

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

In the Matter of Time Warner)
Entertainment Company, L.P. dba)
Sun Cablevision)
)
)
)
)
Update of Basic Service Rate)
(FCC Form 1210))

DECISION AND ORDER NO. 190
(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 American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii¹ (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, by Decision and Order No. 176 issued on June 25, 1995, the State established \$8.44 as the Company's maximum permitted monthly rate for the basic service tier (FCC Form 1200) from July 14, 1994; and

¹By Decision and Order No. 173 issued on June 30, 1995, the State approved the transfer of the cable communications franchise held by American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii to Time Warner Entertainment Company, L.P.

WHEREAS, in connection with justifying the Company's rate adjustment for the basic service tier, the Company submitted its initial FCC Form 1210 to the State on January 10, 1995, an amended FCC Form 1210 on February 21, 1995, and in response to the State's requests submitted a revised Rate Filing on July 11, 1996 (collectively hereinafter referred to as "Rate Filing"),² and submitted supplemental rate information on October 4, 1996, and October 17, 1996; and

WHEREAS, by order dated January 20, 1995, as amended by order dated March 13, 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 Rate 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 March 28, 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 stream-lined rate review process; and

WHEREAS, the State prepared a proposed rate order, a copy of which was 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 submitted by the Company; and

WHEREAS, the Company has the burden of proving by a preponderance of the evidence that its proposed adjustment is in conformance with the FCC Rules;³ and

WHEREAS, an operator may use the FCC Form 1210 to justify adjustments to the maximum permitted programming rates computed on its FCC Form 1200, and the operator may adjust, on a quarterly basis, its permitted programming rates to reflect changes in certain external costs, including programming costs, channel additions and deletions, and inflation; and

²The Rate Filing submitted for the Company's system at Kailua-Kona, Hawaii, covers Community Unit Identification numbers CUID HI0023-HI0032 inclusive, HI0056, HI0075 and HI0078.

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

WHEREAS, in its Rate Filing the Company seeks to justify increasing its maximum permitted monthly rate for the basic tier by \$.34 or from \$8.44 to \$8.78, for external costs (increased programming costs); and

WHEREAS, after reviewing the Company's Rate Filing, there is no adjustment necessary to the Company's proposed maximum permitted monthly rate of \$8.78 for the basic service tier; and

WHEREAS, this Rate Order does not apply to the Company's FCC Form 1205 filed on February 27, 1995, and the Company's FCC Forms 1240 filed on December 28, 1995 and October 7, 1996;⁴

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted monthly rate of \$8.78 for the basic service tier is approved, subject to refunds/credits for overcharges of the basic service tier rate as set forth in paragraph 3 hereof.

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 June 22, 1995 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$8.78.⁵

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

⁴The reasonableness of the Company's proposed charges for equipment and installation under said FCC Form 1205, and proposed adjustments under said FCC Forms 1240, will be reviewed in subsequent separate reviews.

⁵According to the Company's tariffs filed with the State, the Company's actual rate for the basic service tier of \$9.00 was in effect from July 14, 1994 through March 31, 1995, and the Company increased its basic service tier rate from \$9.00 to \$9.16, effective as of April 1, 1995. Adjustments to the basic service tier rate 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 FCC Rules, the State extended its review period for the Company's Rate Filing to June 21, 1995. Thus, the Company could not have implemented the increase until June 22, 1995.

the basic service tier shall be the difference between the actual rates charged to subscribers and the approved maximum permitted monthly rate of \$8.78. The refund period shall run from April 1, 1995 up to the date the Company implements its subsequent adjustment in accordance with FCC Rules.⁶ 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. 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.


⁶Pursuant to Decision and Order No. 177, the Company was ordered to issue refund/credits to subscribers for overcharges (the actual rate of \$9.00 minus the maximum permitted rate of \$8.44) of its basic service tier rate for the period July 14, 1994 through July 15, 1995. The Company's refund plan submitted pursuant to Decision and Order No. 177 included the \$9.00 actual rate, but it did not include the \$9.16 rate for the applicable months. Consequently, the refund period under this Rate Order shall cover the period from April 1, 1995 and continuing up to the date the Company implements its subsequent adjustment in accordance with FCC Rules. It is noted that the tariffs filed by the Company state that the Company next adjusted its basic service tier rate to \$8.48 effective as of January 1, 1996.

6. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1205 filed on February 27, 1995, and the Company's FCC Forms 1240 filed on December 28, 1995 and October 7, 1996, 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, or that the Company is not in compliance with this Rate Order.

8. This Rate Order shall be effective as of the date hereof.

DATED: Honolulu, Hawaii January 28, 1997.


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. 190 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 28th day of January, 1997.

MS. STACIE O. KELLEY
TCI Cablevision of California, Inc.
1850 Mt. Diablo Blvd., Suite 200
Walnut Creek, CA 94596


Patti K. Kodama
Secretary