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

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| In the Matter of Time Warner Entertainment Company, L.P. dba Sun Cablevision | ) | |
| | ) | Docket No. 95-11 |
| Filing of Basic Service Rates (FCC Form 1200 Series) | ) | |

**DECISION AND ORDER NO. 176**
(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 American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii[1] (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, by Decision and Order No. 165 issued on January 26, 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

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[1]By Decision and Order No. 173 issued on June 30, 1995, the State approved the transfer of the cable communications franchise held by American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii to Time Warner Entertainment Company, L.P.

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, according to the Company's rate card effective as of July 14, 1994 the monthly basic service tier rate is listed as $9.00, which is the rate the Company seeks to justify as the 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 26, 1994,[2] and in response to the State's requests submitted supplemental rate information on November 3, 1994, October 23, 1995, November 22, 1995, and January 25, 1996; 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 State retained a financial consultant to assist it in the rate review process; and

WHEREAS, the State prepared a proposed rate order, copies of which were provided 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; and has received and considered the Company's comments, filed on May 9, 1996, on the proposed rate

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[2]The Rate Filing submitted for the Company's system at Kailua-Kona, Hawaii, covers Community Unit Identification numbers CUID HI0023-HI0032 inclusive, HI0056, HI0075 and HI0078.

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;[3] 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;[4] 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;[5] and

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[3]As noted above, the Company gave notice to the State that it took advantage of the maximum refund deferral period under the Amended Rules.

[4]According to FCC Form 1205 instructions, regulated equipment and installation charges may only be updated annually, and only the sections of the Company's FCC Form 1205 that are necessary for computing the Monthly Equipment and Installation Cost per Subscriber amount need to be completed. 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. See TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA 95-2269 (Cable Services Bureau rel. November 14, 1995). Thus, in accordance with FCC Form 1205 instructions, the Company did not complete Schedule D of FCC Form 1205.

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

WHEREAS, in Line A6 of the Company's FCC Form 1200 the Company reported an unadjusted monthly basic service tier rate of $9.87 and an unadjusted monthly cable programming services ("CPS") tier rate of $10.76 as of March 31, 1994; and

WHEREAS, by said Decision and Order No. 165 the State established the maximum permitted monthly basic service tier rate of $8.43, and by Memorandum Opinion and Order the FCC established the maximum permitted monthly CPS tier rate of $10.66;[6] and

WHEREAS, the Company's actual monthly rates for the basic service tier and the CPS tier as of March 31, 1994 should reflect the maximum permitted rates determined by the State and FCC, respectively, in order to establish the maximum permitted rates under the FCC's Amended Rules;[7] and

WHEREAS, adjusting Line A6 of the Company's FCC Form 1200 to reflect the above stated maximum permitted rate for the basic service tier and the adjusted CPS tier rate of $10.66, reduces the Company's maximum permitted monthly basic service tier rate by $.60 or from $9.00 to $8.40;[8] and

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[6]In the Matter of American Cable TV Investors 4, Ltd., Memorandum Opinion and Order, DA 95-1098 (Cable Services Bureau rel. May 19, 1995). However, the Company filed at the FCC its petition for reconsideration of DA 95-1098, and the FCC issued a stay of enforcement of the above-referenced decision. See In the Matter of Petitions For Stay of Action, Pending Resolution of Applications for Review or Petitions for Reconsideration, Order, DA 95-1795 (Cable Services Bureau rel. August 17, 1995). See also In the Matter of TCI Communications, Inc., Order, FCC 96-187 (rel. April 26, 1996) (The FCC's resolution of CPS tier rate complaints did not resolve the Company's petition for reconsideration).

[7]See In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, Second Order On Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38 (rel. March 30, 1994) at paragraph 128.

[8]In its written comments filed on May 9, 1996, the Company states that because its petition for reconsideration regarding the Company's CPS tier rate is still pending before the FCC, the adjustment to Line A6 of the Company's FCC Form 1200 should reflect the Company's CPS tier rate of $10.76 (unadjusted rate) and not $10.66 (FCC adjusted rate). By using the unadjusted CPS tier rate of $10.76, the Company's maximum permitted rate for the basic service tier is increased by $.04 or from $8.40 to $8.44. Accordingly, until otherwise ordered by the State as provided in this Rate Order, the Company's maximum permitted rate for the basic

WHEREAS, with respect to additional outlets the FCC's instructions for completing Line C6 of the FCC Form 1200 state:

> [e]nter the average monthly number of additional outlets charged to subscribers in your fiscal year for 1993. Include all additional residential outlets for each subscriber other than the primary outlet. This average should be computed over just those months for which there was a charge for additional outlets; and

WHEREAS, the Company included additional outlets in Line C6 of its FCC Form 1200 for which there were no charges in any month of fiscal year 1993, and the Company after September 1, 1993 ceased charging for all additional outlets that were previously charged; and

WHEREAS, the Company in its response to the State's second request for supplemental information stated that its charge for additional outlets "was embedded in the basic service rate as part of the 'whole house' policy adopted by the Company in the late 1980's"; and

WHEREAS, the Company's statement of embedding or bundling the charges for additional outlets with the basic service tier rate for purposes of Line C6 of the FCC Form 1200 was not accepted by the FCC;[9] and

WHEREAS, adjusting the Company's FCC Form 1200 to include only the average number of additional outlets for the months for which there were charges for additional outlets reduces the number of additional outlets noted in Line C6 of the Company's FCC Form 1200 from 9,252 to 539, which in turn reduces the Company's calculated "benchmark rate" by $1.21 with no corresponding effect to the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, as of March 31, 1994 the Company treated ten (10) of the eleven (11) channels on the basic service tier[10] as

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service tier shall be $8.44.

