

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

In the Matter of JONES SPACELINK)
of HAWAII, INC.)
(Hilo System))
)
)
)
)
Filing of Basic Service Rates)
(FCC Form 1200 Series))
)
)

Docket No. 95-18

DECISION AND ORDER NO. 183
(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 Jones Spacelink of Hawaii, Inc. (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, by Decision and Order No. 171 issued on May 18, 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

¹By Decision and Order No. 185 issued on April 8, 1996, the State approved the transfer of the cable communications franchise held by Jones Spacelink of Hawaii, Inc. to Time Warner Entertainment Company, L.P.

WHEREAS, the Company seeks to justify \$7.70 as the maximum permitted monthly rate in its FCC Form 1200;² 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, 1994,³ and in response to the State's requests submitted revised FCC Form 1200 and FCC Form 1205 on November 19, 1995, revised FCC Form 1200 on January 29, 1996, and submitted supplemental rate information on October 17, 1994, July 18, 1995, November 13, 1995, December 1, 1995, January 29, 1996, January 31, 1996, and February 20, 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

²The Company's tariff revised August 23, 1994 but effective July 14, 1994 states that the monthly rate for the basic service tier is \$7.89 inclusive of franchise, public, educational, and governmental access, and copyright fees. The Company subsequently reported that the actual rate for the basic service tier exclusive of such fees is \$7.66.

³The Rate Filing submitted for the Company's Hilo system covers Community Unit Identification numbers CUID HI0022 (Hilo), HI0040 (Pahoa), and HI0096 (Volcano).

WHEREAS, the State has reviewed the Rate Filing and other evidence and information; and has received and considered the Company's comments, filed on April 2, 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;⁴ 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;⁵ 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, which reduced the Company's proposed maximum permitted rate for the basic service tier of \$7.70 per month to \$7.56; and

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

⁵According to FCC Form 1205 instructions, regulated equipment and installation charges may only be updated annually. See TCI Cablevision of Oregon, Inc., Memorandum Opinion and Order, DA 95-2269 (Cable Services Bureau rel. November 14, 1995) (cable operators who restructured their rates on September 1, 1993 may not change their equipment and installation rates before the expiration of one year from such date). Because the Company used the FCC Form 393 in establishing its regulated equipment and installation charges as of September 1 1993, the Company may not adjust its charges for regulated equipment and installations until after September 1, 1994. Thus, in accordance with FCC Form 1205 instructions, the Company need not complete Schedule D of FCC Form 1205.

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;⁶ and

WHEREAS, in Line A6 of the Company's FCC Form 1200 the Company reported an unadjusted monthly basic service tier rate of \$8.27 exclusive of franchise fees as of March 31, 1994; and

WHEREAS, by said Decision and Order No. 171 the State established the maximum permitted monthly basic service tier rate of \$8.10 exclusive of franchise fees; and

WHEREAS, the Company's actual monthly rate for the basic service tier as of March 31, 1994 should reflect the maximum permitted rate determined by the State in order to establish the maximum permitted rate under the 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 reduces the Company's calculated "current rate with external costs" by \$.18, with no corresponding effect on the Company's proposed maximum permitted rate for the basic service tier; and

WHEREAS, the Company used the percentage allocation method between its Hilo and Honokaa systems for determining certain line item amounts for subscribers, equipment revenues, additional outlets, and remotes rented as of March 31, 1994, February 28, 1994, September 30, 1992, and May 31, 1993;⁸ and

WHEREAS, because the Company's calculated percentage allocation amounts were not representative of the actual amounts for the Hilo system, the applicable line items of the Company's revised FCC Form 1200 and Form 1205 were adjusted to properly reflect the actual amounts shown in Table 1 attached hereto; and

⁶See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

⁷See 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.

⁸The Company's percentage allocation for its Hilo system was .9739 and the percentage allocation for its Honokaa system was .0261, with 1 equalling 100%.

