

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

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

Docket No. 95-19

DECISION AND ORDER NO. 184
(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. 172 issued on May 18, 1995, the State approved 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 the Jones Spacelink of Hawaii, Inc. to Time Warner Entertainment Company, L.P.

WHEREAS, the Company seeks to justify \$10.44 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, and submitted supplemental rate information on October 17, 1994, November 13, 1995, November 19, 1995, January 29, 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

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

²The Company's tariff revised August 23, 1994 but effective as of July 14, 1994 states that the monthly rate for the basic service tier is \$11.48 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 \$11.13.

³The Rate Filing submitted for the Company's Honokaa system covers Community Unit Identification number CUID HI0079.

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, 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, 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

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.

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

Company's proposed maximum permitted monthly rate for the basic service tier of \$10.44 to \$10.27; 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;⁷ and

WHEREAS, because the Company's calculated percentage allocation amounts were not representative of the actual amounts for the Honokaa 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

WHEREAS, adjusting the applicable line items to reflect to the actual amounts reduces the Company's proposed maximum permitted rate by \$.17 from \$10.44 to \$10.27; 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, 1995⁸, and the Company's FCC Form 1205 filed on August 2, 1995;⁹

⁷The Company's percentage allocation for its Hilo system was .9739 and the percentage allocation for its Honokaa system was .0261, with 1 equalling 100%.

⁸The 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.

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.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted monthly rate of \$10.44 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 \$10.27. 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 August 2, 1995, shall be as follows;

INSTALLATION RATES:¹⁰

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 \$11.13 and the approved maximum permitted monthly rate of \$10.27. The refund period shall run from July 15, 1994 through

¹⁰These maximum permitted rates were set in paragraph 2 of Decision and Order No. 172, 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. 172.

July 15, 1995.¹¹ With respect to each affected subscriber entitled to a refund, the Company shall implement the rate refunds ordered herein within sixty (60) days after the effective date of this Rate Order.

4. 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.¹² 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.

¹¹Although 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).

¹²In 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 monthly rate of \$10.27 and not the Company's proposed maximum rate of \$10.44.


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.

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	452	449
Tier 2 Subs. as of 3/31/94	451	419
Line A9		
Equipment Rev. as of 3/31/94	\$620.56	\$398.69
Line A10		
Franchise Fees	\$285.07	\$269.48
Line I14		
Basic Subs. as of 2/28/94	451	445
Tier 2 Subs. as of 2//28/94	450	415
Line C6		
Additional Outlets, FY 1993	128	149
Line C7		
Promotes Rented, FY 1993	164	80
Line C8		
System Subs., FY 1993	438	452
Line G1		
Basic Subs. as 9/30/92	437	422
Line G2		
Tier 2 Subs. as 9/30/92	4	383
Line G5		
Equipment Rev. as of 9/30/92	\$952.68	\$864.18
Line G6		
Franchise Fees	\$281.04	\$269.76
Form 1205 Percentage Allocation	2.72%	2.61%

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 184 in Docket No. 95-19 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
Jones Intercable, Inc.
9697 E. Mineral Avenue
Englewood, Colorado 80112

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



Patti K. Kodama
Secretary