

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

In the Matter of Garden Isle)
CableVision, L.P. dba Garden Isle)
CableVision)
)
) Docket No. 95-21
)
FCC Form 1230 Small System Cost-of-)
Service Filing)
)
_____)

DECISION AND ORDER NO. 186
(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"), as amended, 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 Garden Isle CableVision, L.P. dba Garden Isle CableVision (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. 166 issued on February 27, 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, as amended (the "Amended Rules"); and

WHEREAS, in connection with justifying the Company's rate for the basic service tier in effect after July 14, 1994, the Company submitted its FCC Form 1220 cost-of-service filing on August 15, 1994; and

WHEREAS, on September 12, 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 to complete its review of the Company's FCC Form 1220 cost-of-service filing; and

WHEREAS, pursuant to section 76.933(d) of the Commission's Rules the State requested the FCC to examine the Company's FCC Form 1220 cost-of-service filing, and by letter dated April 13, 1995 the FCC granted the State's petition; and

WHEREAS, before the FCC completed its examination of the Company's FCC Form 1220 cost-of-service filing, on September 25, 1995 the Company filed its FCC Form 1230 small system cost-of-service filing as discussed infra pursuant to In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration ("Eleventh Order on Reconsideration"), MM Docket No. 92-266, MM Docket No. 93-215, FCC 95-196 (rel. June 5, 1995); and

WHEREAS, on October 12, 1995, 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 to complete its review of the Company's FCC Form 1230 cost-of-service filing; 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 November 16, 1995 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 review of the Company's FCC Form 1230 small system cost-of-service filing; and

WHEREAS, the State reviewed the Company's FCC Form 1230 filed with the State on September 25, 1995 and revised FCC Form 1230 filed on January 11, 1996 (sometimes hereinafter collectively referred to as "Rate Filing")¹ and, in response to the State's requests, the Company's supplemental rate information filed on December 8, 1995 and March 1, 1996, and additional comments filed on March 12, 1996; and

¹The Rate Filing submitted for the Company's system covers Community Unit Identification number CUID HI0011.

WHEREAS, pursuant to the Eleventh Order on Reconsideration a system is eligible to set its maximum permitted combined per channel rate by using the FCC Form 1230 if it can show that it is system with 15,000 or fewer subscribers and it is not owned by small cable company with more than 400,000 subscribers, even though examination of any pending FCC Form 1220 has not yet been completed;² and

WHEREAS, the FCC has stated that eligible small systems "will be able to establish their permitted rates on the basis of an extremely simple formula that requires the operator to supply on five items of data: total operating expenses, net rate base, rate of return, channel count and subscribers. These five items will be used in an easy formula that will generate a per-channel rate that will be presumed reasonable if it is no more than \$1.24 per channel";³ and

WHEREAS, the Company states it is eligible to use the FCC Form 1230 because it had a total of 7,955 subscribers and its management company Rifkin & Associates, Inc. served less than 400,000 subscribers as of September, 1995;⁴ and

WHEREAS, the Company's Rate Filing seeks to establish a maximum combined permitted per subscriber, per channel rate for the basic service tier and Cable Programming Service tier of \$.77 as shown on Line A6 of the Company's revised FCC Form 1230, and a selected per subscriber, per channel rate of \$.73 for the basic service tier and Cable Programming Service tier as shown on Line A11 of the Company's revised FCC Form 1230;⁵ and

²See Sections 76.934(h)(9), 76.901(c) and 76.901(e) of the Commission's Rules; and Eleventh Order on Reconsideration at paragraph 74-75.

³Eleventh Order on Reconsideration at paragraph 54.

⁴See Company's written response filed on December 8, 1995.

⁵The Company in its revised FCC Form 1230 reported a total of 31.5 regulated channels of which 15.5 channels are on the basic service tier and 16 channels are on the Cable Programming Services tier. In response to the State's inquiry, the Company later indicated that channel 7 of the basic service tier carries more than fifty percent (50%) of regulated programming. See Company written response filed on March 1, 1996. Thus, based on the Company's response the total number of regulated channels should be 32 and not 31.5, of which 16 are on the basic service tier and 16 are on the Cable Programming Services tier.

WHEREAS, section 76.934(h) of the Commission's Rules provides that "[i]f the maximum permitted rate established on Form 1230 does not exceed \$1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its cost and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return"; and

WHEREAS, after reviewing the Company's Rate Filing, the Company's revised FCC Form 1230, and the Company's responses to the State's requests for supplemental information in accordance with the provisions of the Eleventh Order on Reconsideration and FCC Rules, the State's financial consultant found that the Company's proposed maximum combined per subscriber, per channel rate and selected per subscriber, per channel rate are below \$1.24 and are therefore presumed reasonable under the Eleventh Order on Reconsideration; 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;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum combined permitted per subscriber, per channel rate of \$.77 as shown on Line A6 of the Company revised FCC Form 1230 and its selected per subscriber, per channel rate of \$.73 (exclusive of franchise fees and applicable taxes) as shown on Line A11 of the Company's revised FCC Form 1230, are each below \$1.24 per channel and are thus presumed reasonable as provided under the Eleventh Order on Reconsideration.⁶

2. The Company's maximum permitted rates for installation and equipment shall be the rates set forth in said Decision and Order No. 166.


⁶The Company must comply with the 30-day notice requirement under section 76.932 of the Commission's Rules to implement an increase to its programming rates. See Eleventh Order on Reconsideration at paragraphs 64 and 692; Section 76.934(h) of the FCC Rules. For example, the Company after providing the required notice to subscribers and after filing its FCC Form 1230 but prior to any determination by the State, increased its basic service tier rate to \$10.95 and its Cable Programming Service tier rate to \$12.25 (exclusive of franchise fees and applicable taxes) effective as of January 1, 1996.

3. The Company may not increase its basic service tier rate, nor may it increase or 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.

4. 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.

5. This Rate Order becomes effective as of the date hereof.

DATED: Honolulu, Hawaii March 19, 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. 186 in Docket No. 95-21 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 19th day of March, 1996.

MR. WILLIAM HARKINS
Garden Isle CableVision, L.P. dba Garden
Isle CableVision
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MR. DAN RYAN
Rifkin & Associates, Inc.
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Patti K. Kodama
Secretary