

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

In the Matter of the Applications of	)	
	)	
KAM CABLEVISION CO., a Hawaii limited	)	Docket No. 00-84-04
partnership,	)	
and	)	
KOHALA CABLE TELEVISION, a Hawaii	)	Docket No. 00-84-01
limited partnership,	)	
	)	ORDER NO. 116
for Authority to Provide Cable	)	
<u>Television Service.</u>	)	

DECISION AND ORDER

On March 15, 1985, the Recommended Decision ("RD") was received by the Director of Commerce and Consumer Affairs ("Director") and served on the parties. Kohala Cable Television ("Kohala") filed exceptions to the RD with the Director on April 2, 1985, and Kam Cablevision Co. ("Kam") filed a statement in support of the RD on April 8, 1985.

On May 7, 1985, the Director issued Order No. 115, remanding these proceedings to the Hearings Officer for consideration of the possibility that the applicants could jointly operate a single cable system in the North Kohala district. Kam responded by letter dated May 16, 1985, moving that the Director reconsider this remand order and stating that Kam has no interest in participating in a joint venture. Kohala responded to the Director's remand order by letter dated May 22, 1985, asking that the order not be pursued, and stating that a jointly-operated system would not be feasible. Both applicants urged the Director to award the North Kohala franchise area to a single applicant.

By letter dated May 21, 1985, the Hearings Officer requested that Kam and Kohala file written responses to Order No. 115 by June 30, 1985. The Hearings Officer has received no direct response to this letter. However, since both applicants indicated in their letters to the Director that they are not interested in a joint venture, the Director believes the Hearings Officer need take no further action with respect to Order No. 115. The Director therefore finds that Kam's motion for reconsideration of Order No. 115, as expressed in its letter dated May 16, 1985, and Kohala's request that Order No. 115 not be pursued, as expressed in its letter dated May 21, 1985, are moot.

The Director has reviewed the RD, Kohala's exceptions, Kam's statement in support, the parties' letters in response to Order No. 115, and other pertinent information

in these proceedings. The Director hereby adopts the discussion in the RD (Attachment 1) as the final Decision in these proceedings, with the addition of the following:

1. Converters. Kohala states in its exceptions that the most compelling argument for its selection as the franchisee for the North Kohala district is that it intends to provide converters, while Kam does not. However, the Director notes that, although Kam's initial application did not include converters for all basic service subscribers, its amendment dated November 5, 1984 included such converters, as noted in Kam's statement in support.

2. Rates. The Director finds the initial basic service rates offered by the applicants reasonable in the context of their respective proposals. Kohala argues, however, that the fact that it proposes lower basic and premium service rates than Kam should have been accorded more weight in the RD, as this indicates that Kohala has a less inflationary attitude towards pricing than Kam. Kam suggests in response that an assessment of relative attitudes towards pricing should also include an evaluation of Comtec, Inc.'s and Sun Cablevision of Hawaii's histories with respect to rate increases.

The Director does not believe that it is appropriate in these proceedings to attempt to extrapolate the applicants' relative attitudes towards pricing and to project the effects of these attitudes on future rates. Regulation of premium rates is prohibited by the Cable Communications Policy Act of 1984 ("Cable Act"). Additionally, recently-issued regulations of the Federal Communications Commission ("FCC") may deregulate basic service rates as well in the North Kohala district. These and other matters affecting the cable industry make it extremely difficult to speculate about system operators' future pricing decisions.

The Director therefore believes that the Hearings Officer has accorded appropriate weight in these proceedings to the issue of rates.

3. Local ownership. Kohala correctly notes that it proposes a greater proportion of local ownership than does Kam. The Director does not find, however, that there is necessarily a correlation between more responsive or responsible performance by a cable operator and local ownership.

4. Serving the proposed coastal urban residential area. The Director finds Kam's arguments concerning the disadvantages of attempting to cable south from Hawi to the proposed coastal urban residential area compelling. The Director believes there is

substantial evidence to support the Hearings Officer's view that it is more feasible to expand north from existing South Kohala facilities to the proposed coastal urban residential area than south, as suggested by Kohala.

5. Service to Kawaihae and consideration of adjacent service areas. Kohala states in its exceptions that "The decision needs to be independently concerned with the service area specified in the applications." Kohala argues that the possibility of bringing service to Kawaihae should not figure in this decision. The Director notes, however, that Section 440G-8(c), Hawaii Revised Statutes ("HRS"), requires the Director to "take into account the geography and topography of the proposed service area, and both the present operations and the planned and potential expansion of the applicant's and other CATV companies" in determining the geographical area to be served. The Director therefore believes the present operation and potential expansion of Sun Cablevision's system, including possible means for bringing service to the proposed coastal urban residential area and, incidentally, to Kawaihae, were properly considered in this proceeding.

NOW, THEREFORE, it is hereby ordered that the application of Kohala Cable Television for authority to provide cable television service to the North Kohala district on the island of Hawaii is DENIED. The application of Kam to provide such service is APPROVED, with the following conditions:

Finance

1. Kam shall provide the Director within sixty days of the issuance of this order:

- a. Certification by a regulated financial institution that \$200,000 is available for immediate call down by Kam for construction of the proposed cable system.
- b. A performance bond in an amount not less than \$125,000, in accordance with Section 440G-6(b)(5), HRS.

Construction

2. Kam shall begin construction of the cable television system within sixty days of the issuance of the order. Construction shall be completed in accordance with the schedule and specifications proposed in Kam's Exhibit N of its application, unless Kam obtains the Director's prior approval of requested changes. Kam shall file a written construction status report with the Cable Television Division on a bi-weekly basis.

