

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 1240))

DECISION AND ORDER NO. 237
(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, by Decision and Order No. 228 the State established the Company's maximum permitted rate of \$7.82 for its basic service tier (FCC Form 1240) as of January 1, 1997; 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 FCC Form 1240 to the State on October 1, 1997 and submitted its amended FCC Form 1240 on December 1, 1997 ("Rate Filing"), for the period January 1, 1998 through December 31, 1998;² 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;³ and

WHEREAS, the Company has the burden of proving that its proposed adjustment is in conformance with the FCC Rules;⁴ 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;⁵ 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

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.

³ The Company agreed to extend the State's review period up to January 4, 1999.

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

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

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. December 15, 1995) ("Social Contract"), which required the Company to establish its rates in accordance with FCC rules and in conformance with the provisions of the Social Contract;⁶ and

WHEREAS, in its Rate Filing the Company seeks to justify \$8.59 as the Maximum Permitted Rate for Projected Period, and the Company selected \$8.25 as the Operator Selected Rate for Projected Period;⁷ and

WHEREAS, the Company listed \$7.77 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. 228, the State established the Company's maximum permitted rate of \$7.82 for its basic service tier as of January 1, 1997; and

⁶For 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 and not the FCC instructions for that line item.

⁷According to tariffs filed by the Company, \$8.25 (exclusive of franchise and regulatory fees and taxes) is the actual monthly rate charged to subscribers for the basic service tier effective as of January 1, 1998.

WHEREAS, adjusting Line A1 to reflect the established maximum permitted rate of \$7.72, increases the Company's proposed Maximum Permitted Rate for Projected Period by \$.10 or from \$8.59 to \$8.69; and

WHEREAS, with respect to Lines E2 (Number of Months in True-Up Period 1) and E3 (Number of Months between the end of True-Up Period 1 and the end of the most recent Projected Period) of the Company's FCC Form 1240, the Company included an amount of 12 and 0, respectively; and

WHEREAS, pursuant to FCC instructions Lines E2 and E3 should include the amount of 9 and 3, respectively;⁸ and

WHEREAS, adjusting Lines E2 and E3 accordingly has no effect on the Company's proposed Maximum Permitted Rate for Projected Period; and

WHEREAS, with respect to Line F8 (True-Up Segment for Period 1) of the Company's FCC Form 1240, the Company included an amount of (\$0.3671); and

WHEREAS, pursuant to FCC instructions Line F8 should include the amount of (\$0.4048), calculated based on amounts included in its previous rate filing, as adjusted by Decision and Order No. 228; and

WHEREAS, adjusting Line F8 accordingly reduces the Company's proposed Maximum Permitted Rate For Projected Period by \$0.03 or from \$8.69 to \$8.66; and

WHEREAS, with respect to Lines C1 (Inflation Factor for True-up Period 1) and Line C3 (Current FCC Inflation Factor), the Company included the amount of 2.7% for both entries based on inflation factors available from the FCC at the time the Company completed its initial Form 1240 on September 26, 1997; and

WHEREAS, because the Company completed its amended Form 1240 on November 20, 1997, the Company should have used the new updated inflation figures of 2% and 1.77%, respectively, released by the FCC as of October 10, 1997, in accordance with FCC instructions; and

WHEREAS, adjusting Lines C1 and C3 accordingly reduces the Company's proposed Maximum Permitted Rate for Projected Period by \$0.17 or from \$8.66 to \$8.49;

⁸ See also In the Matter of Time Warner Cable, Complaint Regarding Cable Programming Services Tier Rate Increases, CUID No. HI0029 (Kailua-Kona), Order, DA-98-1121 (Cable Services Bureau rel. June 15, 1998), at paragraph 5, page 2.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed Maximum Permitted Rate for Projected Period of \$8.59 is disapproved.

2. The Company's Maximum Permitted Rate for Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier (assuming a 12-channel basic service tier) as of January 1, 1998 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$8.49.⁹

3. 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 FCC rules, regulations, orders, and the Social Contract.

4. 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.

5. 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.

6. With respect to the next adjustment to the established Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, the Company's FCC Form 1240 (for the period January 1, 1999 through December 31, 1999) shall include the following: Line A1 \$8.49; Line D2 \$0.4165; Line D6 (\$0.0775); and Line D7 \$0.1417.

