 14, 1994 and continuing up to the effective date of any increase implemented under the Company's FCC Form 1210 filed on August 2, 1995 shall be \$7.50. The Company's maximum permitted rates for equipment and installations set forth in Decision and Order No. 164 and described below shall continue to be in effect as of July 14, 1994 and continuing up to the effective date of any adjustment implemented under the Company's FCC Form 1205 filed on March 2, 1995;<sup>16</sup>

INSTALLATION RATES:

Unwired Homes	\$30.53
Prewired Homes	15.26
Add'l Connections (initial)	10.18
Add'l Connections (separate)	15.26
Connect VCR (initial)	5.09
Connect VCR (separate)	15.26
Reconnect A/O (initial)	5.09
Reconnect A/O (separate)	10.18

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<sup>14</sup>The FCC Form 1210 is used to adjust the Company's programming rates to reflect changes in external costs, channel additions, and inflation. The Company's FCC Form 1210 will be reviewed in a subsequent separate proceeding.

<sup>15</sup>The reasonableness of the Company's charges for equipment and installation set forth in the Company's FCC Form 1205 will be reviewed in a subsequent separate proceeding.

<sup>16</sup>Pursuant to said Decision and Order No. 164, for the period commencing September 1, 1993 and ending on the date the Company implemented its rate restructuring to comply with the Amended Rules, the Company's actual or initial permitted rates for Lease of Remote Control is at \$0.09, Lease of Converter Box (addressable) is at \$1.25, and Upgrade/Downgrade (addressable) is at \$1.95.

Install Converter (separate)	15.26
Service Call	10.18
Install Converter (initial)	No Rate Permitted
Customer Accommodation	No Rate Permitted
Upgrade/Downgrade (non-addressable/ requiring service call)	10.18
Upgrade/Downgrade (addressable)	2.00

EQUIPMENT RATES:

Lease of Converter (addressable)	3.99
Lease of Remote	.30


3. The Company may not increase its basic service tier rate, nor may it institute charges for any other types of service, equipment or installation associated with the basic service tier without first complying with applicable law or regulation, including the Amended Rules.

4. The State reserves all rights it has under the FCC Rules including the right to review the Company's FCC Form 1210 filed on August 2, 1995 and FCC Form 1205 filed on March 2, 1995, and to establish reasonable rates for the basic service tier and associated equipment and installations, in the event the State determines that the proposed rates or charges are unreasonable under FCC Rules, including any modifications or amendments to such rules.

5. 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 or misleading in any material manner.

6. This Rate Order shall be effective as of the date hereof.

DATED: Honolulu, Hawaii January 22, 1996.

  
 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. 175 in Docket No. 95-10 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 22nd day of January, 1996.

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Secretary