

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)
(Ka'u System))
) Docket No. 95-17
)
Filing of Basic Service Rates)
(FCC Form 1200 Series))

DECISION AND ORDER NO. 182
(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, 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 cards dated June 9, 1994 but effective as of July 14, 1994 the monthly basic service tier rate is listed as \$16.95, and lists the Company's charges for regulated equipment and installations; and

WHEREAS, the Company, however, seeks to justify \$16.83 as the initial maximum permitted monthly rate for the basic service tier, and the Company also seeks to justify its maximum permitted rates for regulated installation services and equipment; and

WHEREAS, in connection with justifying the Company's rate for the basic service tier and associated equipment and installation 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 12, 1994,¹ and in response to the State's requests submitted supplemental rate information on October 24, 1994, December 1, 1995, December 5, 1995, February 9, 1996, February 13, 1996, and February 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 dated May 8, 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

¹The Rate Filing submitted for the Company's Ka'u system covers Community Unit Identification number CUID HI0020.

operator took advantage of the maximum refund deferral period under the Amended Rules;² 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;³ and

WHEREAS, after reviewing the Company's Rate Filing, certain adjustments to the Company's calculations described herein were made in accordance with the FCC Rules, the net effect of which increased the Company's proposed maximum permitted monthly rate for the basic service tier of \$16.83 to \$17.34, and adjusted the Company's maximum permitted rates for equipment and installations as set forth in paragraph 3 hereof; and

WHEREAS, with respect to commercial bulk subscriber counts as of September 30, 1992, the Company excluded 55 commercial equivalent bulk subscribers counts on Lines G1 and H2 of the FCC Form 1200, and that the Company did not convert 25 "MDU subscribers" into an equivalent billing unit subscriber which would have resulted in an reduction of 9 subscribers; and

WHEREAS, the effect of adjusting such items results in a net addition of 46 subscribers on Lines G1 and H2, and reduces the Company's Full Reduction Rate with External Costs by \$.14, but it has no corresponding effect on the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, upon review of the Company's February 25, 1994 and March 31, 1994 subscriber counts, the Company also excluded 61 commercial equivalent bulk subscribers from Lines A2, B6, C8, I14 and H6 of its FCC Form 1200; and

²As noted above, the Company gave notice to the State that it took advantage of the maximum refund deferral period under the Amended Rules.

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

WHEREAS, adjusting the Company's FCC Form 1200 to include the 61 commercial equivalent units reduces the Company's proposed maximum permitted rate for the basic service tier by \$.09 from \$16.83 to \$16.74; and

WHEREAS, with respect to Line A6 (Monthly Charge Per Tier as March 31, 1994) of the Company's FCC Form 1200, the Company reported a March 31, 1994 rate for the basic service tier of \$15.38; and

WHEREAS, the Company's rate card in effect as of March 31, 1994 states that the monthly rate for the basic service tier was at \$16.14;⁴ and

WHEREAS, it appears that the Company mistakenly reported \$15.38 instead of \$16.14 as the monthly rate for the basic service tier, and adjusting Line A6 accordingly increases the Company's proposed maximum permitted rate for the basic service tier by \$.76 from \$16.74 to \$17.50; and

WHEREAS, with respect to Equipment Revenue as of March 31, 1994, the Company did not include \$1,927 of additional outlet revenues on Line A9 of the Company's FCC Form 1200; and

WHEREAS, the Company stated that additional outlet revenues were not included on Line A9 because as of March 31, 1994 the "community was unregulated based on FCC allowed 'small system' exclusion";⁵ and

WHEREAS, FCC instructions, however, do not provide an exclusion for additional outlet revenues as described by the Company; and

WHEREAS, adjusting Line A9 of the Company's FCC Form 1200 to include the \$1,927 of additional outlet revenue reduces the Company's proposed maximum permitted rate for the basic service tier by \$.11 from \$17.50 to \$17.39; and

WHEREAS, with respect to Programming Cost Per Tier, the Company included \$12.00 of retransmission consent fee on Line B2 of the Company's FCC Form 1200; and

WHEREAS, FCC instructions, however, specifically exclude retransmission consent fee from Line B2; and

⁴The Company's local representative confirmed that the actual monthly rate for the basic service tier as of March, 1994 was at \$16.14.

⁵Company's written response filed on December 1, 1995.

