

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

In the Matter of JONES SPACELINK)
of HAWAII, INC.)
(Honokaa System))
)
)
)
Updating of Basic Service Rate)
(FCC Form 1210 - 2nd Filing))
)

DECISION AND ORDER NO. 195
(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, 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. 184 issued on June 25, 1996, the State established \$10.27 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. 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, by Decision and Order No. 194 issued on March 18, 1997, the State established \$10.44 as the Company's adjusted maximum permitted monthly rate for the basic service tier (FCC Form 1210 - 1st Filing) as of June 1, 1995; and

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 May 1, 1995, and in response to the State's request submitted a revised and amended FCC Form 1210 on August 8, 1996 (collectively hereinafter referred to as "Rate Filing"), for the period January 1, 1995 through January 1, 1996;² and

WHEREAS, on May 3, 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 May 3, 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 reviewed the Rate Filing, and other evidence and information submitted by the Company; and received and considered the Company's comments, filed on March 13, 1997, on the proposed rate order in accordance with section 16-133-50(a) of the Department's Rules; and

WHEREAS, an operator may use the FCC Form 1210 to justify adjustments to the maximum permitted programming rates, 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 Honokaa system covers Community Unit Identification number CUID HI0079.

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, in its FCC Form 1210 the Company seeks to justify increasing its maximum permitted monthly rate for the basic service tier by \$.47 or from \$10.44 to \$10.91, for external costs and inflation;⁴ and

WHEREAS, FCC instructions provide that Lines A2 and C14 of the Company's Rate Filing should reflect Lines F6 (\$10.4392) and B10 (\$.2106), respectively, as calculated in the Company's previous FCC Form 1210 filing and as adjusted by the State in Decision and Order No. 194; and

WHEREAS, adjusting Lines A2 and C14 accordingly, decreases the Company's proposed maximum permitted rate for the basic service tier by \$.05 or from \$10.91 to \$10.86; and

WHEREAS, this Rate Order does not apply to the Company's FCC Form 1205 filed on August 2, 1995, and FCC Form 1240 filed on October 7, 1996;⁵

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted monthly rate of \$10.91 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 August 30, 1995 and

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

⁴According to the tariff filed by the Company, effective as of June 1, 1995, the Company's actual rate for the basic service tier was \$11.36 (exclusive of franchise fees and taxes). However, 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 FCC Rules, the State extended its review period for the Company's Rate Filing to August 29, 1995. Thus, the adjustment could only have become effective as of August 30, 1995.

⁵The reasonableness of the Company's proposed charges for equipment and installation under said FCC Form 1205, and the proposed adjustment under said FCC Form 1240, will be reviewed in subsequent separate reviews.

continuing up to the effective date of the Company's subsequent adjustment implemented in accordance FCC Rules, shall be \$10.86.

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 \$11.36 and the approved maximum permitted monthly rate of \$10.86. The refund period shall run from June 1, 1995 up to the date the Company implements a 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, as adjusted for subsequent rate filings that have taken effect pursuant to FCC regulations. The Company shall implement the adjusted maximum permitted rate set forth in paragraph 2 hereof not later sixty (60) days from the effective date of this Rate Order.

5. Within 15 days from 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

⁶As noted previously, the Company prematurely increased its actual rate for the basic service tier on June 1, 1995. Consequently, the Company's refund period shall cover the period in which the Company's actual rate exceeds the maximum permitted rate as set forth in this Rate Order.

shall not affect the Company's obligation to implement rate refunds as described in paragraph 3 hereof.

6. The Company shall file with the State within ninety (90) days from the date of this Rate Order a certification, signed by an authorized representative of the Company, stating whether the Company has complied fully with all provisions of this Rate Order, describing in detail the precise measures taken to implement this Rate Order, and showing how any refunds (including interest, franchise fees, and taxes) were calculated and distributed.

7. The Company may charge rates less than the maximum permitted rate indicated herein, as long as such rates are applied in a uniform and nondiscriminatory way, pursuant to applicable federal, state, and local laws and regulations.

8. This Rate Order is not be construed as a finding that the State has accepted as correct any specific entry, explanation or argument made by the Company not specifically addressed herein.


9. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1205 filed on August 2, 1995, and FCC Form 1240 filed on 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.

10. 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.

11. 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.

12. This Rate Order is issued as of the date hereof, and in accordance with the Department's Rules this Rate Order shall become effective on the 31st day of March, 1997.

DATED: Honolulu, Hawaii March 18, 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. 195 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 18th day of March, 1997.

Mr. Mike Bartolementi
Jones Intercable, Inc.
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Ms. LORENE HOUGH
Hawaiian Cablevision of Hilo (formerly Jones
Spacelink of Hawaii, Inc.)
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1257 Kilauea Avenue
Hilo, Hawaii 96721

Patti K. Kodama
Patti K. Kodama
Secretary