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

In the Matter of the Application of **McCAW COMMUNICATIONS OF HAWAII KAI, INC.** For Transfer of CATV Permit of Kaiser Teleprompter of Hawaii, Inc. a Nevada corporation.	)	**DOCKET NO. 01-84-01** **ORDER NO. 112**

DECISION AND ORDER

INTRODUCTION

On November 27, 1984, McCaw Cablevision Limited Partnership Hawaii Kai ("MCLP") and Kaiser Teleprompter of Hawaii, Inc. ("Kaiser"), a Nevada corporation, filed an application with the Department of Commerce and Consumer Affairs ("DCCA") for approval of the transfer of Kaiser's cable television permit and other assets to MCLP. This application was subsequently amended in February 1985 to replace MCLP with McCaw Communications of Hawaii Kai, Inc. ("McCaw-Hawaii Kai"), a Hawaii corporation.

To afford the public the opportunity to participate in regulatory decision-making, a public meeting was conducted by the Cable Television Division ("Division") at 7:30 p.m., January 23, 1985, in the Kamiloiki Elementary School cafetorium, Honolulu, Hawaii. Notice of the meeting was published in The Honolulu Advertiser on January 15, 1985 and Sun Press on January 17, 1985. A transcript of the public meeting, as well as all written testimony received by DCCA, is included as part of the record of this proceeding.

SUMMARY

Section 440G-8, Hawaii Revised Statutes ("HRS"), sets forth the various factors the Director must consider when determining whether it is in the public interest to approve an application for issuance of a cable television permit. The Director has been guided in this transfer application by these same criteria. As discussed more fully in the following sections, the Director finds that McCaw-Hawaii Kai's application satisfies the criteria for transfer of the assets and permit of Kaiser.

In determining whether the public interest will be served by transfer of a cable permit, the Director must consider whether there is a public need for the transfer. In addition, the applicant must demonstrate that (1) it has the ability to offer the proposed services at reasonable cost; (2) it is suitable; (3) it is financially responsible, and (4) it has the ability to perform efficiently the service for which authorization is requested. Finally, any objections to the transfer received from the public or other sources must be considered.

At the public meeting in this proceeding, Kaiser's subscribers testified that they were extremely dissatisfied with the frequency of disruptions in service and the limited programming they receive as compared with other Oahu cable subscribers. Additionally, subscribers complained that the quality of customer service and relations provided by Kaiser was poor. The Director believes that the technical and programming deficiencies complained of by Kaiser's subscribers have largely been addressed in Orders No. 100 and 111 and that they would be resolved, even if the proposed transfer were not approved. However, the Director is convinced that Kaiser has demonstrated a general lack of enthusiasm for operating the Hawaii Kai system in a manner responsive to its subscribers, and that there is therefore a compelling public need for the proposed transfer.

The rates proposed by McCaw-Hawaii Kai represent a significant increase over existing rates in the Hawaii Kai franchise. However, the Director finds that McCaw-Hawaii Kai would not be able to provide the quality of cable services demanded by Hawaii Kai subscribers without the requested increase in rates. The proposed rates are comparable to rates charged by other cable systems offering similar services and are reasonable, given the system's projected expenses.

McCaw-Hawaii Kai proposes to be managed by McCaw Communications Companies, Inc. ("Communications"). As previously discussed in Order No. 110, by virtue of Communications' experience in providing cable communication services to small, self-contained communities in the Pacific Northwest and Alaska, McCaw-Hawaii Kai, as an affiliate of Communications, possesses the requisite ability to perform the services for which authority is requested.

The nature of the public need found by the Director indicates that the issue of suitability is key in this transfer application. The quality of cable services offered in the Hawaii Kai franchise area has suffered because of the unwillingness of the current operator to make needed expenditures for maintenance and improvements. The Director believes that the operational and technical improvements proposed by McCaw-Hawaii Kai demonstrate that it is a suitable operator for the Hawaii Kai cable franchise.

McCaw-Hawaii Kai has proposed to acquire Kaiser's assets and permit through a combination of equity and borrowing. Communications has demonstrated that it has the capacity to make the equity contribution, and McCaw-Hawaii Kai has obtained a loan commitment sufficient to cover the system's additional needs to fund the acquisition and initial years of operation.

