

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)
(Maui System))
) Docket No. 95-14
)
)
Filing of Basic Service Rates)
(FCC Form 1200 Series))

DECISION AND ORDER NO. 179
(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 The Chronicle Publishing Company dba 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, by Decision and Order No. 168 issued on May 19, 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

WHEREAS, according to the Company's rate card effective as of July 14, 1994 the monthly basic service tier rate is listed as \$8.47; 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 12, 1994,¹ and in response to the State's requests submitted supplemental rate information on October 24, 1994, July 6, 1995, September 13, 1995, November 3, 1995, November 30, 1995, December 1, 1995, December 5, 1995, February 9, 1996, and February 13, 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, in connection with the Company's written comments to the proposed rate order, the Company submitted its revised Rate Filing dated May 6, 1996 but filed on May 9, 1996;² and

WHEREAS, the State reviewed the Rate Filing, revised Rate Filing, and other evidence and information; and received and considered the Company's comments dated May 8, 1996 but filed on

¹The Rate Filing submitted for the Company's Maui system covers Community Unit Identification numbers CUID HI0033, HI0034, HI0035, HI0037, HI0039, HI0087, HI0089, and HI0100.

²In the initial Rate Filing, the Company sought to justify \$8.47 as its maximum permitted rate for the basic service tier. In its revised Rate Filing, the Company sought to justify \$8.53 as its maximum permitted rate for the basic service tier.

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 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 FCC Form 1205 has two distinct uses - first, it is "submitted along with the Form 1200 and is used to establish equipment and installation costs in determining initial rates for regulated cable services", which are then "converted to a monthly per subscriber cost that is subtracted from figures derived from programming and equipment revenues in the Form 1200 in order to determine the maximum permitted programming service rate"; second, "Form 1205 is [used] to update permitted regulated equipment and installation charges based on equipment basket costs";⁴ and

WHEREAS, with respect to the use of the FCC Form 1205 in conjunction with the Form 1200, the FCC stated that the Form 1205

is used to establish equipment and installation costs in determining initial rates for regulated cable services. These equipment and installation costs are converted to a monthly per subscriber cost that is subtracted from figures derived from programming and equipment revenues in the Form 1200 in order to determine maximum permitted programming service rates. In following the mathematical principles embodied in these calculations, lower equipment basket costs lead

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

⁴Ventura County Cablevision, Memorandum and Opinion Order, DA-96-223 (Cable Services Bureau rel. March 1, 1996).

to higher programming rates, while higher equipment basket costs lead to lower programming rates;⁵ and

WHEREAS, the other use of the Form 1205 is to update on an annual basis the maximum permitted regulated equipment and installation charges based on equipment basket costs; and

WHEREAS, because the Company initially unbundled its equipment and installation rates on September 1, 1993, the Company must wait one year from such date to update or change its equipment and installation rates;⁶ and

WHEREAS, although the Company indicated in its FCC Form 1205 that said form was being filed in conjunction with the Company's FCC Form 1200 filing, the Company sought to update its equipment charges and change its charges for installation services from a hourly service charge to average rates, effective as of October 1, 1994;⁷ 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;⁸ and

WHEREAS, with respect to commercial bulk subscriber counts as of September 30, 1992, the Company excluded such subscriber counts on Lines G1 and H2 of the FCC Form 1200; and

WHEREAS, based on the Company's FCC Form 393 filing and source documents provided by the Company, the number of subscribers per tier as of September 30, 1992 were 22,192 for the

⁵In the Matter of TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA-95-2269 (Cable Services Bureau rel. November 14, 1995).

⁶See TCI Cablevision of California, Inc., Memorandum and Opinion Order, DA 96-1541 (Cable Services Bureau rel. September 19, 1996); Ventura County Cablevision, Memorandum and Opinion Order, DA 96-223 (Cable Services Bureau re. March 1, 1996); TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA 95-2269 (Cable Services Bureau rel. November 14, 1995).

⁷It is noted that the Company's change from hourly service charge to average rates for installation services resulted in lower installation rates to subscribers after October 1, 1994, as shown in the Company's tariff.

