

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)
(Maui))
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Updating of Basic Service Rate)
(FCC Form 1240))
_____)

DECISION AND ORDER NO. 296
(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 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 d.b.a. 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

¹ By Decision and Order No. 187, the State approved the transfer of the cable communications franchise held by The Chronicle Publishing Company d.b.a. Chronicle Cablevision of Hawaii to TCI of Hawaii, Inc. By Decision and Order No. 239, the State approved the transfer of control from Tele-Communications, Inc. to AT&T Corp. for the franchise held by TCI of Hawaii, Inc. By Decision and Order No. 241, the State approved the transfer and amendment of cable franchise held by TCI of Hawaii, Inc., 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, 2002 ("Rate Filing"), for the period January 1, 2003 through December 31, 2003;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; 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 date, with interest, and it requires that the operator return to subscribers any overcharges that occurred, with interest; and

² The Rate Filing submitted for the Company's Maui system covers Community Unit identification Numbers CUID HI0033, HI0034, HI0035, HI0037, HI0087, HI0089, and HI0100.

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

⁴ See 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, in its Rate Filing the Company seeks to justify \$13.21 as the Maximum Permitted Rate for Projected Period, and the Company selected \$13.20 as the Operator Selected Rate for Projected Period; and

WHEREAS, with respect to Lines A1, D6 and D7 in its Rate Filing the Company included the amounts of \$12.03, \$1.2914 and \$0.3183 for Lines A1, D6 and D7, respectively; and

WHEREAS, pursuant to Decision and Order No. 274, the State established Lines A1, D6 and D7 to be \$12.00, \$1.2748 and \$0.3178 for Lines A1 D6 and D7, respectively; and

WHEREAS, with respect to Line F8 of the Company's FCC Form 1240, the Company included an amount of \$1.301; and

WHEREAS, pursuant to FCC instructions Line F8 should include the amount of \$1.2842, calculated based on amounts included in the previous rate filing, as adjusted by Decision and Order No. 274; and

WHEREAS, adjusting Lines A1, D6, D7 and F8 decreases the Company's proposed Maximum Permitted Rate for Projected Period from \$13.21 to \$13.16.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed Maximum Permitted Rate for Projected Period of \$13.21 for the basic service tier 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 as of January 1, 2003 and continuing up to the effective date of the Company's subsequent adjustment implemented in accordance with the FCC Rules, shall be \$13.16.
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, and orders.
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 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, 2004 through December 31, 2004) shall include the

following: Line A1 \$13.16; Line D2 \$0.6255; Line D6 \$2.4869; Line D7 \$0.1201; and Line H14 \$1,005,828.38.

6. For the year 2004 annual rate adjustment and for every year thereafter, the Company shall not implement an actual charge that is greater than the Company's proposed Maximum Permitted Rate or the approved Maximum Permitted Rate for that particular year.

7. 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.

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. 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.

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

DATED: Honolulu, Hawaii, February 28, 2003.



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. 296 was served upon the following party at the address shown below by mailing the same, postage prepaid, on February 28, 2003.

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