Finally, although some Hawaii Kai subscribers protested the proposed rate increases in this proceeding, no objections to the proposed transfer have been heard. The Hawaii Kai subscribers were primarily concerned that the new operator perform as it has proposed in its application. The Director shares the community's concerns in this area and has imposed conditions in the transfer approval designed to assure that McCaw-Hawaii Kai meets its commitments and provides the quality of service desired by its subscribers.

I. LAW

HRS § 440G-10 sets forth the authority of the Director of Commerce and Consumer Affairs ("Director") to approve the transfer of a cable television permit. That section provides, in pertinent part:

> No CATV permit may be assigned, sold, leased, encumbered, or otherwise transferred without the prior written consent of the director. Such consent shall be given only upon a written application therefor on forms to be prescribed by the director. The forms shall require from both the transferor and the proposed transferee substantially the same information as required by section 440G-6. The application shall also contain information concerning the consideration to be paid and such other matters as the director may deem appropriate or necessary, and shall be signed by both the transferor and the proposed transferee.

In the examination of transfer applications, the Director has been guided by the criteria provided in HRS § 440G-8(b), relating to the issuance of new cable television permits. That section provides that the Director shall issue a cable television permit when he is convinced that it is in the public interest to do so. The section further provides:

> In determining whether a CATV permit shall be issued, the Director shall take into consideration, among other things, (1) the public need for the proposed service or acquisition, (2) the ability of the applicant to offer service at a reasonable cost to the subscribers, (3) the suitability of the applicant, (4) the financial

responsibility of the applicant, (5) ability of the applicant to perform efficiently the service for which authority is requested, and (6) any objections arising from the public hearing, the CATV Advisory Committee, or elsewhere.

II. PUBLIC NEED FOR ACQUISITION

At the January 23, 1985 public meeting, Kaiser subscribers testified that they were extremely dissatisfied with the quality of cable service provided by Kaiser. The subscribers indicated that they had suffered continual interruptions in service, that Kaiser was unresponsive to customer needs, and that the company offered very limited programming services as compared with other Oahu cable systems.

It is important to note that despite these complaints, Kaiser presently serves approximately 7,600 residential subscribers, or 92 percent of all homes passed in the service area. The primary explanation for this high penetration level appears to be that off-air reception in most of the franchise area is poor and residents are prohibited by leasehold covenants from erecting external television antennas.

Additionally, it is significant that the Kaiser system has operated profitably at least since 1979 and has possessed sufficient financial capacity to fund needed and requested improvements in service through a combination of internally-generated cash and institutional financing. In 1982, the system paid dividends of $845,200 and advanced its managing shareholder, Group W, $162,542 at no interest. In 1983, Kaiser advanced an additional $355,991 to Group W. At year-end 1983, the company's retained earnings stood at $322,065. Despite the fact that Kaiser generated more than $1.5 million between 1979 and 1983, Group W's operation of the Hawaii Kai cable system has been characterized by efforts to minimize expenditures, not only for plant maintenance and improvement, but also for related smaller items such as test equipment and training for its employees.

DCCA has previously recognized the need for improving technical quality and reliability and expanding programming in the Hawaii Kai franchise area. In December 1982, the Director issued Order No. 91 to Kaiser, directing the company to show cause why its cable permit should not be altered or revoked for its deficiencies in these areas.

In response to this order, Group W initially proposed to replace components of the Kaiser system, at a cost not to exceed $500,000, an amount which could be funded internally through system earnings. Group W's reluctance to consider the complete rebuild believed by the Division to be required for the system to meet minimum technical requirements delayed the commencement of the rebuild for approximately one year.

In November 1983, the Director instructed Group W to rebuild the system by December 31, 1984 in the manner required by Order No. 100. However, as noted in Order No. 111 (which granted Kaiser's request for an extension of time until April 30, 1985 to complete the rebuild), Group W's original plans to spend $2 million to rebuild the system were designed to meet the minimum requirements of Order No. 100, not necessarily to assure the capability of the rebuilt system to provide quality cable services to the Hawaii Kai community in the long term.

Group W's efforts to minimize its expenditures on the Hawaii Kai cable system appear to be consistent with its desire to divest itself of not only this system, but also its other western cable properties. However, the company's lack of responsiveness to subscriber needs, the steady deterioration of the Hawaii Kai cable plant, and the need for DCCA to institute permit revocation proceedings to bring the system into compliance with technical requirements, all despite the system's financial capacity, clearly demonstrate Group W's unwillingness to operate the Hawaii Kai cable system in a manner consistent with the public interest.