⁸See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

basic service tier and 22,178 for the cable programming services ("CPS") tier; and

WHEREAS, the Company, however, reported 18,001 subscribers for the basic service tier and 17,987 subscribers for the CPS tier on Lines G1 and H2 of its FCC Form 1200; and

WHEREAS, in response to the State's second request for supplemental information, the Company indicated that the difference between the subscriber counts related to certain "commercial" equivalent bulk subscribers which were included in the FCC Form 393 filing, but excluded from Modules G and H of the Company's FCC Form 1200; and

WHEREAS, the FCC stated that "[w]e are not persuaded that the Commission should establish provisions authorizing special, presumably higher, rates for regulated cable services provided to commercial establishments";⁹ and

WHEREAS, adjusting Lines G1 and H2 to include the commercial bulk subscriber counts as of September 30, 1992, decreases the Company's proposed maximum permitted rate for the basic service tier by \$.39 from \$8.53 to \$8.14; and

WHEREAS, upon review of the Company's February 25, 1994 and March 31, 1994 subscriber counts, the Company also excluded commercial bulk subscriber counts from Lines A2, B6, C8, H6, and I14 of the Company's FCC Form 1200 filing; and

WHEREAS, based on equivalent billing units provided by the Company as part of its FCC Form 1205 filing, approximately 4,173 commercial equivalent units were excluded from the Company's subscriber count as of March 31, 1994; and

WHEREAS, adjusting the Company's FCC Form 1200 to include the 4,173 commercial equivalent units does not, however, affect the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, with respect to the Company's FCC Form 1205, the FCC's instructions state that cable operators who have unbundled their equipment and installation rates on or before March 31, 1994 have one of two filing options: the operator may file one FCC Form 1205 using the same data previously used to unbundle its rates, or the operator may file two separate FCC Form 1205, one covering the last fiscal year closed on or before September 30,

⁹In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Second Order on Reconsideration, MM Docket 92-266, FCC 94-38 (rel. March 30, 1994) at paragraph 185.

1992 and the other covering the last fiscal year closed on or before March 31, 1994; and

WHEREAS, it is noted that the Company's financial data used to unbundled its rates on September 1, 1993 and as set forth in the Company's FCC Form 393 filing, was taken as of June 30, 1993; and

WHEREAS, although the Company should have completed two FCC Form 1205 as noted above, the Company completed one FCC Form 1205 using data as of December 31, 1993;¹⁰ and

WHEREAS, with respect to Other Payroll Costs of the Company's FCC Form 1205, the Company included two maintenance/installation employees in completing Schedule B of its FCC Form 1205, but it included only 1.5 employees in calculating the total maintenance and installation hours; and

WHEREAS, in response to the State's inquiry, the Company submitted its revised calculation of its Other Payroll Costs to include 1.5 employees; and

WHEREAS, adjusting the Company's FCC Form 1205 to reflect 1.5 employees for Other Payroll Costs, increases the Company's proposed maximum permitted rate for the basic service tier by \$.01 or from \$8.14 to \$8.15; decreases the Company's Hourly Service Charge by \$.743 or from \$21.928 to \$21.185; and decreases the Company's monthly charge for Lease of Converters by \$.01 or from \$2.14 to \$2.13; and

¹⁰Except to the extent otherwise provided herein, the State will permit the Company to use December 31, 1993 data for its FCC Form 1205 filing, which is the year end data prior to March 31, 1994. The State reserves all of its rights with respect to requiring the Company to use two FCC Form 1205, the requisite data and related matters all as noted herein, in the event this Rate Order is challenged by the Company.

In addition, the Company in its written comments dated May 8, 1996 stated for the first time that certain errors in the Company's FCC Form 393 were corrected in its FCC Form 1205. The Company did not notify the State nor did the Company correct any error in its FCC Form 393 at any time prior to the issuance of the State's rate order regarding the Company's FCC Form 393. This is significant as the Company filed its FCC Form 1205 only one month after the Company filed its FCC Form 393 (the Company filed its FCC Form 393 on July 15, 1994, and filed its FCC Form 1200 and Form 1205 on August 12, 1994). Thus, the State does not waive any rights it may have with respect to the Company's FCC Form 393 or its FCC Form 1200 and 1205.

WHEREAS, with respect to the Company's FCC Form 1205, the Company excluded additional outlet installations hours from the total amount of installation related hours, and excluded contract labor hours related to certain repair costs for converters that were not repairable in-house, including service, parts, and shipping; and

WHEREAS, in response to the State's second request for supplemental information, the Company stated it unknowingly omitted additional outlet installation hours, and indicated that a total of 254 hours for the Company System were related to outside converter repairs; and

WHEREAS, adjusting the Company's FCC Form 1205 to reflect the inclusion of additional outlet installation and outside converter repair hours, decreases the Company's proposed maximum permitted rate for the basic service tier by \$.02 or from \$8.15 to \$8.13; increases the Company's Hourly Service Charge by \$.14 or from \$21.18 to \$21.32; increases the Company's monthly charge for Lease of Converters by \$.03 or from \$2.13 to \$2.16; and increases the Company's monthly charge for Lease of Remotes by \$.01 or from \$.29 to \$.30; and