[9]See TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA 95-2269 (Cable Services Bureau rel. November 14, 1995).

[10]The eleven (11) channels on the basic service tier include channel 2 - NBC, channel 4 - ABC, channel 6 - The Big Island, channel 7 - educational and government access, channel 8 - program guide, channel 9 - CBS, channel 10 - public access, channel 11 - PBS, channel 12 - PPV Preview, channel 13 - Fox, and channel 14 - WTBS.

non-broadcast channels as noted in Module C, Line C2 of FCC Form 1200; and

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"[11]; and

WHEREAS, the State requested from the Company supplemental information explaining why four (4) of the local broadcast stations - channels 2, 4, 9 and 13 are classified as "non-broadcast" and thus not receivable off-the-air by the Company's cable system;[12] and

WHEREAS, the Company responded that "off-the-air signals of the four (4) stations at [the Company's] headend suffer from unacceptable levels of electrical interference", and that such signals "are highly susceptible to inversions";[13] and

WHEREAS, the Company further stated that the off-the-air signal of channel 13 - KHNL as of April 22, 1993, did "not meet the FCC and State's minimum visual signal strength requirement of at least 0 Dbmv",[14] and that it also does not "meet the FCC's minimum signal level to qualify for must-carry status" under Federal law;[15] and

WHEREAS, the Company asserts that because the signals of the four (4) local broadcast stations are inadequate at the Company's principal headend, the Company uses its receiver on the island of

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[11]In the Matter of Sammons Communications, Inc., Memorandum Opinion and Order, DA 95-1748 at page 2 (Cable Services Bureau released August 15, 1995) (emphasis in original).

[12]See State's Third Request dated November 16, 1995.

[13]See Company's written response to State's third request filed on December 1, 1995, and Company's additional comments filed on January 25, 1996.

[14]It is noted that the Company's reliance on Federal and State technical standards is misplaced, and that the standards referred to are not directly applicable with respect to testing of television broadcast off-the-air signal quality.

[15]Notwithstanding anything to contrary, this Rate Order does not address nor shall it be deemed to affect the "must carry" status of the four local television broadcast station's carriage on the Company's cable system.

Maui to receive and transmit the signals of said local broadcast stations to its principal headend via microwave;[16] and

WHEREAS, the Company submitted additional information in support of its assertion that the four local television broadcast stations' signals are not receivable off-the-air at the Company's principal headend for purposes of Line C2 of FCC Form 1200;[17] and

WHEREAS, the Company states although some of the local television broadcast stations have translators or receivers at the 10,000 foot elevation of Mount Haleakala, Maui, are intended to serve the islands of Maui and Hawaii, they "do not eliminate the reception problem caused by changes in weather conditions and temperatures ... The off-the-air signals must travel through various atmospheric temperature layers from local broadcasters' translators ... on Mount Haleakala to [the Company's] receiver at the 3,600 elevation at Kaupulehu, North Kona ... [which] adversely affects the off-the-air signal quality of the channels in question, inhibiting the video images and audio signals of stations transmitted off-the-air";[18] and

WHEREAS, it is also noted that the distance between Mount Haleakala, Maui and Kaupulehu, Hawaii, is approximately 69 miles; and

WHEREAS, the Company also states that its microwave system enhances the reception of the local broadcast signals from Mount Haleakala, which would otherwise be "'snowy,' [with] indistinguishable video images and audio signals overwhelmed by static and other interferences";[19] and

WHEREAS, in light of such circumstances, it appears that the Company's use of a microwave system to enhance the reception of the local television broadcast stations' off-air signals is reasonable, and thus the four local television broadcast stations 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 June 2, 1995, between the Company and the State, the Company agreed to waive the one-year refund liability limitation contained in 47

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[16]The microwave shot from Mount Haleakala, Maui is received by the Company's receiver at Kaupulehu, Hawaii and then transmitted to the Company's principal headend at Kailua-Kona, Hawaii.

[17]See Company's written comments filed on January 25, 1996.

[18]Id.

[19]See Company's written comments filed on December 1, 1996.

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 basic service rates described in the Company's Rate Filing were effective;[20] and

WHEREAS, this Rate Order does not apply to the Company's amended FCC Form 1210 filed with the State on February 21, 1995[21] and the Company's FCC Form 1205 filed with the State on February 27, 1995;[22]

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted rate for the basic service tier is disapproved.