The Director therefore believes that a compelling public need exists for the proposed acquisition.

III. SUITABILITY OF THE APPLICANT

The Director, although concerned about certain issues detailed below, believes that McCaw-Hawaii Kai possesses the necessary managerial, technical, and operational capacity to operate and develop the Hawaii Kai cable system. Additionally, the Director believes McCaw-Hawaii Kai's proposals to improve the system's physical plant and management demonstrate its interest and willingness to operate the system in the public interest.

Past performance

By Order No. 110, the Director approved the acquisition of Camp, Inc. and Maui Camp Cable Television (both hereinafter "Camp") by McCaw Cablevision LP Maui County/Hawaii County ("Maui/Hawaii"). This approval allows the affiliate of

Communications to acquire and operate cable systems on the islands of Maui, Hawaii, Lana'i and Moloka'i.

The slow sale of limited partnership units following this approval delayed the closing of the asset purchase of Camp by Maui/Hawaii until April 1985. Consequently, certain conditions contained in Order No. 110 have not been fulfilled as required. Among the conditions which remain unfulfilled include the commencement of cable communication services to Lana'i and Moloka'i. However, Maui/Hawaii has placed orders for microwave equipment and intends to begin service to the two islands by July 1, 1985.

Although the Director is disappointed with the delay in the closing of the asset purchase of Camp, this delay was in large part due to external circumstances (e.g., the U.S. Treasury proposal to eliminate tax shelter treatments of limited partnerships). The Director remains confident that Maui/Hawaii will be able to effectively and efficiently provide cable communication services to the present Camp system.

Managerial capabilities

The Director believes the concerns expressed in the subsection on Management Capabilities in Order No. 110 are also applicable to McCaw-Hawaii Kai's proposed operation of the Kaiser system. McCaw-Hawaii Kai, like Maui/Hawaii, will be managed by Communications. While the Director believes Communications is willing and able to provide the management resources needed to operate the Hawaii systems effectively, the Director continues to be concerned about the lack of depth in its management team.

The Director is particularly concerned about this present lack of depth because of Communications' continued expansion of its cable properties into geographically separated areas of the continental United States. The acquisition of cable systems in the American southeast and New York will create strains on the already overburdened Communications top management team. With systems spanning the breadth and length of the nation (from Hawaii to New York and from Alaska to Arkansas), it is anticipated that organizational problems experienced by major cable system operators many times the size of Communications will soon become evident in management discoordination. Although Communications has supplemented its management team with personnel recruited from other multiple-system operators, it is anticipated that the Communications management team will need major reorganization in order to operate effectively communication systems so geographically separated. To minimize the negative effects of Communications' anticipated transition period, it is imperative that the Pacific region, made up of Hawaii cable systems, be given maximum financial, budgetary and operational autonomy.

The geographic separation of the systems even here in Hawaii also requires the development of a systematic mode of operation and management. This new system should provide the individual system managers flexibility and authority in dealing with subscriber problems and concerns which may develop on a daily or continuing basis. The Pacific Regional Vice President and Communications' headquarters management must be separated from the details of daily operations in order to assure that the cable systems are able to respond effectively to their respective cable constituencies.

<u>Improvement in cable services</u>

In its transfer application, McCaw-Hawaii Kai proposes to:

1. Upgrade the existing headend with FM reception capabilities to allow studio-feed of Honolulu television broadcast signals.
2. Construct a Simulsat earth station capable of receiving programming simultaneously from several satellites.
3. Expand basic television-set tuning capacity by providing subscribers with 35-channel converters.
4. Install and operate community access programming equipment and facilities.
5. Improve quality of repair and technical services thorough systematic training of personnel.
6. Provide subscribers with cable service information and a cable program guide.

These proposals will enhance the utilization of the cable facilities rebuilt pursuant to Order No. 100. The proposals will bring to Hawaii Kai equipment and capabilities competitive with those offered by other cable systems in the state.

