

CABLE TELEVISION DIVISION

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of) **DECISION AND ORDER NO. 349**
)
Time Warner Entertainment)
Company, L.P.,)
)
)
Amended 2010 Consolidated Annual)
Adjustment of Basic Service Tier)
Rates for the State of Hawaii)
(FCC Form 1240).)
_____)

DECISION AND ORDER NO. 349
(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 operators¹;

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,

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.

inflation, and the number of regulated channels that are projected for the twelve (12) months following the rate adjustment⁴;

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 rules⁵;

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, on or about October 2, 2009, Time Warner Entertainment Company, L.P.'s ("**TWE**") submitted FCC Forms 1240 ("**Rate Filings**") to the State of Hawaii ("**State**") Department of Commerce and Consumer Affairs ("**Department**") for the period January 1, 2010 through December 31, 2010 ("**Projected Period**");

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).

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

WHEREAS, on or about December 7, 2009, the Department issued Decision and Order No. 343 ("**D&O 343**") that approved TWE's rate filing of the Maximum Permitted Rates ("**MPR**") of its Basic Service Tier of Service for the Projected Period;

WHEREAS, FCC rules allow a cable operator to amend its Form 1240 within 90 days if there has been a material change in the operator's circumstances that would affect the rate filing.⁶ TWE submitted amended rate filings on or about December 29, 2009 making changes to its original Form 1240s in light of additional retransmission consent fees, franchise related costs, and updated inflation. The Department's financial consultant reviewed the submitted information and obtained further information from TWE. After further review and analysis, the Department's financial consultant recommended allowance of TWE's corrected amendment of retransmission consent fees and updated inflation figures, and disallowance of TWE's inclusion of franchise related costs. TWE agreed to make a correction in the reported retransmission consent fees, but did not change the franchise related costs in the revised submissions dated January 25, 2010. The financial consultant therefore made adjustments to the franchise related costs and produced revised Form 1240s that established the maximum permitted rates indicated in this D&O. A summary of these activities was submitted to the Department in the consultant's report dated April 30, 2010.

NOW, THEREFORE, upon consideration of TWE's revised amended rate filings and the Department's financial consultant analysis of these filings, the Department determines that amended adjusted Maximum Permitted Rates ("**MPR**") approvals shall be issued, and it is hereby ordered that Decision and Order No. 349 shall supersede Decision and Order No. 343 in its entirety as follows:

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")⁷.

⁶ 47 CFR §76.933(g)(1)

⁷ The Rate Filing submitted for TWE's system at Mililani, 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.

3. In its Rate Filing, TWE seeks to justify THIRTEEN AND 56/100 DOLLARS (\$13.56) as the monthly Maximum Permitted Rate for the Projected Period, and TWE selected THIRTEEN AND 31/100 DOLLARS (\$13.31) as the Operator Selected Rate for the Projected Period.
4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of THIRTEEN AND 56/100 DOLLARS (\$13.56) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$13.31**.
 - a. With respect to TWE'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, 2011 through December 31, 2011) shall include the following: Line A1: \$13.3103; Line D2: \$1.7539; Line D6: (\$0.0379); and Line D7: \$0.00. In calculating Line F8, TWE shall apply (\$1,248,662) as the amount of true-up claimed for the Projected Period.

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")⁹.
3. In its Rate Filing, TWE seeks to justify TWELVE AND 28/100 DOLLARS (\$12.28) as the Maximum Permitted Rate for the

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, HI0083, and HI0093.

Projected Period, and TWE selected TWELVE AND 07/100 DOLLARS (\$12.07) as the Operator Selected Rate for the Projected Period.

4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of TWELVE AND 28/100 DOLLARS (\$12.28) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$12.07**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$12.0767; Line D2: \$1.8440; Line D6: (\$0.1495) and Line D7: \$0.00. In calculating Line F8, TWE shall apply (\$44,431) as the amount of true-up claimed for the Projected Period.

