

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

In the Matter of Time Warner)
Entertainment Company, L.P. dba)
HAWAIIAN CABLEVISION)
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)
Updating of Basic Service Rate)
(FCC Form 1240))
_____)

DECISION AND ORDER NO. 253
(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 Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company (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 September 30, 1998 and submitted its amended FCC Form 1240 on December 30, 1998 ("Rate Filing"), for the period January 1, 1999 through December 31, 1999;² and

¹By Decision and Order No. 174 issued on October 2, 1995, the State approved the transfer of the cable communications franchise held by Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company to Time Warner Entertainment Company, L.P.

²The Rate Filing submitted for the Company's system at Lahaina, Maui covers Community Unit Identification number CUID HI0002.

WHEREAS, the State retained a financial consultant to assist it in the stream-lined 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 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 revenues the operator collected and the actual cost changes 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

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).

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;⁵ and

WHEREAS, in its Rate Filing the Company seeks to justify \$7.49 as the Maximum Permitted Rate for Projected Period, and the Company selected \$7.75 as the Operator Selected Rate for Projected Period;⁶ and

WHEREAS, after review of the Company's Rate Filing there were no adjustments necessary to the Company's proposed Maximum Permitted Rate for Projected Period;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed Maximum Permitted Rate for Projected Period of \$7.49 is approved.

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 tier) as of January 1, 1999 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance the FCC Rules, shall be \$7.49.

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.

⁵For 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.

⁶According to tariffs filed by the Company, \$7.75 (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, 1999.

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 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. With respect to the 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 January 1, 2000 through December 31, 2000) shall include the following: Line A1 \$7.49; Line D2 \$0.2622; Line D6 (\$0.3032); and Line D7 \$0.0612.

7. The Company's Operator Selected Rate or actual rate charged to subscribers for its basic service tier for the period from January 1, 2000 through December 31, 2000, shall not exceed \$7.75 per month or the proposed maximum permitted rate, whichever is lower, and which charge shall be reflected in the Company's FCC Form 1240 for that period.⁷

8. 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.

9. 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.

⁷ The Company is required to file the Form 1240 for its next rate adjustment no later than three months prior to the effective date of the rate adjustment e.g., for a January 1, 2000 rate adjustment the Company must file its Form 1240 with the State on or before September 30, 1999. The difference between the Maximum Permitted Rate approved by this Order and the Company's actual charge for the Projected Period will be reflected in the maximum permitted rate calculated by the State for the Company's next rate adjustment filing.

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

DATED: Honolulu, Hawaii May 13, 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. 253 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on May 13, 1999.

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

Patti K. Kodama
Patti K. Kodama
Secretary