<u>Direct feed of broadcast signals</u>

Subsequent to the transfer of Kaiser's cable permit, McCaw-Hawaii Kai proposes to complete improvements and upgrade the Hawaii Kai headend facility to allow direct feed reception of broadcast signals. These modifications will allow Honolulu broadcast signals to be transmitted by utilizing FM microwave links from the broadcasters' studios to the Hawaii Kai headend. The direct feed of broadcast signals will result in Hawaii Kai subscribers receiving improved signal quality with a greater dependability of transmission.

<u>Satellite receive capability</u>

Following completion of the rebuild of the Hawaii Kai cable system and transfer to it of Kaiser's cable permit, McCaw-Hawaii Kai proposes construction of a satellite earth station. The earth station will be a seven-meter Simulsat antenna, capable of receiving signals simultaneously from all geosynchronous communications satellites within a 57-degree azimuthal arc, provided that Hawaiian beams are employed or the main satellite beam possesses a 25.5 dBm effective isotropic-radiated power. When installed on a 32-yard concrete foundation, this antenna is represented to be capable of operating without signal degradation in storms with winds of 80 mph and of surviving wind speeds of 125 mph without damage.

The earth station proposed by McCaw-Hawaii Kai will enable the operator to receive all programming available to Hawaii by satellite and to select programming responsive to the needs and desires of its subscribers. Without its own earth station, the system would be dependent on Oceanic Cablevision for its satellite programming.

<u>Converters</u>

Order No. 100 requires that Kaiser provide its subscribers with table top converters. This requirement was intended to increase from twelve to more than thirty, the number of channels available to subscribers. In addition to substantially increasing the cable subscriber's ability to receive additional program offerings, the converters proposed to be used by McCaw-Hawaii Kai will have optional remote control functions. While not a perfect solution, this will allow subscribers. to retain remote control capabilities which would otherwise be lost when they use a converter box.

In addition to providing basic service subscribers with a converter which can tune in 35 channels, McCaw-Hawaii Kai proposes to provide its premium service subscribers with thirty-five channel capacity, addressable converters. These addressable converters will offer features and functions which, among other things, will simplify changes in subscriber services. Many changes will be able to be made by computer from the cable system offices rather than by a technician at the subscriber's home.

Access Facilities and Programming

An area of acute deficiency in the current Hawaii Kai cable operation is the failure of Kaiser to provide adequate equipment or channel capacity for governmental, educational or public access programming. In addition to requiring the rebuild of the cable system and the distribution of table top converters which will allow the reception of additional channels, Cable Order No. 100 requires Kaiser to provide local origination equipment.

McCaw-Hawaii Kai proposes to comply with the provisions of Cable Order No. 100 by: (1) initially designating a channel (to be supplemented with other channels as need be) for access programming; (2) providing cameras and related equipment necessary for the production and transmission of quality access programming; (3) committing human technical resources necessary to support access programming; (4) developing a program to publicize and invite involvement in access programming; (5) arranging to include Oceanic Cablevision's access programming on the Hawaii Kai system; and (6) developing a training and assistance program for potential users of access facilities.

McCaw-Hawaii Kai's proposals parallel requirements made of other recent permit transferees. The Director believes McCaw-Hawaii Kai should view its proposals as merely the foundation of an access programming plan designed and developed to meet the unique needs of its service area.

IV. ABILITY OF APPLICANT TO PERFORM EFFICIENTLY THE SERVICE FOR WHICH AUTHORITY IS REQUESTED

As indicated previously in Order No. 110, Communications, the parent company of McCaw-Hawaii Kai, has had a long-standing commitment and involvement in the telecommunications industry in Hawaii. Communications' predecessor companies were pioneer broadcasters in pre-statehood Hawaii. One of its early involvements was ownership of Island Broadcasting Company, licensee for radio stations KPOA-AM (Honolulu) and KILA-AM (Hilo), from 1936 to 1959.

Communications in the Maui/Hawaii proceeding emphasized its extensive experience in providing telecommunications services to areas with natural barriers to operation (e.g. distance, mountains, over-water transmission). The Director believes

Communications' expertise in the use of microwave and satellite systems will enable it to efficiently receive and deliver communications signals in the Hawaii Kai service area.

Communications' experience in serving small and self-contained communities has also helped it to develop the adaptability and sensitivity required to meet the needs of cable subscribers in such communities. Hawaii Kai, a planned self-contained community, will benefit from a cable operator with such characteristics.