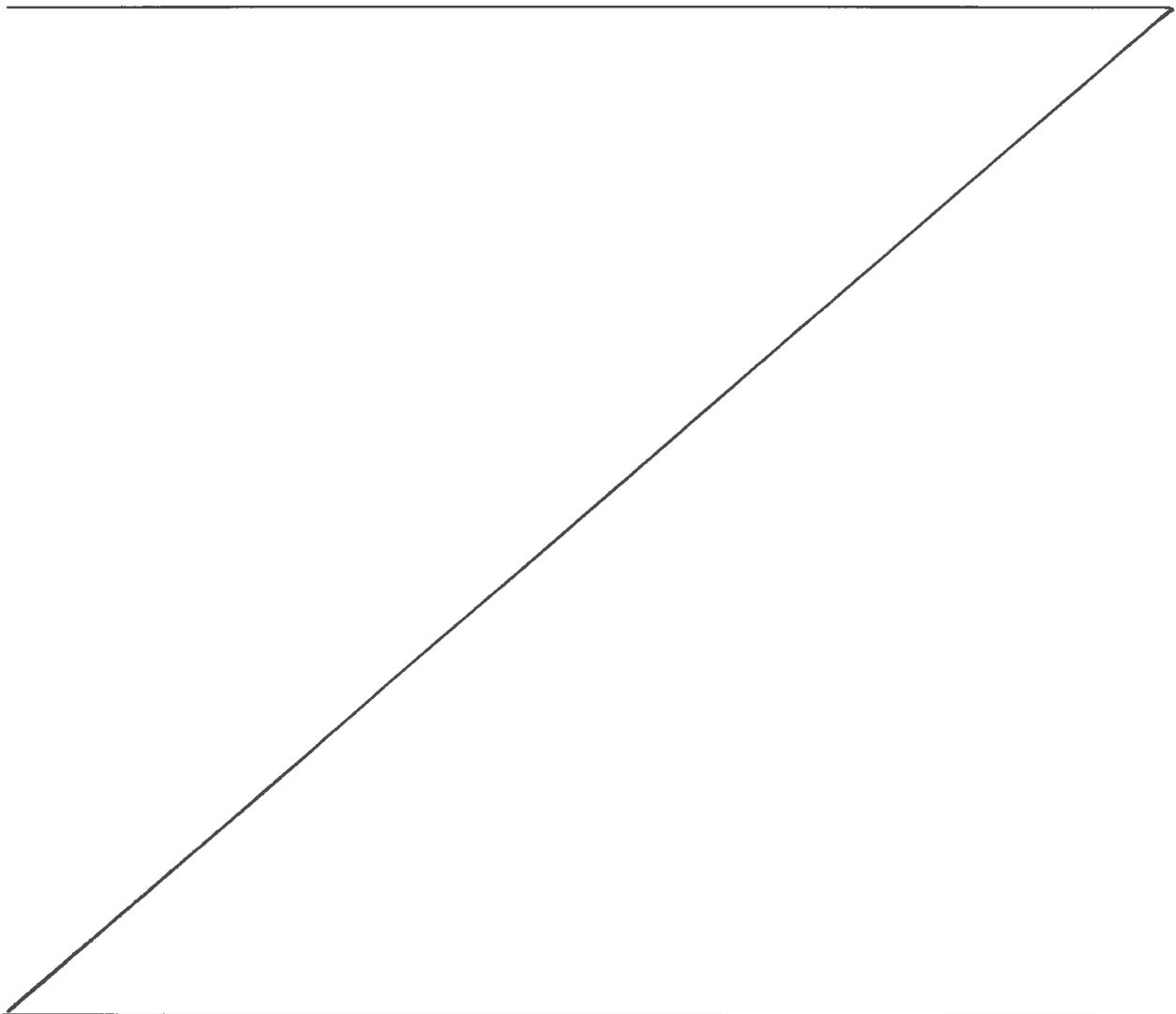
⁹Because the Company's Selected Rate of \$8.25, the actual rate charged to subscribers, is lower than the established Maximum Permitted Rate for Projected Period of \$8.49, the Company is not subject to refund liability under this Rate Order.

However, in the event the Company overestimated its projected costs than what actually occurred in practice, the Company, when adjusting its rate pursuant to "true-up" in the next year, must reduce its rate on a prospective basis and the overcharges, plus interest, must be returned to subscribers in the form of reduced rates in twelve equal monthly installments. Thirteenth Order on Reconsideration, paragraph 82.

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. The State reserves all rights it has under FCC Rules including the right to review any pending rate filing submitted by the Company, 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.

9. This Rate Order is issued and is effective as of the date hereof.



DATED: Honolulu, Hawaii December 30, 1998.

A handwritten signature in cursive script, appearing to read "Kathryn S. Matayoshi", written over a horizontal line.

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. 237 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on December 30, 1998.

MR. RUSSELL SAIKI
Time Warner Entertainment Company, L.P. dba
Sun Cablevision
200 Akamainui Street
Mililani, HI 96789-3999

Patti K. Kodama

Patti K. Kodama
Secretary