

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

In the Matter of Time Warner)
Entertainment Company, L.P. dba)
Kamehameha Cablevision (N. Kohala))
)
) Docket No. 95-12
)
Filing of Basic Service Rates)
(FCC Form 1200 Series))

DECISION AND ORDER NO. 177
(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 Kamehameha Cablevision of Hawaii (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 gave the State notice that effective as of July 14, 1994, the Company would restructure its basic service 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 tariff issued by the Company on June 7, 1994 and effective as of July 14, 1994, the monthly basic service tier rate is listed as \$9.14 and the Company also listed

¹By 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 and Kamehameha Cablevision to Time Warner Entertainment Company, L.P.

its actual rates for regulated installation services and equipment; and

WHEREAS, in connection with justifying the Company's rates for the basic service tier and associated installation and equipment charges 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 October 17, 1995, November 2, 1995, and November 17, 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 and charges 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 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

²The Rate Filing submitted for the Company's system at North Kohala, Hawaii, covers Community Unit Identification numbers CUID HI0082, HI0083, and HI0084.

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, 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;⁴ and

WHEREAS, after reviewing the Company's Rate Filing, certain adjustments to the Company's calculations described herein were made in accordance with FCC Rules, which affected the Company's proposed maximum permitted rate for the basic service tier and associated installation and equipment charges; and

WHEREAS, with respect to additional outlets the 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 was no charge 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 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";⁵ and

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

⁴See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

⁵See Company's written response to State's second request filed on November 2, 1995.

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;⁶ and

WHEREAS, adjusting the Company's FCC Form 1200 to include only the average number of additional outlets for the months for which there was a charge for additional outlets reduces the number of additional outlets noted in Line C6 of the Company's FCC Form 1200 from 297 to 7, which in turn reduces the Company's calculated "benchmark rate" by \$0.77 but it does not affect the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, with respect to "capital costs of leased equipment" of the Company's FCC Form 1205, the Company reported 276 converter units in service but the amounts for "gross book value", "accumulated depreciation", and "current provision for depreciation" were understated as only five (5) of the 276 units were represented; and

WHEREAS, adjusting the Company's FCC Form 1205 to include the excluded amounts for "gross book value", "accumulated depreciation", and "current provision for depreciation", increases the "total capital costs of leased customer equipment" in the Company's FCC Form 1205 from \$228 to \$4,814.58; and

WHEREAS, the effect of such adjustment increases the Company's proposed maximum permitted rate for leased converter boxes from \$.25 to \$1.63, which in turn increases the Company's "adjusted monthly equipment and installation cost per subscriber" by \$.4944, which then decreases the Company's proposed maximum permitted rate for the basic service tier by \$.25 from \$9.14 to \$8.89; and

WHEREAS, the Company's rate card in effect as of July 14, 1994 includes an "hourly service charge" of \$23.06; and

WHEREAS, because the Company has chosen to establish average rates instead of an "hourly service charge" for its installation services, the Company's hourly service charge of \$23.06 should not be listed on the Company's rate card; and

WHEREAS, the Company's Rate Filing did not propose certain rates for installation or other services which the Company may have been charging during the refund period; and

⁶See TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA 95-2269 (Cable Services Bureau rel. November 14, 1995).

WHEREAS, the Company did not include in its Rate Filing the "Inside Wiring Maintenance Program" nor any information in support thereof; and

WHEREAS, the Company currently charges subscribers \$.49 per month for its "Inside Wiring Maintenance Program"; and

WHEREAS, the FCC has determined that inside wiring maintenance agreements are rate-regulated;⁷ 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 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; and

WHEREAS, this Rate Order does not apply to the Company's FCC Form 1210 filed with the State on December 15, 1995, FCC Form 1210 filed with the State on September 26, 1995,⁸ and the Company's FCC Form 1205 filed with the State on February 27, 1995;⁹

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's rate for the basic service tier and associated equipment and installation charges are disapproved in part and approved in part as set forth below.

2. The Company's initial 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 FCC Form 1210 filed on December 15, 1994 and FCC Form 1210 filed with the State on September 26, 1995, shall be \$8.89. 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

⁷ML Media Partners, L.P. Trading as Multivision Cable TV, Order, DA 95-1352 (Cable Services Bureau rel. June 19, 1995).

⁸The FCC Form 1210 is used to adjust the Company's programming rates to reflect changes in external costs, channel additions, and inflation. Each of the Company's FCC Forms 1210 will be reviewed in a subsequent separate proceeding.