Finally, the youth, vigor and interest in new technology of Communications' management and operating team will do much to assure that the Hawaii Kai system will be able to keep pace with the demands of the fast-changing cable industry and not fall behind in technology and program services as was the case of the system under Group W's management.

V. FINANCIAL RESPONSIBILITY OF APPLICANT AND ABILITY OF APPLICANT TO PROVIDE SERVICE AT REASONABLE COST

Financing the acquisition and improvement of the cable system

McCaw-Hawaii proposes to fund the acquisition and initial capital improvements of the Hawaii Kai system through a combination of equity from Communications and borrowing. Communications has demonstrated its capacity to make the $2.5 million equity contribution and the applicant has obtained a $7 million commitment from the Provident National Bank and Toronto-Dominion Bank to fund the proposed loan.

The total cost of acquiring the Hawaii Kai system is estimated to be $5.5 million. In addition, McCaw-Hawaii Kai proposes capital expenditures of approximately $2.76 million in the first six years of operation. To fund the acquisition, McCaw-Hawaii Kai proposes to draw $2.6 million of its long-term institutional loan commitment, and to take an additional $400,000 in subordinated loans. The company projects additional borrowing for capital expenditures at only $1.6 million in the first year of operation, and $170,000 in the second year.

The financial requirements and scheduled expenditure of funds for capital improvements in the proposed Hawaii Kai transfer are significantly different from most transfer applications presented to the Director for his approval. In the present proceeding, McCaw-Hawaii Kai will be purchasing a completely rebuilt cable communications system over which it has maintained daily supervision in construction. Under the terms of its purchase agreement, McCaw-Hawaii Kai has dictated the technical quality and capabilities of the new Hawaii Kai facilities. The agreement requires McCaw-Hawaii Kai to reimburse Kaiser for additional rebuild costs associated with the proposed acquisition. Consequently, at closing, McCaw-Hawaii Kai will already have made approximately $600,000 of its proposed $1.67 million expenditure for first-year capital improvements. The remainder of first-year capital expenditures are scheduled to be made within ninety days of closing.

The reasonableness of rates

The $12.00 basic rate proposed by McCaw-Hawaii Kai represents a significant increase over the present $7.25 rate charged by Kaiser. Citing the franchise area's history of constant service interruptions and limited programming, Hawaii Kai subscribers expressed their opposition to an increase in monthly service charges. In public testimony and by letter, subscribers have asked the Director either to deny the requested rate increases outright or to make the revenues generated by these requested increases subject to rebate if Hawaii Kai's cable services are not improved as proposed.

However, DCCA's analysis indicates that McCaw-Hawaii Kai will need the increases requested to secure the financing required both to acquire the system and to meet the costs of rebuilding the cable plant and making additional capital and operational improvements. In most cable loans agreements, the borrower's ability to draw funds is based on a factor times annualized cash flow. McCaw-Hawaii Kai's loan commitment limits borrowing to 6.75 times cash flow. Keeping the rates at existing levels would result in a cash flow of $312,500, so that McCaw-Hawaii Kai would not be able to borrow the $2.6 million loan needed to acquire the system nor the additional $1.84 million required for capital improvements.

Any revenues required to be held in escrow or subject to rebate pending their release by the Director would be regarded as a contingent liability by financial institutions. The imposition of such a requirement would therefore have the same effect on McCaw-Hawaii Kai's cash flow, and, therefore, on its borrowing power, as a denial of the requested rate increases.

As a result of the transfer, the Director believes service to Hawaii Kai subscribers will be vastly improved, as demanded by the community, and therefore that the basic service and installation rates requested are reasonable.

VI. PUBLIC CONCERNS

Public input regarding the nature of cable services in the Hawaii Kai community and the proposed transfer was received at the public meeting in this proceeding and in letters to the Director. As previously noted, with regard to present service, subscribers complained that there were frequent service interruptions and limited programming, and that Kaiser seemed unresponsive to customer needs. With regard to the proposed transfer, subscribers were concerned that these service problems could continue despite McCaw-Hawaii Kai's promises to the contrary. While subscribers believed that a change in management of the cable system was needed, they suggested that higher rates, if allowed, should not go into effect until the new operator had demonstrated that it intended to perform as proposed in its application.

