

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

In the Matter of TCI of Hawaii, Inc.)
(Ka'u System))
)
)
)
)
)
)
 Update of Basic Service Tier Rate)
(FCC Form 1240 Filing))

DECISION AND ORDER NO. 238
(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 The Chronicle Publishing Company dba Chronicle 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, 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 February 2, 1998 (hereinafter referred to as "Rate Filing"), for the period April 1, 1998 through March 31, 1999;² and

¹By Decision and Order No. 187 issued on March 22, 1996, the State approved the transfer of the cable communications franchise held by The Chronicle Publishing Company dba Chronicle Cablevision of Hawaii to TCI of Hawaii, Inc.

²The Rate Filing submitted for the Company's Ka'u system covers Community Unit Identification number CUID HI0020.

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

WHEREAS, the Company submitted its written comments on the proposed rate order by letter dated September 3, 1998, and other information dated October 20, 1998; and

WHEREAS, the Company has the burden of proving that its proposed adjustment is in conformance with the FCC Rules;³ 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;⁴ 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

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

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

date, with interest, and it requires that the operator return to subscribers any overcharges that occurred, with interest; and

WHEREAS, in its Rate Filing the Company seeks to justify \$20.01 as the Maximum Permitted Rate for Projected Period, and the Company selected \$20.01 as the Operator Selected Rate for Projected Period;⁵ and

WHEREAS, the Company listed \$18.83 as the Current Maximum Permitted Rate on Line A1 of its Rate Filing; and

WHEREAS, Decision and Order No. 232, however, states that the Company's maximum permitted rate for the basic service tier on Line A1 of the Company's Rate Filing shall be \$18.78⁶; and

WHEREAS, the Company stated that Line A1 includes Federal Communications Commission regulatory fee in the amount of \$0.05, which is the difference between \$18.83 and \$18.78; and

WHEREAS, in establishing the rate of \$18.78 in Decision and Order No. 232, said rate was exclusive of all fees and taxes; and

WHEREAS, adjusting the Company's Rate Filing to exclude Federal Communications Commission regulatory fee in the amount of \$0.05, results in a Maximum Permitted Rate for Projected Period in the amount of \$19.96;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed Maximum Permitted Rate for Projected Period of \$20.01 for the basic service tier is disapproved.

⁵According to tariffs filed by the Company, \$19.97 (exclusive of franchise fees and taxes) is the actual charge to subscribers for the basic service tier effective as of April 1, 1998. The Company also added six (6) programs to its basic service tier as of April 1, 1998: Discovery, Nickelodeon, VH-1, Home Shopping Network, C-Span 2, and the Nashville Network. See Company's Channel Listing effective as of April 1, 1998.

⁶ See Decision and Order No. 232, fn. 4.

2. The Company's Maximum Permitted Rate for Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier (assuming an 18 channel tier) as of April 1, 1998 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$19.96.⁷

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 but not limited to FCC rules, regulations and orders. Within 60 days after the effective date of this Rate Order, 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.

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. With respect to the Company's next adjustment to the approved Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, the Company's FCC Form 1240 (for the period April 1, 1999 through March 31, 2000) shall include the following: Line A1 \$19.96; Line D2 \$3.0961; Line D6 (\$0.0143); and Line D7 \$0.2380.

6. 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.

⁷Because the difference between the Company's Selected Rate of \$19.97 and the established Maximum Permitted Rate for Projected Period of \$19.96, is diminimis the Company is not subject to refund liability under this Rate Order.

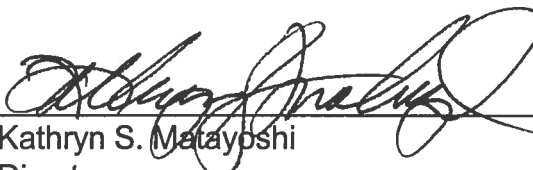
However, in the event the Company overestimated its projected costs than what actually occurred in practice, the Company, when adjusting its rate pursuant to "true-up" in the next year, must reduce its rate on a prospective basis and the overcharges, plus interest, must be returned to subscribers in 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 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.

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 January 5, 1999.


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. 238 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on January 5, 1999.

MS. STACIE O. KELLEY
TCI Cablevision of California, Inc.
1850 Mt. Diablo Blvd., Suite 200
Walnut Creek, CA 95496


Patti K. Kodama
Patti K. Kodama
Secretary