WHEREAS, adjusting Line B2 of the Company's FCC Form 1200 to exclude the \$12.00 of retransmission consent fee increases the Company's Current Rate with External Costs by \$.01, but it does not have any corresponding effect on the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, with respect to Number of Tier Changes in Fiscal Year 1993, the Company reported a total of seven (7) tier changes for fiscal year 1993 on Line C4 of the Company's FCC Form 1200; and

WHEREAS, FCC instructions, however, state that the number for Line C4 should include the average monthly number of tier changes for which a charge was made to the subscriber;⁶ and

WHEREAS, adjusting Line C4 of the Company's FCC Form 1200 to reflect the average monthly number of tier changes of .58 reduces the Company's proposed maximum permitted rate for the basic service tier by \$.04 from \$17.39 to \$17.35; and

WHEREAS, with respect to Line G5 of the Company's FCC Form 1200, the Company reported \$32.50 of "imputed revenue for free converter boxes/remotes", which item is not listed in the FCC's instructions for Line G5; and

WHEREAS, the FCC's instructions for Line G5 state that the operator should "[e]nter the total monthly equipment revenue earned for the last whole monthly billing period ending on or before September 30, 1992, for the following categories of equipment and installation services: (1) converter box rental; (2) remote control rental; (3) additional outlet fees; (4) installation fees; (5) disconnect fees; (6) reconnect fees; and (7) tier change of service fees"; and

WHEREAS, adjusting Line G5 to exclude the \$32.50 of "imputed revenues" reduces the Company's Full Reduction Rate plus External Costs by \$.03, but it does not have any corresponding effect on the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, with respect to Schedule B of the Company's FCC Form 1205, the Company used two maintenance/installation employees in its calculation of Other Payroll costs; and

⁶Dividing the seven (7) tier changes by 12 months results in an average monthly tier change of .58.

WHEREAS, in response to the State's inquiry, the Company provided a recalculation of Other Payroll costs using 1.5 maintenance/installation employees;⁷ and

WHEREAS, adjusting the Company's FCC Form 1205 accordingly increases the Company's proposed maximum permitted rate for the basic service tier by \$.02 from \$17.35 to \$17.37; and

WHEREAS, with respect to Lines 5 and 6 of the Worksheet for Calculating Permitted Equipment and Installation Charges of the Company's FCC Form 1205, the Company stated that it "unknowingly omitted additional outlet installation hours in the calculation of total installation related hours";⁸ and

WHEREAS, adjusting the Company's FCC Form 1205 accordingly reduces the Company's proposed maximum permitted rate for the basic service tier by \$.01 from \$17.37 to \$17.36; and

WHEREAS, the above-noted adjustments to the Company's FCC Form 1205 - Other Payroll Costs and Additional Outlet Hours, reduce the Company's proposed hourly service charge by a total of \$1.42 or from \$21.86 to \$20.44, to wit: (a) adjustment for Other Payroll costs reduced by the proposed hourly service charge by \$.74; and (b) adjustment for Additional Outlet hours reduced the proposed hourly service charge by \$.68; and

WHEREAS, the Company's proposed hourly service charge is further reduced by \$.38 or from \$20.44 to \$20.06, as a result of adjusting the Company's calculation of total maintenance and installation hours, Line 4 of Step A of the Company's FCC Form 1205;⁹ and

WHEREAS, the above described adjustments to the proposed hourly service charge do not, however, affect the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, the Company's FCC Form 1205 was based on the percentage of franchise subscribers to total system subscribers as of March 31, 1994 and that commercial equivalent bulk subscribers were excluded from that calculation; and

⁷Company written response filed on July 6, 1995.

⁸Company's written response filed on July 6, 1996.

⁹In response to the State's inquiry, the Company provided an estimate of 7.18 contract labor hours which related to outside converter repair costs at \$40 per hour that should be included in Schedule B of the Company's FCC Form 1205.

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";¹⁰ and

WHEREAS, adjusting the Company's FCC Form 1205 to reflect a percentage allocation based on December 1993 franchise subscribers to total system subscribers that includes commercial equivalent bulk subscribers, decreases the Company's proposed maximum permitted rate for the basic service tier by \$.02 from \$17.36 to \$17.34, and increases the Company's hourly service charge by \$1.27 from \$20.06 to \$21.33; 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, 1994¹¹ and the Company's FCC Form 1205 filed with the State on March 31, 1995¹²;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

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

2. The Company's initial 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 any increase

¹⁰In 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.

¹¹The FCC Form 1210 is used to adjust the Company's programming rates to reflect changes in external costs and other items. The Company's FCC Form 1210 will be reviewed in a subsequent separate proceeding.

¹²The reasonableness of the Company's charges for equipment and installation set forth in the Company's FCC Form 1205 for year ending December 31, 1994 will be reviewed in a subsequent separate proceeding.

implemented under the Company's FCC Form 1210 filed on December 5, 1994 shall be \$17.34.

