

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

In the Matter of the Revocation or Alteration )  
of the CATV Permit of )  
KAISER TELEPROMPTER OF HAWAII, INC. )  
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DOCKET NO. 01-82-01  
ORDER NO. 111

DECISION AND ORDER

On December 11, 1984, the Cable Television Division submitted its Recommended Decision to the Director and the Recommended Decision was served on all parties. On December 19, 1984, Kaiser Teleprompter of Hawaii, Inc. ("Kaiser") submitted its Exceptions to Recommended Decision to the Director.

Having reviewed the Recommended Decision, Kaiser's Exceptions to Recommended Decision, and other pertinent information in this case, the Director hereby adopts the Division's Recommended Decision (attached hereto as Attachment 1) as the final Decision in this proceeding, with the following clarifications and exceptions.

1. Headend construction and purchase of converters and descramblers. The Director recognizes that McCaw Communications of Hawaii Kai, Inc. ("McCaw") and the owners of Kaiser have executed a purchase agreement which is predicated, in part, on the construction of the new headend and the purchase of converters and descramblers by McCaw rather than Kaiser. Kaiser notes that the Department's requirement for completion of the headend and installation of converters and descramblers by the extended deadline may result in unnecessary expense because, if the transfer of ownership to McCaw is approved, McCaw intends to install different headend equipment, converters and descramblers than Kaiser. Kaiser therefore proposes that it not be required to commence headend construction nor to purchase converters and descramblers unless and until it appears unlikely that the transfer of ownership to McCaw will occur.

It is the Director's understanding that the negotiations between McCaw and Kaiser's owners have been on-going for several months, and that these negotiations were in part responsible for Kaiser's seeking an extension of time in which to complete the rebuild. The Director also notes that the Cable Television Administrator, in her

October 23, 1984 letter, specifically requested that Kaiser notify the Division if the company sought, in addition to an extension of time, waiver or modification of other conditions of Order No. 100. On November 14, 1984, representatives of Kaiser and McCaw met with departmental representatives in part to express their concerns about the possible conflict between McCaw's desire to install its choice of electronics and Kaiser's deadline for completion of the rebuild, including these components. However, the issue of modifying the completion requirements to exclude the headend, converters, and descramblers from the proposed deadline was never raised in this application as a means of obviating these concerns. Indeed, Kaiser's November 16, 1984 letter response to the Division's request for additional information includes data regarding the costs of constructing the headend and providing converters and descramblers. The modification issue was raised only in Kaiser's Exceptions to Recommended Decision.

Both McCaw and Kaiser have indicated to the Department that procurement and installation of headend equipment, converters, and descramblers will require approximately ninety days of lead time. In its Exceptions to Recommended Decision, Kaiser proposes to tie acquisition of this equipment to the state's making a "good faith" determination of the likelihood of approval of a transfer to McCaw. This proposed condition is unacceptable because it would shift responsibility for the timely completion of headend construction and the installation of converters and descramblers from Kaiser to the state. Under Kaiser's proposal, in order to provide the necessary lead time for obtaining and installing this equipment by April 30, 1985, the state would have to make a determination in the Kaiser/McCaw transfer application by February, a scant five weeks hence. The Director does not believe that Kaiser has adequately explored alternatives for handling its concerns about the headend, converters, and descramblers, nor provided the Department with sufficient information to evaluate the matter. Additionally, the Kaiser/McCaw transfer application, filed in late November 1984, has not yet been processed by the Department. Given the time and manner in which this issue was raised, the Director believes that it is premature to rule on this matter in this docket and that the full burden for completion of the rebuild must remain with Kaiser at this time.

However, the Director urges Kaiser and McCaw to consider the matter more thoroughly and to engage in further negotiation regarding alternatives for handling their concerns. The Director believes the appropriate time for approaching the Department with alternative solutions would be during the processing of the pending transfer application.