WHEREAS, adjusting the applicable line items to reflect to the actual amounts reduces the Company's proposed maximum permitted rate by \$.14 from \$7.70 to \$7.56; and

WHEREAS, as of March 31, 1994 the Company treated nine (9) of the eleven (11) channels on the basic service tier⁹ as 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"¹⁰; and

WHEREAS, the State requested from the Company supplemental information explaining why seven (7) of the local broadcast stations - channels 3-KGMB, 5-KFVE, 7-KHON, 8-KHNL, 10-KHET, 11-KWHH, and 12-KITV are classified as "non-broadcast" and thus not receivable off-the-air by the Company's cable system;¹¹ and

WHEREAS, the Company initially responded that because channel 5-KFVE and channel 14 KWHH were receivable off-the-air as of March 31, 1994 such channels should have been classified as broadcast channels, and that the remaining five (5) local broadcast stations' signals were not receivable off-the-air because of unacceptable signal quality, electrical interference, and inversions "(reversals of normal atmospheric temperature gradient)" that inhibit off-the-air video images and audio signals;¹² and

⁹The eleven (11) channels on the basic service tier include channel 2 - Local Access, channel 3 - KGMB, channel 4 - ME/U, channel 5 - KFVE, channel 7 - KHON, channel 8 - KHNL, channel 9 - channel guide, channel 10 - KHET, channel 11 - KWHH, channel 12 - KITV, and channel 13 - WTBS.

¹⁰In 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).

¹¹See State's 4th Request dated November 17, 1995.

¹²See Company's written response filed on December 1, 1995. The five (5) remaining channels asserted by the Company to be non-broadcast are cable channels 7-KHON, 12-KITV, 3-KGMB, 10-KHET, and 8-KHNL.

WHEREAS, the Company asserts that because the signals of the five (5) local broadcast stations are inadequate at the Company's principal headend, the Company uses its receiver on the island of Maui to receive and transmit the signals of said local broadcast stations to its principal headend via microwave;¹³ and

WHEREAS, the Company submitted additional information in support of its assertion that the five (5) 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;¹⁴ 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 Mahukona on the Big Island, and then to the Kaupulehu receiver shared by the [Company] and Sun Cablevision at the 3,600 [feet] elevation at Kaupulehu in 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";¹⁵ and

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

WHEREAS, the distance between Honolulu, Oahu (signal transmission origination point of the five (5) local broadcast stations) and Hilo, Hawaii (location of the Company's principal headend) is approximately 217 miles; and

¹³The off-air signals of KHON, KITV, and KGMB are received at the Company's receiver site at Mount Haleakala, Maui, which are then processed and transmitted to the Company's Mahukona site on the island of Hawaii via the Company's microwave system. These signals are again processed at the Company's Mahukona site and transmitted to the Company's Kaupulehu site, together with the off-air signals of KHNL and KHET. All (5) five off-air signals are then microwaved from Kaupulehu to the Company's Mauna Kea site, where the signals are received and transmitted to the Company's principal headend at Hilo via microwave. See Company's written response filed on December 1, 1995.

¹⁴See Company's written comments filed on January 31, 1996.

¹⁵Id.

WHEREAS, in light of such circumstances, it appears that the Company's use of a microwave system to enhance the reception of the five (5) local television broadcast stations' off-air signals is reasonable, and thus all five (5) local television broadcast stations should be classified as "non-broadcast" for purposes of Line C2 of the Company's FCC Form 1200;¹⁶ and

WHEREAS, by that certain letter agreement dated August 10, 1995 between the Company and the State and letters dated January 24, 1996, February 28, 1996, and March 1, 1996, 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 on January 31, 1995 and FCC Form 1210 filed on May 1, 1995¹⁷, and the Company's FCC Form 1205 filed on August 2, 1995;¹⁸

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted monthly rate of \$7.70 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 FCC Form 1210 filed on January 31, 1995 and/or FCC Form 1210 filed on May 1, 1995, shall be \$7.56. The Company's 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 August 2, 1995, shall be as follows;

¹⁶Notwithstanding anything to contrary, this Rate Order does not address nor shall it be deemed to affect the status of the five local television broadcast station's carriage on the Company's cable system as provided under Federal law.

¹⁷The FCC Form 1210 is used to adjust the Company's programming rates to reflect changes in external costs, channel additions, and inflation. The Company's FCC Forms 1210 will be reviewed in subsequent separate proceedings.

¹⁸The 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.