⁹The 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.

under the Company's FCC Form 1205 filed on February 27, 1995 shall be as follows;

INSTALLATION RATES:

Unwired Homes	\$40.36
Prewired Homes	17.30
Add'l Connections (initial)	11.53
Add'l Connections (separate)	17.30
Connect VCR (initial)	5.77
Connect VCR (separate)	11.53
Reassignment of Service	5.77
Relocate Outlet	17.30
Upgrade/Downgrade (non-addressable)	11.53
Upgrade/Downgrade (addressable)	2.00

EQUIPMENT RATES:

Lease of Converter (addressable)	1.63
Lease of Remote	.13

3. Subject to offsets permitted by FCC Rules, the Company shall refund that portion of actual rates paid by subscribers plus interest for the basic service tier and associated installation and equipment charges to the extent such actual rates exceeded the maximum permitted rates 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 \$9.14 and the adjusted maximum permitted monthly rate of \$8.89. The refund period shall run from July 15, 1994 through July 15, 1995.¹⁰ 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.

¹⁰Although the Company is seeking to adjust upwards its basic service tier rate as set forth in its FCC Forms 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 each of the Company's FCC Forms 1210. Moreover, the proposed adjustments sought by the Company in its FCC Forms 1210 are 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).

4. Within seven (7) days upon request from the State, the Company shall submit to the State a written statement, together with supporting documentation, as to why the \$.49 Inside Wiring Maintenance Program charge is permissible under the FCC Rules. Such justification shall indicate, at a minimum, whether subscribers own their home wiring, and if so, when such ownership was transferred to subscribers; whether the value to subscribers of the Inside Wiring Maintenance Program, as reflected in the \$.49 charge, was removed from the base rate number when the Company calculated its maximum permitted rate for the basic service tier; and whether the charge for the Inside Wiring Maintenance Program is based on the Company's costs, as provided under the FCC Rules.

5. The State reserves all rights to address the reasonableness of the Company's rates for installation or other services not included in the Company's Rate Filing including, but not limited to the Inside Wiring Maintenance Program, and to take appropriate action with respect thereto, and the Company shall comply with any orders the State may issue regarding such outstanding rate related matters. The State reserves all rights it has under the FCC Rules, including the right to establish reasonable rates and to order rate refunds, in the event the State determines that the rates in submissions required by paragraph 4 hereof are unreasonable under the FCC Rules, including any modifications or amendments to such regulations.

6. The Company may not increase its basic service tier rate and associated equipment and installation charges, 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.¹¹ The Company shall reduce its current rates for the basic service tier and lease of remote so that such rates do 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.

7. 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;

¹¹In event the Company implements the proposed adjustment to the Company's basic service tier rate under its FCC Form 1210 filed on December 15, 1994 and/or its FCC Form 1210 filed on September 26, 1995, the adjustment must be added to the maximum permitted rate of \$8.89 and not the Company's actual rate of \$9.14.

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 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 obligations to submit such a plan shall not affect the Company's obligation to implement rate refunds as described in paragraph 3 hereof.

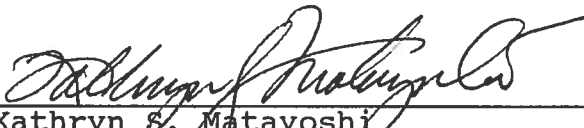
8. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1210 filed on December 15, 1994 and FCC Form 1210 filed on September 26, 1995, and the Company's FCC Form 1205 filed on February 27, 1995, and to establish reasonable rates for the basic service tier and associated equipment and installations 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.

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. 177 in Docket No. 95-12 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 25th day of June, 1996.

MS. STACIE O. KELLEY
TCI Cablevision of California, Inc.
1850 Mt. Diablo Blvd., Suite 200
Walnut Creek, CA 95496

MR. DON CARROLL
Time Warner Entertainment Company, L.P. dba
Kamehameha Cablevision
200 Akamainui Street
Mililani, Hawaii 96789-3999

JOHN T. KOMEIJI, ESQ.
BETH K. FUJIMOTO, ESQ.
Watanabe, Ing & Kawashima
745 Fort Street
5th & 6th Floors
Honolulu, Hawaii 96813
Attorneys for Time Warner Entertainment Company,
L.P. dba Kamehameha Cablevision

Patti K. Kodama
Patti K. Kodama
Secretary