

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

| | | |
|------------------------------------|---|------------------------------------|
| In the Matter of |) | DECISION AND ORDER NO. 314 |
| |) | (CONSOLIDATED BASIC SERVICE |
| Time Warner Entertainment |) | TIER RATE ORDER) |
| Company, L.P., |) | |
| |) | |
| |) | |
| Consolidated Annual |) | |
| Adjustment of Basic Service |) | |
| Tier Rates for the State of Hawaii |) | |
| (FCC Form 1240). |) | |
| _____ |) | |

DECISION AND ORDER NO. 314
(CONSOLIDATED BASIC SERVICE TIER RATE ORDER)

I. INTRODUCTION

WHEREAS, on May 12, 1994, the Cable Television Division of the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs became certified by the Federal Communications Commission ("**FCC**") to regulate basic service tier and associated equipment rates of cable operators,¹

WHEREAS, the State has followed the requirements prescribed by federal law² ("**FCC Rules**") and the State's administrative rules³ in regulating the basic service tier rates of cable operators in the State;

WHEREAS, under FCC Rules and the September 22, 1995 Thirteenth Order on Reconsideration (FCC 95-397) issued by the FCC, a cable operator may update its basic service tier rates on an annual basis by filing a FCC Form 1240 with the State to 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 twelve (12) months following the rate adjustment;⁴

¹ This "Consolidated Basic Service Tier Rate Order" pertains only to the basic service tier rates. The associated equipment rates shall be addressed separately in another consolidated order.

² See, 47 C.F.R. part 76, subpart N (i.e., 47 C.F.R. §§ 76.901 through 76.990 (2002)).

³ See, Hawaii Administrative Rules ("**HAR**") §§ 16-133-40 to 16-133-53.

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

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 that an operator has actually incurred. 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 twelve (12) month period. 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;

WHEREAS, the cable operator has the burden of proving that its proposed annual adjustment complies with applicable FCC Rules and the State's administrative rules;⁵

WHEREAS, the State retained a financial consultant to assist it in reviewing the cable operator's FCC Form 1240 filing and request to adjust its annual rates;

WHEREAS, Time Warner Entertainment Company, L.P. ("**TWE**") is the sole cable operator that has seven (7) cable television systems in the State, and files separate Form 1240s for each cable television system to adjust its rates on an annual basis;

WHEREAS, these seven (7) cable television systems and the names TWE does business under for each cable television system is as follows:

- | | | |
|-----|----------------|-------------------------------|
| (1) | Oahu: | Oceanic Time Warner Cable; |
| (2) | Kona: | Sun Cablevision; |
| (3) | Hilo: | Hawaiian Cablevision of Hilo; |
| (4) | Maui: | Hawaiian Cablevision; |
| (5) | Molokai/Lanai: | Hawaiian Cablevision; |
| (6) | Lahaina: | Hawaiian Cablevision; and |
| (7) | Kauai: | Oceanic Time Warner Cable. |

WHEREAS, the State previously issued seven (7) separate Decision and Orders⁶ ("**Rate Orders**") to address each FCC Form 1240 and annual rate adjustment filing submitted by TWE for its seven (7) cable television systems in the State; and

WHEREAS, the State desires to consolidate all of the Decisions and Orders into one Rate Order for the FCC Form 1240 and annual rate adjustment filings submitted by

⁵ See, 47 C.F.R. § 76.937(a), and HAR § 16-133-46.

⁶ For example, the State issued Decision and Order No. 293 on February 28, 2003 for Oahu, Decision and Order No. 294 on February 28, 2003 for Kona, Decision and Order No. 295 on February 28, 2003 for Hilo, Decision and Order No. 296 on February 28, 2003 for Maui, Decision and Order No. 297 on February 28, 2003 for Molokai/Lanai, Decision and Order No. 298 on February 28, 2003 for Lahaina, and Decision and Order No. 299 on March 17, 2003 for Kauai.

TWE for its seven (7) cable television systems in the State for the period January 1, 2004 through December 31, 2004.