As discussed above in the Summary and Section II, "Public Need for the Acquisition," the Director has previously recognized the inadequacies of the present Kaiser cable facilities and addressed these deficiencies in Orders No. 100 and 111. The completion of the Hawaii Kai rebuild has been carefully monitored and the Director believes the enforcement of these prior orders will ensure that the cable service received by Hawaii Kai subscribers is comparable in terms of technical quality and program quantity to service received by other Oahu cable subscribers. Additionally, McCaw-Hawaii Kai's transfer application proposes changes in management practices and policies which demonstrate that the company recognizes the need for improvements in customer service and relations.

The Director has seriously considered the community's opposition to the proposed rate increase and its proposal that the rate increase be either withheld or subject to rebate until the new operator has demonstrated its commitment to meeting its promises. However, as discussed in the preceding section, the Director finds that the increase in rates and the availability of the revenues generated by this increase are necessary at the time of transfer to assure that McCaw-Hawaii Kai has the financial capacity to meet the community's demands. Additionally, the Director believes that McCaw-Hawaii Kai has already demonstrated its commitment to the responsible operation of the Hawaii Kai cable system through the considerable funds it has placed at risk to assure the completion of the Kaiser rebuild to its specifications.

NOW, THEREFORE, it is hereby ordered that the request for transfer of the assets and permit of Kaiser Teleprompter of Hawaii, Inc. to McCaw Communications of Hawaii Kai, Inc. be APPROVED, with the following conditions:

1. McCaw-Hawaii Kai shall be a corporation organized under the laws of the State of Hawaii. No fewer than fifty percent of the directors of McCaw-Hawaii Kai shall be Hawaii residents.

2. McCaw-Hawaii Kai shall be headed by a full-time, Hawaii-based executive possessing and exercising all powers traditionally vested in a chief executive officer.

3. Any and all changes in the managerial and operating entities of McCaw-Hawaii Kai shall require the Director's prior approval.

4. Any change in stock ownership of five percent or more of McCaw-Hawaii Kai's units shall require the Director's prior approval.

5. All revenues of McCaw-Hawaii Kai shall be deposited to, and all disbursements by McCaw-Hawaii Kai shall be made from, accounts maintained with a bank or other financial institution authorized under the laws of the State of Hawaii to engage in a general banking business.

6. McCaw-Hawaii Kai shall maintain complete accounting books and records, including invoices and other documentation and records of customer accounts, at the system's headquarters to be located in Hawaii Kai, on the island of Oahu. These records shall be maintained separately from those of any other business entity owned, controlled, managed, or having any relationship with McCaw-Hawaii Kai.

7. McCaw-Hawaii Kai shall submit, for the Director's prior approval, copies of any agreements evidencing institutional debt financing in excess of $100,000 over and above the amount at closing of the loan commitment described in the application. The Director shall be notified in writing prior to closing of any change in the proposed loan commitment amount.

8. Communications shall manage McCaw-Hawaii Kai pursuant to the terms of the Management Agreement included in McCaw-Hawaii Kai's transfer application for a fee not to exceed three percent of gross revenues, with the exception that Communications shall waive any rights it may have under that agreement to withdraw as

manager of the Hawaii Kai system. Any changes in the Management Agreement shall be subject to the Director's prior approval.

9. By August 1, 1985, McCaw-Hawaii Kai shall submit for the Director's prior approval a detailed proposal for the use of the $25,000 investment required in the transfer application plus the amount of its annual fees due to be paid in 1985 to support community programming and increase the usage of the mandated public, educational, and governmental access channels. This proposal shall be made in a form prescribed by the Division.

10. McCaw-Hawaii Kai shall maintain accounts, ledgers, and other documentation of its assets, liabilities, revenues, and expenses which shall not reflect any "step-up in basis" as a result of its acquisition of the assets of Kaiser and the additional expenses accruing thereunto.

11. Kaiser is hereby relieved of its responsibilities to complete headend improvements and distribute converters to its subscribers (Conditions I.F. and II.B. of Order No. 100). These responsibilities shall be assumed by McCaw-Hawaii Kai.

a. Sufficient headend improvements shall be completed by April 30, 1985, to allow the provision of increased services, in accordance with Order No. 100, Condition No. II.B.

b. Converters shall be available for distribution to subscribers immediately following the transfer of Kaiser's assets to McCaw-Hawaii Kai.