WHEREAS, with respect to capital costs of leased customer equipment of Schedule C of FCC Form 1205, the information in the Company's FCC Form 1205 was not consistent with the Company's source documents; and

WHEREAS, in response to the State's third request for supplemental information, the Company submitted revised information for the gross book, accumulated depreciation, and depreciation expense line-items for converter units; and

WHEREAS, adjusting the Company's FCC Form 1205 to include the Company's revised information, increases the Company's proposed maximum permitted rate for the basic service tier by \$.06 or from \$8.13 to \$8.19; and decreases the Company's monthly charge for Lease of Converters by \$.40 or from \$2.16 to \$1.76; and

WHEREAS, with respect to Line 11 (number of basic subscribers in franchise) of the Worksheet for Calculating Total Equipment and Installation Costs, the Company included an amount for commercial subscribers but excluded commercial subscribers in the calculation of its allocation percentages for Schedules A, B, and C of its FCC Form 1205; and

WHEREAS, adjusting the Company's FCC Form 1205 to include amounts for, and calculations derived from, commercial subscribers as of December, 1993, decreases the Company's proposed maximum permitted rate for the basic service tier by \$.03 or from \$8.19 to \$8.16; and

WHEREAS, the Company's **proposed** maximum permitted rates for regulated installations and equipment as of October 1, 1994, are as follows:

Installation of unwired homes	\$14.62
Installation of prewired homes	9.14
Installation of additional connections (initial)	5.48
Installation of additional connections (separate)	9.14
Upgrade Non-Addressable	9.14
Special Work Order	9.14
Lease of remote control	.29
Lease of converter	2.14

WHEREAS, the Company's rate card in effect as of October 1, 1994, did not include Installation of Additional Connections (separate), Upgrade Non-Addressable, and Special Work Order; and

WHEREAS, the adjusted maximum permitted rates or charges for regulated installations and equipment are set forth in paragraph 3 hereof; and

WHEREAS, the Company's March 31, 1994 rate card included an item labeled "Base Installation Charge" at \$7.88, which charge was disapproved pursuant to said Decision and Order No. 168;¹¹ and

WHEREAS, by those certain letter agreements dated July 20, 1995 and February 28, 1996, 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 5, 1994¹² and the

¹¹The issue regarding the Company's "Base Installation Charge" was discussed and resolved in said Decision and Order No. 168, and to such extent it is thus incorporated herein by reference.

¹²The FCC Form 1210 is used to adjust the Company's programming rates to reflect changes in external costs and other items. The Company's amended FCC Form 1210 will be reviewed in a subsequent separate proceeding.

Company's FCC Form 1205 filed with the State on March 31, 1995¹³;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted rates for the basic service tier and associated installation and equipment are disapproved.

2. The Company's maximum permitted monthly rate, exclusive of franchise fees and taxes, 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 an increase implemented by the Company in accordance with FCC's rules and guidelines, shall be \$8.16.

3. The Company's maximum permitted rates for installations and equipment as of July 14, 1994 and continuing up to October 1, 1994, shall be as follows;

INSTALLATION RATES:

Hourly Service Charge	\$30.96
Base Installation Charge	Not Permitted
Changing Tiers	1.99

EQUIPMENT RATES:

Lease of Converter	2.30
Lease of Remote	.60

From October 1, 1994 and continuing up to the effective date of any adjustment implemented under the Company's FCC Form 1205 filed on March 31, 1995, the Company's maximum permitted rates for installations and equipment shall be as follows:

INSTALLATION RATES:¹⁴

Installation of unwired homes	\$14.21
Installation of prewired homes	8.88
Installation of Additional Connections (initial)	5.33
Base Installation Charge	Not Permitted

¹³The 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.

¹⁴The installation rates are based on the adjusted Hourly Service Charge of \$21.32. The Company's Hourly Service Charge in effect as of October 1, 1994 was \$21.92.

Changing Tiers¹⁵ 1.99

EQUIPMENT RATES:

Lease of Converter 1.76
Lease of Remote .30

4. 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 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 \$8.47 and the adjusted maximum permitted monthly rate of \$8.16, and the difference between the actual rates for installations and equipment¹⁶ and the adjusted maximum permitted rates set forth in paragraph 3 hereof. The refund period shall run from July 15, 1994 through July 15, 1995.¹⁷ With respect to each affected

¹⁵It is noted that Company's rate card in effect as of October 1, 1994, includes a charge for "Addressable Service Charge", but the Company did not include this service as a regulated service in Schedule D of its FCC Form 1205. The \$1.99 maximum permitted rate was established by the State in Decision and Order No. 168 (the Company's FCC Form 393 filing). The Company apparently did not include this service in Schedule D as the rate was not adjusted.