II. ORDER

A. Oceanic Time Warner Cable (Oahu)

1. On May 12, 1994, the State notified TWE dba Oceanic Cablevision that TWE's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").⁷
3. In its Rate Filing, TWE seeks to justify FOURTEEN AND 53/100 DOLLARS (\$14.53) as the monthly Maximum Permitted Rate for the Projected Period, and TWE selected FOURTEEN AND 50/100 DOLLARS (\$14.50) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's calculations are accurate, and that accordingly, there are no adjustments necessary to TWE's proposed monthly Maximum Permitted Rate for the Projected Period.
5. The State hereby orders that TWE's proposed monthly Maximum Permitted Rate of \$14.53 for the Projected Period for the basic service tier is APPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$14.53**.
 - b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in

⁷ The Rate Filing submitted for TWE's system at Millani, Hawaii covers Community Unit Identification Numbers CUID HI0001, HI0003, HI0004, HI0005, HI0006, HI0007, HI0008, HI0009, HI0010, HI0012, HI0041, HI0057, HI0058, HI0059, HI0060, HI0061, HI0062, HI0063, HI0064, HI0065, HI0066, HI0067, HI0068, HI0069, HI0070, HI0071, and HI0072. Because TWE has franchise agreements with various military branches on the island of Oahu, TWE for purposes of its Rate Filing submitted revised subscriber counts, revenues, and costs to reflect the exclusion of military subscribers.

paragraph 2 hereof, the Company's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$14.53; Line D2: \$0.7165; Line D6: \$2.7858; Line D7: \$0.2574; and Line F8: \$8,609,592.

B. Sun Cablevision (Kona)

1. On May 12, 1994, the State notified American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii and TWE⁸ that TWE's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").⁹
3. In its Rate Filing, TWE seeks to justify NINE AND 82/100 DOLLARS (\$9.82) as the Maximum Permitted Rate for the Projected Period, and TWE selected NINE AND 80/100 DOLLARS (\$9.80) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's calculations are accurate, and that accordingly, there are no adjustments necessary to TWE's proposed monthly Maximum Permitted Rate for the Projected Period.
5. The State hereby orders that TWE's proposed monthly Maximum Permitted Rate of \$9.82 for the Projected Period for the basic service tier is APPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment

⁸ In Decision and Order No. 173 issued on June 30, 1995, the State approved the transfer of the cable television franchise held by American Cable TV Investors 4, Ltd. dba Sun Cablevision of Hawaii to TWE.

⁹ The Kamehameha system was consolidated into the Sun system, and is included in TWE's Rate Filing. The Rate Filing submitted for TWE's system at Kailua-Kona, Hawaii, covers Community Unit Identification Numbers CUID HI0023-HI0032 inclusive, HI0056, HI0075, HI0078, HI0082, HI0083, HI0084, and HI0093.

implemented in accordance with the FCC Rules shall be **\$9.82**.

- b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$9.82; Line D2: \$0.7065; Line D6: \$(0.0483); Line D7: \$0.2138; and Line F8: \$(12,291).

C. Hawaiian Cablevision of Hilo (Hilo)

1. On May 12, 1994, the State notified the Jones Spacelink of Hawaii, Inc. and TWE¹⁰ that TWE's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").¹¹
3. In its Rate Filing, TWE seeks to justify NINE AND 30/100 DOLLARS (\$9.30) as the Maximum Permitted Rate for the Projected Period, and TWE selected NINE AND 20/100 DOLLARS (\$9.20) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's calculations are accurate, and that accordingly, there are no adjustments necessary to TWE's proposed monthly Maximum Permitted Rate for the Projected Period.
5. The State hereby orders that TWE's proposed monthly Maximum Permitted Rate of \$9.30 for the Projected Period for the basic service tier is APPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to

¹⁰ In Decision and Order No. 185 issued on April 8, 1996, the State approved the transfer of the cable television franchise held by the Jones Spacelink of Hawaii, Inc. to TWE.

¹¹ The Honokaa and Ka'u systems were consolidated into the Hilo system, and are included in TWE's Rate Filing. The Rate Filing submitted for TWE's Hilo system covers Community Unit Identification Numbers CUID HI0020, HI0022, HI0039, HI0040, HI0079, HI0096, HI0101, HI0102, HI0103, HI0104, HI0105, and HI0106.

the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$9.30**.

- b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$9.30; Line D2: \$0.6688; Line D6: \$0.4554; Line D7: \$0.1908; and Line F8: \$114,436.

