

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

In the Matter of Time Warner)
Entertainment Company, L.P. dba)
Kamehameha Cablevision (N. Kohala))
)
)
)
Updating of Basic Service Rate)
(FCC Form 1210 - 2nd Filing))

DECISION AND ORDER NO. 192
(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 Kamehameha Cablevision of Hawaii (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, the Company gave the State notice that effective as of July 14, 1994, the Company would restructure its basic service 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. 177 issued on June 25, 1996, the State established \$8.89 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 and Kamehameha Cablevision to Time Warner Entertainment Company, L.P.

WHEREAS, by Decision and Order No. 191 the State approved \$8.93 as the Company's adjusted maximum permitted rate for the basic service tier (FCC Form 1210) as of April 18, 1995;

WHEREAS, in connection with justifying the Company's rate adjustment for the basic service tier, the Company submitted its FCC Form 1210 to the State on March 30, 1995, an amended and revised FCC Form 1210 on September 26, 1995, and a subsequent amended and revised FCC Form 1210 on July 11, 1996, for the period January 1, 1995 to June 30, 1995 (collectively hereinafter referred to as "Rate Filing");² and

WHEREAS, on September 28, 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 September 28, 1995, directing the Company to keep an accurate account of all amounts received by reason of the rates and charges 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 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

²The Rate Filing submitted for the Company's system at North Kohala, Hawaii, covers Community Unit Identification numbers CUID HI0082, HI0083, and HI0084.

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

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

WHEREAS, in its Rate Filing the Company seeks to justify increasing its maximum permitted monthly rate for the basic tier by \$.32 or from \$8.93 to \$9.25, for external costs and inflation; and

WHEREAS, after reviewing the Company's Rate Filing, there is no adjustment necessary to the Company's proposed maximum permitted monthly rate for the basic service tier of \$9.25; and

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted monthly rate of \$9.25 for the basic service tier is approved.

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 January 24, 1996 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$9.25.⁵

The tariffs submitted by the Company shows that the Company did not implement the proposed adjustment under this Rate

⁴The reasonableness of the Company's proposed charges for equipment and installation under said FCC Form 1205, and proposed adjustments under each of 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 \$9.14 was in effect from July 14, 1994 through December 31, 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 January 24, 1996. Thus, the Company could not have implemented the proposed increase prior to January 24, 1996.

Filing.⁶ Further, pursuant to Decision and Order No. 191 the Company was required to provide refund/credits to subscribers for the period described therein. Accordingly, the Company is not subject to refund liability under this Rate Filing, provided the Company implements the refunds/credits in accordance with said Decision and Order No. 191.⁷

3. 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.

4. 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.


5. 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 the requirements of this Rate Order.

⁶Nothing herein shall be deemed to extend the time period to implement the rate adjustment under this Rate Filing beyond the one-year period set forth in 47 C.F.R. section 76.922(d)(3).

⁷According to the tariffs filed by the Company, the Company adjusted its basic service tier rate to \$8.50 effective as of January 1, 1996.

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

DATED: Honolulu, Hawaii January 28, 1997.

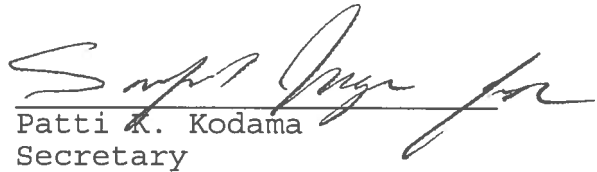


Kathryn S. Matayoshi
Director
Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 192 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 95496


Patti K. Kodama
Secretary