12. McCaw-Hawaii Kai shall complete headend improvements and satellite receive site construction in accordance with the schedule and specifications proposed in its application, unless McCaw-Hawaii Kai obtains the Director's prior approval of requested changes. McCaw-Hawaii Kai shall file a written construction status report with the Division on a bi-weekly basis. McCaw-Hawaii Kai shall also provide the Director within thirty days of transfer with a performance bond in an amount not less than $180,000, in accordance with Section 440G-6(b)(5), Hawaii Revised Statutes.

13. By July 1, 1985, McCaw-Hawaii Kai shall submit in a form specified by the Division, a schedule setting forth the terms and conditions for all cable services to be provided to the designated service area, including, for informational purposes, all rates and programming services. All regulated rates and terms and conditions of customer service shall be subject to the Director's prior approval.

14. By June 1, 1986, McCaw-Hawaii Kai shall distribute to all of its existing subscribers a customer satisfaction survey in a form approved by the Division. The results of this survey shall be made available to the Division on or before September 1, 1986.

15. McCaw-Hawaii Kai shall submit the following monthly reports to the Division in a form approved by the Division:

a. Written summaries of subscriber complaints received during the reporting month, with an indication of the complainant, the nature of the complaint, the responsive action taken, and the response time.

b. Written reports summarizing tests of the technical system made during the reporting month, with an indication of maintenance and repair activities. Copies of work orders for installation and repair requests received and documentation of actual response time shall be available for inspection by the Division.

c. Monthly reports shall be due on the first day of the second month following the reporting month.

16. In accordance with Section 623(e)(1) of the Cable Communications Policy Act of 1984 ("Cable Act"), McCaw-Hawaii Kai may raise its regulated rates no more than five percent per year without seeking the Director's approval.

a. Including the amount of this five percent increase, McCaw-Hawaii Kai's initial rates shall not exceed the following amounts plus tax for basic cable service:

i.	Monthly service charge	$12.00
ii.	Installation of first outlet	$40.00

b. These rates shall take effect on June 1, 1985 unless, in the judgment of the Director, McCaw-Hawaii Kai has not substantially completed the installation of drops and distribution of converters to all Hawaii Kai subscribers.

c. Pursuant to the Cable Act, the Federal Communications Commission ("FCC") is scheduled to promulgate rules in April 1985 relating to rate regulation of basic service in communities lacking effective competition. Should the promulgation of these rules affect the Hawaii Kai community, the Director may issue a subsequent order specifying the amounts of other rates and charges allowed by the FCC's rules to be regulated.

17. The transfer of Kaiser assets to McCaw-Hawaii Kai shall not occur until Kaiser has received the Director's approval upon inspection and testing of construction in accordance with condition III.5. of Order No. 100.

18. McCaw-Hawaii Kai shall secure the Director's prior written approval before engaging in any type or form of business activity other than allowed in Order No. 1 as amended.

19. In the event that McCaw-Hawaii Kai fails to comply with the conditions of this Decision and Order, the Director may require McCaw-Hawaii Kai to cure such failure or to appear and explain the cause for such failure and the plan for its correction.

20. Subject to the provisions of Section 625 of the Cable Act, McCaw-Hawaii Kai shall maintain the mix, quality, and level of programming proposed. In specific, McCaw-Hawaii Kai shall provide a mix of services which includes children's, news, sports, general interest, and access programming. McCaw-Hawaii Kai shall notify the Division of planned changes in specific program services at least thirty days in advance of the change.

21. All conditions in Order No. 1, dated October 21, 1970, as amended by Order No. 65, dated August 14, 1978, Order No. 100, dated November 14, 1983, and Order No. 111, dated January 2, 1985, which are not superseded or amended by this Decision and Order shall remain in effect.

22. Any exercise by McCaw-Hawaii Kai of the rights and privileges granted herein for the transfer of Kaiser's permit will constitute agreement to these conditions.

Dated this 25th day of April, 1985.

Russel S. Nagata

RUSSEL S. NAGATA
Director of Commerce and Consumer Affairs

I hereby certify that this is a true and correct copy of the original on file in the Department of Commerce and Consumer Affairs.

R. Takamoto

R. Takamoto

CERTIFICATE OF SERVICE

I hereby certify that a copy of Decision and Order No. 112 in Docket No. 01-84-01 was served upon the following by mailing the same, postage paid, on the 25th day of April, 1985:

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