D. Hawaiian Cablevision (Maui)

1. On May 12, 1994, the State notified The Chronicle Publishing Company dba Chronicle Cablevision of Hawaii and TWE¹² that TWE's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").¹³
3. In its Rate Filing, TWE seeks to justify FIFTEEN AND 03/100 DOLLARS (\$15.03) as the Maximum Permitted Rate for the Projected Period, and TWE selected FIFTEEN AND NO/100 DOLLARS (\$15.00) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's calculations are accurate, and that accordingly, there are no adjustments necessary to TWE's proposed monthly Maximum Permitted Rate for the Projected Period.

¹² In Decision and Order No. 187 issued on March 22, 1996, the State approved the transfer of the cable television franchise held by The Chronicle Publishing Company dba Chronicle Cablevision of Hawaii to TCI of Hawaii, Inc. In Decision and Order No. 239 issued on February 12, 1999, the State approved the transfer of control from Tele-Communications, Inc. to AT&T Corp. for the franchise held by TCI of Hawaii, Inc. In Decision and Order No. 241 issued on May 10, 1999, the State approved the transfer and amendment of cable television franchise held by TCI of Hawaii, Inc., to TWE.

¹³ The Rate Filing submitted for TWE's Maui system covers Community Unit Identification Numbers CUID HI0033, HI0034, HI0035, HI0037, HI0087, HI0089, and HI0100.

5. The State hereby orders that TWE's proposed monthly Maximum Permitted Rate of \$15.03 for the Projected Period for the basic service tier is APPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$15.03**.
 - b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$15.03; Line D2: \$0.7107; Line D6: \$3.9275; Line D7: \$0.2426; and Line F8: \$1,622,261.

E. Hawaiian Cablevision (Molokai/Lanai)

1. On May 12, 1994, the State notified The Chronicle Publishing Company dba Chronicle Cablevision of Hawaii and TWE¹⁴ that the company's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").¹⁵
3. In its Rate Filing, TWE seeks to justify THIRTEEN AND 82/100 DOLLARS (\$13.82) as the Maximum Permitted Rate for the Projected Period, and the Company selected THIRTEEN AND 80/100 DOLLARS (\$13.80) as the Operator Selected Rate for the Projected Period.

¹⁴ In Decision and Order No. 187 issued on March 22, 1996, the State approved the transfer of the cable television franchise held by The Chronicle Publishing Company dba Chronicle Cablevision of Hawaii to TCI of Hawaii, Inc. In Decision and Order No. 239 issued on February 12, 1999, the State approved the transfer of control from Tele-Communications, Inc. to AT&T Corp. for the cable television franchise held by TCI of Hawaii, Inc. In Decision and Order No. 241 issued on May 10, 1999, the State approved the transfer and amendment of the cable television franchise held by TCI of Hawaii, Inc. to TWE.

¹⁵ The Rate Filing submitted for TWE's system at Molokai/Lanai covers Community Unit Identification Numbers CUID HI0073, HI0074, and HI0107.

4. With respect to Part III: Projected Period, Module I: New Maximum Permitted Rate in its Rate Filing, the State has determined that the Maximum Permitted Rate was miscalculated and that the Line I9 calculation results in a Maximum Permitted Rate of \$13.09.
5. The State hereby orders that the calculated new Maximum Permitted Rate of THIRTEEN AND 09/100 DOLLARS (\$13.09) shall take precedence over TWE's calculation of \$13.82, and TWE's proposed Maximum Permitted Rate for the Projected Period of \$13.82 for the basic service tier is DISAPPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$13.09**.
 - b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$13.09; Line D2: \$0.6423; Line D6: \$1.9134; Line D7: \$0.1719; and Line F8: \$68,723.

F. Hawaiian Cablevision (Lahaina)

1. On May 12, 1994, the State notified Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company and TWE¹⁶ that TWE's rates for the basic service tier and associated equipment were subject to regulation by the State.
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").¹⁷

¹⁶ In Decision and Order No. 174 issued on October 2, 1985, the State approved the transfer of the cable television franchise held by Daniels Communications Partners Limited Partnership dba Hawaiian Cablevision Company to TWE.

¹⁷ The Rate Filing submitted for TWE's Lahaina system covers Community Unit identification Number CUID HI0002.