2. The Company's maximum permitted monthly rate, exclusive of franchise fees and taxes, for the basic service tier (assuming a 11-channel basic service tier) as of July 14, 1994 and continuing up to the effective date of any increase implemented under the Company's amended FCC Form 1210 filed on February 21, 1995, shall be $8.44. The Company's initial maximum permitted rates for installations and equipment 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 February 27, 1995, shall be as follows;[23]

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[20]By letter dated January 19, 1996, the Company agreed to extend the December 31, 1995 deadline and to preserve the full refund period described in said June 2, 1995 letter agreement for a reasonable period of time.

[21]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 amended FCC Form 1210 will be reviewed in a subsequent separate proceeding.

[22]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.

[23]The rates for equipment and installation noted in paragraph 2 hereof are the initial maximum permitted rates set by the State in said Decision and Order No. 165, which remain in effect until the Company implements any adjustment under the Company's FCC Form 1205 filed on February 27, 1995. Also, pursuant to said Decision and Order No. 165, 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 rates for Installation of Unwired Homes was at $39.32, Lease of Remote was at $0.12, Lease of Converter (addressable) was at $1.47, and Downgrade (non-addressable) was at $6.55.

INSTALLATION RATES:

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| Unwired Homes | $40.39 |
| Prewired Homes | 17.31 |
| Add'l Connections (initial) | 11.54 |
| Add'l Connections (separate) | 17.31 |
| Connect VCR (initial) | 5.77 |
| Connect VCR (separate) | 11.54 |
| Reassignment of Service | 5.77 |
| Move Outlet | 17.31 |
| Minimum Charge | 11.54 |
| Upgrade/Downgrade (non-addressable) | 11.54 |
| Upgrade/Downgrade (addressable) | 2.00 |

EQUIPMENT RATES:

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| Lease of Converter (addressable) | 2.01 |
| Lease of Converter (non-addressable) | .94 |
| Lease of Remote | .15 |

3. Subject to offsets permitted by FCC Rules, the Company shall refund that portion of the actual rate paid by subscribers plus interest for the basic service tier to the extent such actual rate exceeded the maximum permitted rate approved herein. The Company shall not offset refunds by the amount of any discounts or promotions provided to subscribers. The refund for the basic service tier shall be the difference between the actual rate of $9.00 and the adjusted maximum permitted monthly rate of $8.44. The refund period shall run from July 15, 1994 through July 15, 1995.[24] With respect to each affected subscriber entitled to a refund, the Company shall implement the rate refunds ordered herein within sixty (60) days after the effective date of this Rate Order.

4. As set forth in said Decision and Order No. 165, the Minimum Charge the Company imposes for problems caused by the customer which require a service call shall be the average rate charged to all subscribers for such service calls.

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[24]Although the Company is seeking to adjust upwards its basic service tier rate as set forth in its amended FCC Form 1210, such adjustment only becomes effective once it is approved by the State or once the review period for such approval has lapsed. See 47 C.F.R. section 76.933. In accordance with the Amended Rules, the State extended its review period for the Company's amended FCC Form 1210. Moreover, the proposed adjustment sought by the Company in its amended FCC Form 1210 is not applicable for purposes of the Company's refund liability set forth herein. See In the Matter of TCI Cablevision of Washington, Inc., Consolidated Order, DA 95-631 (Cable Services Bureau released March 29, 1995).

5. 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.[25] The Company shall reduce its current rate for the basic service tier so that such rate does not exceed the maximum permitted rate approved in paragraph 2 hereof. The Company shall implement said prospective rate reduction not later sixty (60) days from the effective date of this Rate Order.

6. Within fifteen (15) 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 applicable taxes) ordered in paragraph 3 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 rates therefor with respect to calculating the offsets of undercharges with overcharges in accordance with FCC 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 obligation to submit such a plan shall not affect the Company's obligation to implement rate refunds as described in paragraph 3 hereof.

7. The State reserves all rights it has under FCC Rules including the right to review the Company's amended FCC Form 1210 filed on February 21, 1995 and the Company's FCC Form 1205 filed with the State on February 27, 1995, and to establish reasonable rates for the basic service tier and associated equipment and installation charges, 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.

8. The State shall have the right to issue an order re-establishing the Company's maximum permitted rate for its basic service tier for the period covered by this Rate Order, in the event the FCC denies the Company's petition for reconsideration and affirms its prior determination regarding the Company's CPS tier rate of $10.66, as discussed supra.

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[25]In event the Company implements the proposed adjustment to the Company's basic service tier rate under its amended FCC Form 1210 filed on February 21, 1995, the adjustment must be added to the maximum permitted rate of $8.44 unless otherwise ordered by the State pursuant to paragraph 8 hereof, and not the Company's proposed maximum permitted rate of $9.00.

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 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 12th day of July, 1996.

DATED: Honolulu, Hawaii June 25, 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. 176 in Docket No. 95-11 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 25th day of June, 1996.

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