

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 )  
 )  
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 )  
Update of Basic Service Rate )  
(FCC Form 1240) )

DECISION AND ORDER NO. 198  
(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 Hawaii<sup>1</sup> (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

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<sup>1</sup>By 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, by Decision and Order No. 190 the State approved the Company's adjusted maximum permitted rate of \$8.78 for its basic service tier (FCC Form 1210) as of June 22, 1995; and

WHEREAS, in connection with justifying the Company's rate adjustment for the basic service tier, the Company submitted its FCC Form 1240 to the State on December 28, 1995, and a revised and amended FCC Form 1240 on October 7, 1996<sup>2</sup> ("Rate Filing"), for the period January 1, 1996 through December 31, 1996;<sup>3</sup> and

WHEREAS, the State retained a financial consultant to assist it in the streamlined rate review process; and

WHEREAS, the State reviewed the Rate Filing, and prepared a proposed rate order, a copy of which was provided to the Company prior to the issuance of this Rate Order; and

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<sup>2</sup>The Company submitted its first revised and amended FCC Form 1240 on October 7, 1996, which according to Company incorporated certain changes made by the FCC in the "methodology used to calculate the maximum permitted rate." The FCC, Cable Services Bureau, Public Notice dated January 19, 1996, DA 96-40, described an error in the Instructions of the paper copy of the December 1995 version of Form 1240, and described how to obtain the corrected form. By order released January 19, 1996, the Cable Services Bureau stated that cable operators are required to use the corrected Form 1240, and that operators who have already filed the FCC Form 1240 should file their corrected FCC Form 1240 with their local franchising authorities by February 20, 1996. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration; FCC Form 240, Order, DA 96-41 (rel. January 19, 1996). The order states that "[i]f a corrected filing is made after that date, the franchising authority will have the authority to extend the review period by as many days as the filing is late." Id. at paragraph 2.

Therefore, because the Company did not submit its revised FCC Form 1240 until October 7, 1996, the State hereby extends the review period by 230 days (February 20, 1996 to October 7, 1996). The State has thus acted well before the expiration of the additional period provided under the January 19, 1996 order.

<sup>3</sup>The 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.

WHEREAS, the Company requested an extension of time to submit its written comments on the proposed rate order to January 14, 1997, and in consideration of the State's approval to such extension, the Company agreed to extend the State's deadline for the issuance of this Rate Order for an additional 30 days to January 28, 1997; and

WHEREAS, the Company has the burden of proving that its proposed adjustment is in conformance with the FCC Rules;<sup>4</sup> and

WHEREAS, under the FCC Rules an operator who chooses to use FCC Form 1240 may update its permitted programming rates on an annual basis, and may adjust its rates to reflect reasonably certain and quantifiable changes in external costs, inflation and the number of regulated channels that are projected for the 12 months following the rate change;<sup>5</sup> and

WHEREAS, in general, the annual rate adjustment has two components - the first component is based on the operator's projected costs, and the second component is based on the costs which an operator has actually incurred; and

WHEREAS, under the Thirteenth Order on Reconsideration, an operator that elects to use the annual adjustment methodology may adjust its programming rates once per year on a maximum permitted rate that accounts for reasonably certain and reasonably quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change; and

WHEREAS, the annual adjustment methodology also provides a "true-up" mechanism to correct differences between the operator's projected costs and the actual costs that occurred during the 12 month period; and

WHEREAS, the "true-up" mechanism provides that if the operator has not recovered actual costs it incurred, the operator may add such costs to its rates at a later date, with interest, and it requires that the operator return to subscribers any overcharges that occurred, with interest; and

WHEREAS, the Company submitted its Rate Filing in connection with that certain Social Contract adopted by the FCC in Matter of Social Contract for Time Warner Cable, Order, DA 95-2491 (rel.

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<sup>4</sup>See 47 C.F.R. Section 76.937(a), and Section 16-133-46 of the Department's Rules.

<sup>5</sup>See Thirteenth Order on Reconsideration, paragraph 7 at p. 4, FCC 95-397 (rel. September 22, 1995); 47 C.F.R. section 76.922(e).

December 15, 1995) ("Time Warner Social Contract Order"), which permitted the Company to restructure its basic service programming rate by reducing that rate by 10 %, and to adjust it upwards for external costs, channel additions, and inflation, and allowed the Company to implement its restructured basic service rate on January 1, 1996;<sup>6</sup> and

WHEREAS, in its Rate Filing the Company seeks to justify \$8.91 as the Maximum Permitted Rate for Projected Period, and the Company selected \$8.48 as the Operator Selected Rate for Projected Period;<sup>7</sup> and

WHEREAS, the Company listed \$9.50 as the Current Maximum Permitted Rate on Line A1 of its Rate Filing; and

WHEREAS, FCC instructions provide that the Current Maximum Permitted Rate is the permitted rate for regulated programming services according to FCC regulations; and

WHEREAS, pursuant to Decision and Order No. 190, the State approved the Company's adjusted maximum permitted rate of \$8.78 for its basic service tier as of June 22, 1995;<sup>8</sup> and

WHEREAS, adjusting Line A1 to reflect the approved maximum permitted rate of \$8.78, decreases the Company's proposed Maximum

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<sup>6</sup>See Time Warner Social Contract Order, paragraphs 7-21. The form used by the Company for this Rate Filing is a "one-time only form", which the Company may use for establishing the restructured rate that resulted from implementing the Social Contract. Thereafter, the Company must establish its rates in accordance with FCC Rules and in conformance with the provisions of the Social Contract. Id. at paragraph 8.