3. 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 March 31, 1995 shall be as follows;¹³

INSTALLATION RATES:

Unwired Homes	\$14.22
Prewired Homes	8.89
Additional Connections (Initial)	5.33
Additional Connections (Separate)	8.89
Special Work Order	8.89
Changing Tier - Upgrade (Non-addressable)	8.89

EQUIPMENT RATES:

Lease of Remotes	No Charge
Lease of Converters (Non-Addressable)	No Charge
Lease of Converters (Addressable)	No Charge

4. Subject to offsets permitted by the FCC, the Company shall refund that portion of actual rates paid by subscribers plus interest for equipment and installation 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 shall be the difference between the actual rates for installations and equipment¹⁴ and the adjusted maximum permitted rates set forth in paragraph 3 hereof. The refund period shall

¹³With respect to the Company's actual charges as shown on its rate card in effect as of July 14, 1994, Additional Connections (Separate) and Special Work Order were not included. The Company, however, included separate calculations for each of these services for its FCC Form 1205. The Company also proposed a maximum permitted rate for Upgrade (non-addressable) in its FCC Form 1205 only, and stated that the Company does not charge for any tier changes. In addition, the Company did not propose maximum permitted rates for lease of converters and lease of remotes in its FCC Form 1205, and stated that the Company does not charge for the lease of converters and lease of remotes.

¹⁴The Company's reported actual rates as of July 14, 1994 are as follows: monthly rate for the basic service tier at \$16.95; Service Installation [unwired home] at \$34.13; Service Reconnection [prewired home] at \$21.00; and Additional Connection (initial) at \$10.50, with the hourly service charge at \$31.50.

run from July 15, 1994 through July 15, 1995.¹⁵ With respect to each affected subscriber entitled to a refund, the Company shall implement the 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 installations 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 installations and equipment so that such rates do not exceed the maximum permitted rates approved in paragraph 3 hereof.¹⁶ 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) 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 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 including

¹⁵Although the Company is seeking to adjust upwards its basic service tier rate as set forth in its 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 by order for extension of time extended its review period for the Company's FCC Form 1210 until April 3, 1995 (see Order for additional time dated December 28, 1994). However, according to the Company's tariff filed with the State and effective as of January 1, 1995, the Company prematurely increased its monthly basic service tier rate to \$17.09, which date was well before the expiration of the State's review period.

¹⁶According to the Company's tariff filed with the State and effective as of October 1, 1994, the Company adjusted its installation and equipment rates as follows: Service Installation [unwired home] at \$14.61; Service Reconnection [prewired home] at \$9.13; and Additional Connections (initial) at \$5.48, with the hourly service charge at \$21.95. Those rates, however, exceed the maximum permitted amounts set forth in paragraph 3 hereof.

the overcharges described in footnotes 15 and 16 hereof; 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, and in connection therewith the State reserves the right to request any additional information relating to the Company's refund plan. The Company's obligations to submit the refund plan shall not affect the Company's obligation to implement rate refunds as described in paragraph 3 hereof.

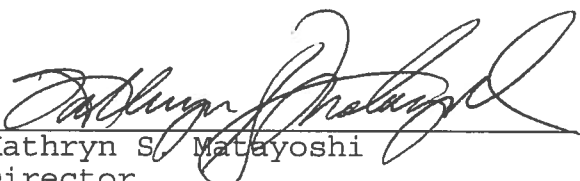
8. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1210 filed on December 5, 1994, and the Company's FCC Form 1205 filed on March 31, 1995, and to establish reasonable rates for the basic service tier and associated equipment and installations,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

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 28th day of November, 1996.

DATED: Honolulu, Hawaii November 15, 1996.

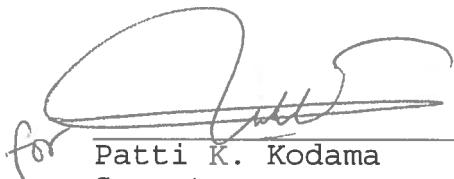

Kathryn S. Matayoshi
Director
Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 182 in Docket No. 95-17 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 known as Chronicle
Cablevision)
350 Hooana 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. 182 disapproving Chronicle Cablevision's (now known as TCI of Hawaii, Inc.) FCC Form 1200 basic service rate filing for its system serving Ka'u, Hawaii. The maximum permitted rates for the basic service tier and associated installation and equipment as of July 14, 1994, are set forth in the written decision. The written decision shall become effective on November 28, 1996.

Copies of the written decision 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:

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November 24, 1996