INSTALLATION RATES:¹⁹

Unwired Homes	\$35.69
Prewired Homes	29.74
Add'l Connections (initial)	17.84
Add'l Connections (separate)	23.79
Reconnect Additional Outlet (new trip)	23.79
Reconnect Additional Outlet (same trip)	17.84
Transfer Service	29.74
Relocate Outlet	23.79
VCR/Trouble Call	23.79
Changing Tiers	11.78

EQUIPMENT RATES:

Lease of Converter (addressable)	1.19
Lease of Converter (non-addressable)	.86
Lease of Remote	.28

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 to the extent such actual rates 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 \$7.66 and the approved maximum permitted monthly rate of \$7.56. The refund period shall run from July 15, 1994 through July 15, 1995.²⁰ With respect to each affected subscriber entitled to a refund, the Company shall implement the rate

¹⁹These maximum permitted rates were set in paragraph 2 of Decision and Order No. 171, and the Company's initial actual rates in effect as of September 1, 1993 were described in paragraph 3 of said Decision and Order No. 171.

²⁰Although the Company is seeking to adjust upwards its basic service tier rate as set forth in its FCC Forms 1210, such adjustments only become effective once 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 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).

refunds ordered herein within sixty (60) days after the effective date of this Rate Order.

4. The Company may not increase its basic service tier rate, nor may it institute increases or 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.²¹ 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.

5. 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 the rates therefor with respect to calculating the offsets of undercharges with overcharges in accordance with the 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 obligation to submit such a plan shall not affect the Company's obligation to implement rate refunds as described in paragraph 3 hereof.

6. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1210 filed on January 31, 1995 and FCC Form 1210 filed on May 1, 1995, and the Company's FCC Form 1205 filed on August 2, 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.

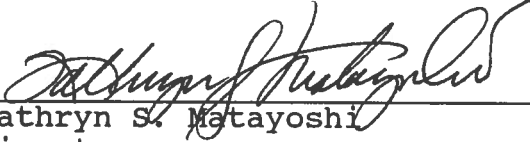
7. The State reserves the right to modify this Rate Order if, at any time, it determines that information the Company provided to the State is incorrect or misleading in any material manner.

²¹In event the Company implements the proposed adjustment to the Company's basic service tier rate under its FCC Form 1210 filed on January 31, 1995 and/or its FCC Form 1210 filed on May 1, 1995, the adjustment must reflect the approved maximum permitted rate of \$7.56 and not the Company's proposed maximum permitted rate of \$7.70.

8. 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.

9. 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

TABLE 1
 Comparison of Actual Amounts and Operator's
Revised FCC Form 1200 and Form 1205**

<u>Line Description (Form 1200)</u>	<u>Actual Amounts</u>	<u>Reported Amounts</u>
Line A2		
Basic Subs. as of 3/31/94	16,366	16,766
Tier 2 Subs. as of 3/31/94	15,772	15,617
Line A9		
Equipment Rev. as of 3/31/94	\$14,694.57	\$14,876.73
Line A10		
Franchise Fees	\$10,621.41	\$10,581.12
Line I14		
Basic Subs. as of 2/28/94	16,242	16,606
Tier 2 Subs. as of 2/28/94	15,652	15,491
Line C6		
Additional Outlets, FY 1993	5,575	5,554
Line C7		
Comotes Rented, FY 1993	2,884	2,968
Line C8		
System Subs., FY 1993	15,673	15,763
Line G1		
Basic Subs. as 9/30/92	15,399	15,753
Line G2		
Tier 2 Subs. as 9/30/92	14,866	14,275
Line H2		
System Subs. as 9/30/92	15,399	15,738
Line G5		
Equipment Rev. as of 9/30/92	\$32,230.51	\$32,246.10
Line G6		
Franchise Fees	\$10,528.34	\$10,696.91
Form 1205 Percentage Allocation	97.28%	97.39%

*The Company's Reported Amounts reflect the revised FCC Forms 1200 and 1205 as submitted by the Company in January, 1996 and November, 1995, respectively. The Company's Reported Amounts do not contain information for commercial bulk subscribers submitted in response to the State's request of February 6, 1996.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 183 in Docket No. 95-18 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 25th day of June, 1996.

Mr. BRAD AMMAN
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Englewood, Colorado 80112

Ms. LORENE HOUGH
Jones Spacelink of Hawaii, Inc.
P.O. Box 787
1257 Kilauea Avenue
Hilo, Hawaii 96721

Patti K. Kodama

Patti K. Kodama
Secretary