2. Bond. Kaiser estimates that as of January 1, 1985, it will have expended approximately \$425,000 on the rebuild. In its letter of November 16, 1984, Kaiser estimated the total cost of the rebuild, including construction of the headend and provision of converters and descramblers, at \$1.88 million. Since the remaining cost of construction as of January 1, 1985 will approximate \$1.5 million, the Director believes, given the sentiments expressed by subscribers at the public meeting held in November, that it would be appropriate to require that Kaiser post a bond in the increased amount of \$1.5 million, rather than \$2 million, as recommended by the Cable Television Division.

NOW, THEREFORE, it is hereby ordered that the request of Kaiser Teleprompter of Hawaii, Inc. for an extension of time in which to complete rebuild construction be APPROVED, with the following conditions:

1. Kaiser shall submit a written status report and meet with a representative of the Cable Television Division every two weeks, commencing two weeks after the issuance of the Director's Decision and Order, regarding the progress of construction and the company's ability to meet the proposed construction schedule.

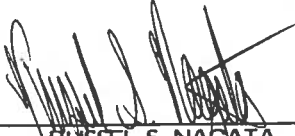
2. Kaiser shall provide a performance bond in the penal amount of \$1,500,000, the condition which will be the company's satisfactory completion of the rebuild as now proposed no later than April 30, 1985.

3. No transfer of the cable television permit presently held by Kaiser shall occur prior to completion of rebuild construction and approval of that construction by the Department, as provided for in Order No. 100.

4. Kaiser shall maintain a record, in a form approved by the Division, of the nature and disposition of all telephonic and written complaints received by the company. A written summary of this information shall be provided to the Division on a monthly basis one week following the end of each month, beginning with January, 1985.

5. All conditions in Order No. 100 not inconsistent with this Decision and Order shall remain in effect.

DATED: Honolulu, Hawaii, 1/2/85.

  
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RUSSEL S. NAGATA  
Director of Commerce and Consumer Affairs

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OF THE STATE OF HAWAII

In the Matter of the Revocation or Alteration )  
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DOCKET NO. 01-82-01

RECOMMENDED DECISION

On November 14, 1983, by Order No. 100, the Department of Commerce and Consumer Affairs ordered Kaiser Teleprompter of Hawaii, Inc. ("Kaiser") to rebuild its cable television system and to make certain service improvements by December 31, 1984. By letter dated October 29, 1984, Kaiser requested an extension of its December 31, 1984 deadline for completion of the rebuild to April 30, 1985. Information provided in this letter application was augmented in Kaiser's subsequent letter dated November 16, 1984, and corrected in Kaiser's letter dated December 4, 1984. A public meeting was conducted by the Cable Television Division in Hawaii Kai on November 26, 1984, to obtain community input regarding Kaiser's request. Written comments regarding the application were solicited and received through December 9, 1984.

Kaiser's application cites a number of reasons for the delay in the commencement of construction. Of these, the two critical factors appear to have been the loss of its rebuild contractor due to licensing problems just before the scheduled start of construction in June and the decision to increase the capacity of the rebuilt system from 30 to 40 channels.

It is conceivable that Kaiser might have been able to meet its December 31, 1984 deadline had it successfully negotiated with Hawaiian Telephone Company in June and simply proceeded with its original rebuild plans. However, it appears that the resulting system, while meeting the technical requirements of Order No. 100, would not have provided the subscribers in Hawaii Kai with the same potential for future system improvement and the degree of reliability offered by the new rebuild plan.

ATTACHMENT 1

The decision to increase channel capacity prompted by McCaw Communications Companies' ("McCaw") negotiations to purchase the Hawaii Kai system necessitated the redesign of both the electronics and the distribution system for the rebuild. The rebuilt system as presently proposed will be technically superior to that originally proposed by Kaiser and required by Order No. 100. The majority of the improvements proposed are a direct result of McCaw's requirement for increased channel capacity. The negotiations with McCaw also appear to have resulted in Kaiser's agreement to replace, rather than reuse, the majority of existing cable. Additionally, Kaiser now proposes to replace, rather than reuse, its underground cable equipment enclosures and to install above-ground, rather than flush-mounted, enclosures for its trunk amplifiers. These proposed changes in the original rebuild plan offer major advantages to Hawaii Kai subscribers by providing greater channel capacity, as well as increased system reliability and improved safety.