For purposes of this Rate Order, it is presumed that the Company by signing the certification statement on its FCC Form 1240, has properly completed said form, the instructions and worksheets in accordance with the terms of the Social Contract, and that any line item which was modified by the Company was so modified in accordance with the Social Contract as adopted by the FCC.

<sup>7</sup>According to tariffs filed by the Company, \$8.48 is the basic service tier rate the Company elected to charge to subscribers for the Projected Period, January 1, 1996 through December 31, 1996.

<sup>8</sup>Section III A 2 of the Time Warner Social Contract provides that the Company's restructuring of its basic service tier rate in accordance with the Social Contract, does not adversely affect any previously filed Form 1210 rate adjustment that remain pending before a local franchising authority.

Permitted Rate for Projected Period by \$.77 or from \$8.91 to \$8.14;<sup>9</sup> and

WHEREAS, the Company listed 4.10% as the Inflation Factor for True-Up Period 1 on Line C1 of the Rate Filing; and

WHEREAS, according to the Company's document attached to its Rate Filing - "Time Warner Social Contract Modifications to FCC Form 1240 Annual Updating of Maximum Permitted Rates For Regulated Cable Services", the inflation factor for Line C1 should be .0296; and

WHEREAS, adjusting Line C1 to reflect the .0296 inflation factor, decreases the Company's proposed Maximum Permitted Rate for Projected Period by \$.09 or from \$8.14 to \$8.05;<sup>10</sup> and

WHEREAS, this Rate Order does not address to the Company's FCC Form 1205 filed on February 27, 1995, and FCC Form 1240 filed on October 7, 1996;<sup>11</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed Maximum Permitted Rate for Projected Period of \$8.91 is disapproved.

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<sup>9</sup>The Company in its written comments to the proposed rate order did not object to this adjustment.

<sup>10</sup>The Company filed its written comments on the proposed rate order on January 13, 1997, and on January 21, 1997 submitted a Company memo dated August 26, 1996. According to the Company, the Company made certain changes in calculating inflation and interest to conform to new FCC methodologies. However, upon review of the information submitted by the Company it is still unclear as to how the 4.10% inflation factor as stated in Line C1 was calculated, and thus the Company did not carry its burden of proof. Nonetheless, the State will provide the Company the opportunity to submit additional information that explains its calculation of the 4.10% inflation factor within 15 days from the effective date of this Rate Order. Upon receipt and review of the supporting information, the State will determine whether the Company has met its burden of proof. If the Company satisfies its burden of proof with respect to this inflation adjustment issue, the State will issue a subsequent order adjusting the maximum permitted rate for the basic service tier approved in this Rate Order accordingly.

<sup>11</sup>The reasonableness of the Company's proposed charges for equipment and installation under said FCC Form 1205, and the proposed adjustment to the basic service tier under said FCC Form 1240, will be reviewed in subsequent separate reviews.

2. The Company's Maximum Permitted Rate for Projected Period, exclusive of franchise fees and taxes, for the basic service tier (assuming a 12-channel basic service tier) as of January 1, 1996 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$8.05.

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 in accordance with applicable FCC regulations. 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 \$8.48 and the approved maximum permitted monthly rate of \$8.05. The refund period shall run from January 1, 1996 up to the date the Company implements a subsequent adjustment in accordance with FCC Rules. With respect to each affected subscriber entitled to a refund, the Company shall implement the rate refunds ordered herein as soon as possible, but in any case within sixty (60) days after the effective date of this Rate Order.<sup>12</sup>

4. The Company may not make adjustments for overestimated or underestimated costs in the Rate Filing, nor may the Company increase its basic service tier rate, institute charges for any other types of service, equipment or installation associated with the basic service tier, without first complying with all applicable laws or regulations, including the Amended Rules, FCC Orders, and the Time Warner Social Contract. 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.

5. Within 15 days from the effective date of this Rate Order, the Company may submit additional information supporting its inflation factor as described in footnote 10 hereof. The

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<sup>12</sup>In its written comments on the proposed rate order, the Company stated that any overcharges should be included in its subsequent FCC Form 1240 filed on October 7, 1996, as part of its "true-up" calculations for any unrecovered actual costs incurred and overcharges. However, any reduction in the basic service tier rate that may be ordered by a local franchising authority in light of the Social Contract was not addressed by the Company. Thus, the reduction of the Company's basic service tier rate for the Projected Period and corresponding refund/credits to subscribers may be addressed by the State and Company prior to or after the refund plan is submitted.

State may modify this Rate Order as provided in paragraph 11 hereof.

6. Within thirty (30) 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 any 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.

7. 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.

8. 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.

9. 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.

10. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1205 filed on March 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.


11. The State reserves the right to modify this Rate Order if, at any time, it determines that the Company has met its burden of proof with respect to its inflation factor referred to in paragraph 5 hereof, or it determines that the 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.

12. 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.

13. This Rate Order is issued as of the date hereof, and in accordance with the Department's Rules becomes effective on the 10th day of February, 1997.

DATED: Honolulu, Hawaii January 28, 1997.



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

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