

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 )  
)  
)  
)  
)  
)  
Updating of Equipment and )  
Installation Rates )  
)  
)  
(FCC Form 1205) )

DECISION AND ORDER NO. 204  
(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

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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, after reviewing the Company's initial rate justification (FCC Form 393), the State, in Decision and Order No. 165, established the Company's maximum permitted rates for the basic service tier and associated equipment and installations; and

WHEREAS, in connection with justifying the Company's rate adjustment for regulated equipment and installation services, the Company submitted its FCC Form 1205 to the State on February 27, 1995 (hereinafter referred to as "Rate Filing")<sup>2</sup> for year ending December 31, 1994, and in response to State's request submitted supplemental information filed on October 4, 1996; and

WHEREAS, by order dated March 29, 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 streamlined 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 that its proposed adjustment is in conformance with the FCC Rules;<sup>3</sup> and

WHEREAS, an operator may use the FCC Form 1205 to update its charges for equipment and installation services on an annual basis, and it is the official form used by regulators to

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<sup>2</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.

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

determine whether an operator's regulated rates for equipment and installations are reasonable under the Amended rules;<sup>4</sup> and

WHEREAS, in its Rate Filing the Company seeks to justify adjustments to the maximum permitted rates for its regulated equipment and installations from the rates set forth in Decision and Order No. 165; and

WHEREAS, after reviewing the Company's Rate Filing, and supplemental information submitted by the Company, there are no adjustments necessary to the Company's proposed maximum permitted rates for regulated equipment and installations; and

WHEREAS, it is noted that the Company implemented its Inside Wiring Maintenance Program at \$.49 per month, effective as of March 1, 1994, which the Company describes as an optional program that subscribers may select for servicing their inside home wiring; and

WHEREAS, the Company did not include in its Rate Filing the Inside Wiring Maintenance Program nor any information in support thereof; and

WHEREAS, the FCC has determined that inside wiring maintenance agreements are rate-regulated;<sup>5</sup> and

WHEREAS, this Rate Order does not address the Company's FCC Form 1240 filed on October 7, 1996;<sup>6</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum permitted rates for regulated equipment and installations are approved, and the Company's maximum permitted rates, exclusive of franchise fees and taxes, for regulated equipment and installations as of June 28, 1995 and continuing up to the effective date of the Company's

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<sup>4</sup>FCC instructions state that, if an operator has already unbundled equipment and installation charges at cost, the operator must wait one year from the date the operator unbundled its equipment and installation charges before updating such charges. In connection with its FCC Form 393 filing, the Company stated that it first unbundled its rates as of September 1, 1993.

<sup>5</sup>See ML Media Partners, L.P. Trading as Multivision Cable T.V., Order, DA 95-1252 (Cable Services Bureau rel. June 19, 1995).

<sup>6</sup>The reasonableness of the Company's proposed adjustments under said FCC Form 1240, will be reviewed in a subsequent separate review.

subsequent adjustment implemented in accordance the FCC Rules, shall be as follows:<sup>7</sup>

	<u>Maximum Permitted Rate</u>
<u>Installation</u>	
Unwired Homes	\$41.26
Prewired Homes	17.68
Add.Conn. (initial)	11.79
Add.Conn. (separate)	17.68
Relocate Outlet	17.68
Upgrade/Downgrade Non- Addressable	11.79
Upgrade/Downgrade Addressable	2.00
Connect VCR (initial)	5.89
Connect VCR (separate)	11.79
<u>Equipment</u>	
Remote	0.11
Converter (non-addressable)	1.22
Converter (addressable)	1.84

2. The Company may not increase its rates for regulated equipment and installations above the maximum permitted rates indicated herein, 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 and FCC orders.<sup>8</sup>

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<sup>7</sup>Adjustments to regulated equipment and installation rates 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 27, 1995. Thus, the Company could not have implemented an increase until June 28, 1995. According to tariffs filed by the Company, the Company did not implement its proposed adjustments as set forth in this Rate Filing.

<sup>8</sup>By that certain Social Contract between Time Warner Cable and the FCC, the Company and other systems of Time Warner Cable, may establish as of January 1, 1996, blended rates for hourly service charge, installations, remote control devices, non-addressable converters, addressable converters, other customer equipment, and customer tier changes, by geographic region e.g., Hawaii. The FCC will review and set such rates, and enforcement of the FCC's rate decisions is left to the local franchising authorities. In the

3. Within seven (7) days upon request from the State, the Company shall submit to the State a written statement, together with supporting documentation, as to why the \$.49 Inside Wiring Maintenance Program charge is permissible under the FCC Rules. Such justification shall indicate, at a minimum, whether subscribers own their home wiring, and if so, when such ownership was transferred to subscribers; whether the value to subscribers of the Inside Wiring Maintenance Program, as reflected in the \$.49 charge, was removed from the base rate for the basic service tier; and whether the charge for the Inside Wiring Maintenance Program is based on the Company's costs, as provided under the FCC Rules.

4. The Company may charge rates less than the maximum permitted rates 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.

5. This Rate Order is not to 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.

6. The State reserves all rights it has under FCC Rules including the right to review the Company's FCC Form 1240 filed October 7, 1996, and to establish reasonable rates for the basic service tier 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.

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event the local franchising authority finds that the operator's equipment and installation charges exceed those permitted by the FCC, the local franchising authorities may order refunds of excess charges as necessary to comply with the equipment and installation charges permitted by the FCC. See Social Contract for Time Warner, pp 7-8, attached to In the Matter of Social Contract For Time Warner, Memorandum and Order, FCC-95-478 (rel. November 30, 1995).

8. This Rate Order is issued as of the date hereof.

DATED: Honolulu, Hawaii February 27, 1997.



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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 204 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on this 27th day of February, 1997.

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

*Patti K. Kodama*  
Patti K. Kodama  
Secretary