At the public meeting held in Hawaii Kai on November 26, 1984, residents were critical of Group W's handling of the Hawaii Kai franchise since its acquisition of the system in 1981. Subscribers complained that Group W had made no capital improvements, although such improvements were clearly needed to provide quality cable service. Individuals also stated that complaints made to Kaiser were not answered by the company. Finally, citing their past experience with the cable company, subscribers queried whether Kaiser really intended to complete the rebuild by the requested extension date, and recommended that the request for an extension of time be denied.

A number of subscribers also suggested that, even if approval of the extension seemed appropriate, such approval should be given only if penalties were also provided which were designed to make it clear that the rebuild must be completed within the extended time frame. Sanctions suggested included the following:

- a. Withholding monthly service fees until rebuild construction is complete;
- b. Imposing a fine for each day after the deadline that construction remains incomplete.

- c. Doubling the amount of the bond;
- d. Requiring construction to be completed before Group W could transfer its cable television permit to a new owner; and


Kaiser's November 16, 1984 letter suggests that it is now impossible for the company, at any cost, to complete the rebuild to acceptable standards by December 31, 1984. It is the Division's belief that a delay in completion of the rebuild is unavoidable. However, the Division also believes that the four-month extension requested by Kaiser is reasonable, given the significant benefits to Hawaii Kai subscribers of the new rebuild plan. The Division is also mindful, however, of the history of service problems in the Hawaii Kai area, and feels that the imposition of reasonable sanctions would be appropriate.

The device of withholding service fees was discarded because such action would require protracted hearings and would probably result in further delays in completion of rebuild construction. The imposition of fines was also discarded because the Hawaii Cable Television Systems Law does not allow such fines to be imposed. However, the other sanctions suggested by the community appear to be appropriate. Doubling the amount of the penal bond would clearly indicate to the company that the rebuild is to be completed as scheduled by April 30, 1985. The additional cost to Kaiser of obtaining such a bond would be negligible. Similarly, requiring the satisfactory completion of rebuild construction prior to allowing any transfer of Kaiser's cable television permit would provide an appropriate incentive to Group W to complete the rebuild as proposed.

Having considered the information provided by Kaiser and the concerns of the Hawaii Kai community, the Division recommends that Kaiser's request for an extension of time to complete the rebuild as now proposed be APPROVED, with the following conditions:

1. Kaiser shall submit a written status report and meet with a representative of the Cable Television Division every two weeks, commencing two weeks after the issuance of the Director's Decision and Order, regarding the progress of construction and the company's ability to meet the proposed construction schedule.
2. Kaiser shall provide a performance bond in the penal amount of \$2,000,000, the condition of which will be the company's satisfactory completion of the rebuild as now proposed no later than April 30, 1985.
3. No transfer of the cable television permit presently held by Kaiser shall occur prior to completion of rebuild construction and approval of that construction by the Department, as provided for in Order No. 100.
4. Kaiser shall maintain a record, in a form approved by the Division, of the nature and disposition of all telephonic and written complaints received by the company. A written summary of this information shall be provided to the Division on a monthly basis one week following the end of each month, beginning with January, 1985.
5. All conditions in Order No. 100 not inconsistent with the Decision and Order shall remain in effect.

DATED: Honolulu, Hawaii, December 11, 1984.

  
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SUSAN DOYLE  
Administrator  
Cable Television Division



CERTIFICATE OF SERVICE

I hereby certify that I have this date served copies of the foregoing Decision and Order upon the following parties, by causing copies hereof to be mailed, postage prepaid, properly addressed, or delivered, to the following:

Ms. Roberta Towill  
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Honolulu, Hawaii 96813



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SUSAN DOYLE  
Administrator

DATE: Jan. 2, 1985