3. In its Rate Filing, TWE seeks to justify NINE AND 56/100 DOLLARS (\$9.56) as the Maximum Permitted Rate for the Projected Period, and TWE selected NINE AND 50/100 DOLLARS (\$9.50) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State determined that the Maximum Permitted Rate for the Projected Period was miscalculated and that the Maximum Permitted Rate should be NINE AND 85/100 DOLLARS (\$9.85).
5. The State hereby orders that:
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$9.85**.
 - b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$9.85; Line D2: \$0.7756; Line D6: \$0.8023; Line D7: \$0.1350; and Line F8: \$117,419.

G. Oceanic Time Warner Cable (Kauai)

1. On May 12, 1994, the State notified Garden Isle Cablevision, L.P., Kauai Cablevision, L.P., and TWE¹⁸ 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
2. On October 1, 2003, TWE submitted its FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2004 through December 31, 2004 ("**Projected Period**").¹⁹

¹⁸ In Decision and Order Nos. 208 and 209 issued on July 15, 1997, the State approved the transfer of the cable television franchise held by Garden Isle Cablevision, L.P. and Kauai Cablevision, L.P., respectively, to G Force, L.L.C., dba Garden Isle Telecommunications. In Decision and Order No. 291 issued on July 12, 2002, the State approved the transfer of the cable television franchises held by G Force, L.L.C. dba Garden Isle Telecommunications to TWE dba Oceanic Time Warner Cable (Kauai).

¹⁹ The Rate Filing submitted for TWE's Kauai system covers Community Unit Identification Numbers CUID HI0011 and HI0098.

3. In its Rate Filing, TWE seeks to justify ELEVEN AND 73/100 DOLLARS (\$11.73) as the Maximum Permitted Rate for the Projected Period, and TWE selected ELEVEN AND 70/100 DOLLARS (\$11.70) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's calculations are accurate, and that accordingly, there are no adjustments necessary to TWE's proposed monthly Maximum Permitted Rate for the Projected Period.
5. The State hereby orders that TWE's proposed Maximum Permitted Rate for the Projected Period of \$11.73 for the basic service tier is APPROVED.
 - a. TWE's Maximum Permitted Rate for the Projected Period, exclusive of franchise and regulatory fees and taxes, for the basic service tier as of January 1, 2004 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$11.73**.
 - b. With respect to TWE's next adjustment to the Maximum Permitted Rate for the basic service tier set forth in paragraph 2 hereof, TWE's FCC Form 1240 (for the period January 1, 2005 through December 31, 2005) shall include the following: Line A1: \$11.73; Line D2: \$0.6912; Line D6: \$1.5846; Line D7: \$0.2206; and Line F8: \$433,650.

H. Other Provisions

1. The State hereby orders that TWE shall not make adjustments for overestimated or underestimated costs in the Rate Filings above, or increase its basic service tier or associated equipment rates without first complying with all applicable State and federal laws and rules (including but not limited to FCC Rules, regulations, and orders) and obtaining the State's prior approval.
2. The State hereby orders that TWE may charge basic service tier rates that are lower than the Maximum Permitted Rates described above; provided that the lower rates are applied in a uniform and nondiscriminatory way pursuant to all applicable State and federal

laws and rules (including but not limited to FCC Rules, regulations, and orders).

3. For the year 2005 annual rate adjustment and for every year thereafter, TWE shall not charge basic service tier rates that exceed TWE's proposed Maximum Permitted Rate or the approved Maximum Permitted Rate for that particular year.
4. This Rate Order shall not be construed and is not intended to be construed as a finding that the State has accepted as correct any entry, explanation, or argument made by TWE not specifically addressed herein.
5. The State reserves all of its rights under State and federal laws and rules (including but not limited to FCC Rules, regulations, and orders), including the right to review any pending rate filings submitted by TWE and to establish reasonable rates for the basic service tier in the event the State determines that the proposed rates or charges are unreasonable.
6. The State reserves the right to modify this Rate Order if, at any time, it determines that information TWE provided to the State is incorrect or misleading in any material manner, or that TWE is not in compliance with this Rate Order or State and federal laws and rules (including but not limited to FCC Rules, regulations, and orders).
7. This Rate Order is issued and shall be effective as of the date specified below.

DATED: Honolulu, Hawaii, July 2, 2004.

Mark E. Rechtenwald

MARK E. RECKTENWALD
Director of Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 314 was served upon the following party at the address shown below by mailing the same, postage prepaid, on July 6, 2004.

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

Patti K. Kodama
Patti K. Kodama
Secretary

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July 1, 2004