¹⁶The Company's reported actual rates as of July 14, 1994 were as follows: Service Installation [unwired home] at \$34.13; Service Reconnection [prewired home] at \$21.00; and Additional Connection (initial) at \$10.50; Lease of Converter at \$2.30; and Lease of Remote at \$.60.

The Company's reported actual rates as of October 1, 1994 were as follows: Service Installation [unwired home] at \$14.61; Service Reconnection [prewired home] at \$9.13; and Additional Connection (initial) at \$5.48; Lease of Converter at \$2.14; and Lease of Remote at \$.29.

¹⁷Although the Company is seeking to adjust upwards its basic service tier rate as set forth in its FCC Form 1210, such adjustment only becomes effectively 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 by order for extension of time extended its review period for the Company's FCC Form 1210. The Company, as evidenced by the Company's tariffs filed with the State, did not implement its proposed adjustment sought in its FCC Form 1210 at any time during

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.

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. The Company shall reduce its current rates for the basic service tier and associated installation and equipment so that such rates do not exceed the maximum permitted rates approved in paragraphs 2 and 3 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 explanation in sufficient detail of its charges for Additional Connections (Separate), Upgrade Non-Addressable, and Special Work Order. The State reserves the right to request additional information in determining whether such items are regulated, and to issue any order necessary in connection therewith including the issuance of refunds.

7. Within fifteen (15) days after the effective date of this Rate Order, the Company shall submit all relevant calculations and source documents to support the revised amounts for Programming Costs (Lines B2, B8, and I10) stated in the Company's revised FCC Form 1200 filed on May 9, 1996. The State reserves the right to request additional information to clarify or support the Company's submission, and to issue any order necessary in connection therewith including the issuance of refunds.

8. 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 4 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

the subject refund period. Thus, the FCC Form 1210 proposed adjustment 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).

FCC'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 described in paragraph 4 hereof.

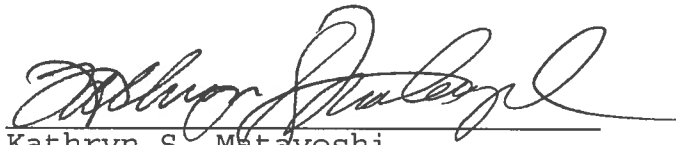
9. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1210 filed on December 5, 1994 and the Company's FCC Form 1205 filed on March 31, 1995, and to establish reasonable rates for the basic service tier and associated equipment and installations, 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.

10. 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.

11. 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.

12. This Rate Order becomes effective on the 28th day of November, 1996.

DATED: Honolulu, Hawaii November 15, 1996.



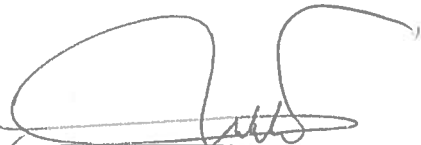
Kathryn S. Matayoshi
Director
Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 179 in Docket No. 95-14 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 15th day of November, 1996.

MR. JOHNNIE GILES
Western Communications
Two Rincon Center
121 Spear Street, Suite 203
San Francisco, CA 94105

MS. GERRIANNE SAKAMOTO
TCI of Hawaii, Inc. (formerly Chronicle
Cablevision)
350 Hoozana Street
Kahului, Hawaii 96732

for 

Patti K. Kodama
Secretary

PUBLIC NOTICE

Pursuant to Section 16-133-45(b) of the Hawaii Administrative Rules, notice is hereby given that the Director of Commerce and Consumer Affairs has issued Decision and Order No. 179 disapproving Chronicle Cablevision's (now known as TCI of Hawaii, Inc. dba TCI) FCC Form 1200 basic service rate filing for its system serving Maui, Hawaii (except West Maui), and Decision and Order No. 181 disapproving Chronicle Cablevision's (now known as TCI of Hawaii, Inc.) FCC Form 1200 basic service rate filing for its systems serving Lanai and Molokai, Hawaii. The maximum permitted rates for the basic service tier and associated installations and equipment as of July 14, 1994 for each system, are set forth in the respective written decision. The written decisions shall become effective on November 28, 1996.

Copies of the written decisions will be made available upon request and at cost from the Cable Television Division, Department of Commerce and Consumer Affairs, P.O. Box 541, Honolulu, Hawaii 96809 (telephone number 808 586-2620), and from TCI of Hawaii, Inc. dba TCI, 350 Hoozana Street, Kahului, Hawaii 96732 (telephone number 808 871-7303).

Kathryn S. Matayoshi
Director of Commerce and Consumer Affairs

Publication Dates:

November 17, 1996
November 24, 1996