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")¹¹.
3. In its Rate Filing, TWE seeks to justify ELEVEN AND 27/100 DOLLARS (\$11.27) as the Maximum Permitted Rate for the Projected Period, and TWE selected ELEVEN AND 05/100 DOLLARS (\$11.05) as the Operator Selected Rate for the Projected Period.

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, HI0040, HI0079, HI0096, HI0101, HI0102, HI0103, HI0104, HI0105, HI0106, HI0109, HI0110 and HI0111.

4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of ELEVEN AND 27/100 DOLLARS (\$11.27) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$11.05**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$11.0553; Line D2: \$1.8368; Line D6: (\$0.0473) and Line D7: \$0.00. In calculating Line F8, TWE shall apply (\$13,687) as the amount of true-up claimed for the Projected Period.

D. Hawaiian Cablevision (Kahului, 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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")¹³.
3. In its Rate Filing, TWE seeks to justify FOURTEEN AND 13/100 DOLLARS (\$14.13) as the Maximum Permitted Rate for the Projected Period, and TWE selected THIRTEEN AND 89/100 DOLLARS (\$13.89) as the Operator Selected 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.

4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of FOURTEEN AND 13/100 DOLLARS (\$14.13) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$13.89**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$13.8922; Line D2: \$1.8459; Line D6: \$0.3327 and Line D7: \$0.00. In calculating Line F8, TWE shall apply \$159,487 as the amount of true-up claimed for the Projected Period.

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")¹⁵.
3. In its Rate Filing, TWE seeks to justify FOURTEEN AND 29/100 DOLLARS (\$14.29) as the Maximum Permitted Rate for the Projected Period, and the Company selected FOURTEEN AND

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.

04/100 DOLLARS (\$14.04) as the Operator Selected Rate for the Projected Period.

4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of FOURTEEN AND 29/100 DOLLARS (\$14.29) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$14.04**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$14.0461; Line D2: \$1.8459; Line D6: \$0.2332 and Line D7: \$0.00. In calculating Line F8, TWE shall apply \$8,413 as the amount of true-up claimed for the Projected Period.

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")¹⁷.
3. In its Rate Filing, TWE seeks to justify ELEVEN AND 36/100 DOLLARS (\$11.36) as the Maximum Permitted Rate for the Projected Period, and TWE selected ELEVEN AND 11/100 DOLLARS (\$11.11) as the Operator Selected Rate for the Projected Period.

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.

4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of ELEVEN AND 36/100 DOLLARS (\$11.36) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$11.11**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$11.1199; Line D2: \$1.8224; Line D6: (\$0.1531) and Line D7: \$0.00. In calculating Line F8, TWE shall apply (\$23,128) as the amount of true-up claimed for the Projected Period.

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 January 25, 2010, TWE submitted its revised amended FCC Form 1240 ("**Rate Filing**") and annual rate adjustment filings to the State for the period January 1, 2010 through December 31, 2010 ("**Projected Period**")¹⁹.
3. In its Rate Filing, TWE seeks to justify TWELVE AND 21/100 DOLLARS (\$12.21) as the Maximum Permitted Rate for the Projected Period, and TWE selected ELEVEN AND 96/100 DOLLARS (\$11.96) as the Operator Selected Rate for the Projected Period.

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.


4. After reviewing TWE's Rate Filing, the State finds that TWE's proposed Maximum Permitted Rate of TWELVE AND 21/100 DOLLARS (\$12.21) is **disapproved**.
5. The State hereby orders that 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, 2010 and continuing up to the effective date of TWE's subsequent adjustment implemented in accordance with the FCC Rules shall be **\$11.96**.
 - a. 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, 2011 through December 31, 2011) shall include the following: Line A1: \$11.9649; Line D2: \$1.8467; Line D6: (\$0.6029) and Line D7: \$0.00. In calculating Line F8, TWE shall apply (\$171,206) as the amount of true-up claimed for the Projected Period.

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 2011 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 to 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, 13 AUG 10, 2010.


RONALD BOYER
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. 349 was served upon the following party at the address shown below by mailing the same, postage prepaid, on August 17, 2010.

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

Patti K. Kodama

Patti K. Kodama
Secretary