3. Prospective subscribers in newly-constructed dwellings located within the permit area, but not included in Kam's original construction schedule, shall be provided service within six months of their applications for service, subject to Kam's line extension policy.

Access

4. Kam shall provide the equipment and support services proposed in its response to the Initial Request for Information to encourage use of the mandated public, educational, and governmental access channels.

Management

5. The Director's prior approval shall be required for all changes in ownership involving one percent or more of the units of the general or limited partnerships.

6. Kam shall secure the Director's prior approval for any proposed sale, exchange, or transfer of assets having an original acquisition or present market value, whichever is greater, in excess of the sum of \$5,000 to any person, other than for the payment of legitimate costs incurred in operating the cable television system.

7. Kam shall secure the Director's prior approval before engaging in any business activity other than allowed in this permit.

8. Kam shall maintain all financial and business records, including individual billing records, at the cable television system's principal offices in the North Kohala district.

9. Kam shall maintain a responsible managing employee in offices in North Kohala who shall have the power to act for Kam in providing effective cable television service to the district. The name of the responsible managing employee shall be provided promptly to the Cable Television Division. Any change in responsible managing employee shall be reported to the Division within ten days of the change.

Programming

10. Subject to the provisions of Section 625 of the Cable Act, Kam shall maintain the mix, quality, and level of programming proposed. In specific, Kam shall provide a mix of services which includes children's, news, sports, religious, general interest, and access programming. Kam shall notify the Cable Television Division of

planned changes in specific program services at least thirty days in advance of the change.

Customer Service

12. Kam shall, prior to offering cable services to the public and no later than August 1, 1985, submit in a form specified by the Cable Television 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 terms and conditions of service, including customer service standards, shall be subject to the Director's prior approval.

Rates

13. Pursuant to the Cable Act, the FCC has promulgated rules relating to rate regulation of basic service in communities lacking effective competition. If Kam is found to be subject to rate regulation, Kam may raise its regulated rates no more than five percent per year without seeking the Director's approval, in accordance with Section 623(e)(1) of the Cable Act. Including the amount of this five percent increase, Kam's initial rates shall not exceed the following amounts plus tax for basic cable service:


- |                                 |         |
|---------------------------------|---------|
| a. Monthly service charge       | \$12.95 |
| b. Installation of first outlet | \$40.00 |

14. Kam's construction and operation of a cable system in the North Kohala district shall be subject to the provisions and requirements of the Cable Act and amendments thereto, applicable FCC rules, the Hawaii Cable Television Systems Law, Chapter 440G, HRS, and amendments thereto, and rules and orders issued by the Director.

DATED: Honolulu, Hawaii, 5/29, 1985.

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

  
\_\_\_\_\_  
RUSSEL S. NAGATA  
Director of Commerce and Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of Order No. 116 in Docket Nos. 00-84-04 and 00-84-01 was served upon the following by mailing the same, postage paid, on the 30th day of May, 1985:

KAM CABLEVISION CO.

Box 2940

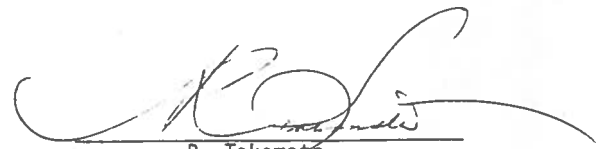
Kailua-Kona, HI 96743

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915 Fort Street  
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KOHALA CABLE TELEVISION

345 Kekuanaoa Street

Hilo, HI 96720



R. Takamoto

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limited partnership,	)	
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<u>Television Service.</u>	)	

HEARINGS OFFICER'S  
RECOMMENDED DECISION

On March 22, 1984 and July 6, 1984, respectively, KOHALA CABLE TELEVISION ("KOHALA") and KAM CABLEVISION CO. ("KAM"), filed applications with the Department of Commerce and Consumer Affairs ("DCCA") for permits to provide cable services to the North Kohala district on the island of Hawaii.

To afford the public the opportunity to participate in regulatory decision-making, a consolidated public hearing on the applications was held on August 22, 1984, in the North Kohala District Courthouse, Kapaau, Hawaii, at 7:00 p.m. Notice of the hearing was published in newspapers of statewide circulation on August 5 and 12, 1984, and in Hawaii island newspapers, the Hawaii Tribune Herald and West Hawaii Today, on August 3 and 12, 1984. A transcript of the public hearing, as well as all written testimony received by the DCCA, is included as part of the record of this proceeding.

Subsequent to the public hearing, a consolidated staff hearing was held on September 6, 1984 at the DCCA, 1010 Richards Street, Honolulu, Hawaii, commencing at 9:00 a.m. A transcript of that hearing is also part of the record.

On September 20, 1984 and November 30, 1984, KOHALA submitted amendments to its application. On November 7, 1984, KAM filed an amendment to its application.

SUMMARY

As is discussed more fully in sections II through IX below, the applications of KAM and KOHALA to serve the North Kohala district are similar in many respects and the applicants satisfy the minimum criteria for the issuance of a cable permit. Material to the decision recommended herein is the fact that in order to support their operations in North Kohala, both KAM and KOHALA propose to rely heavily on the resources of affiliated cable television companies, KAM on Sun Cablevision of Hawaii ("SUN"), a limited partnership, and KOHALA on Comtec, Inc. ("COMTEC"), a Hawaii corporation. After carefully reviewing and considering both applications, the Hearings Officer concludes that the proximity of SUN's current operations to the North Kohala district

ATTACHMENT 1

offers distinct advantages which support the selection of KAM to receive the cable permit to service the area.

The two determinations that must be made in reviewing an application to provide cable service are (1) whether it is in the public interest to issue the requested cable permit and (2) if so, what geographical area the applicant should serve. HRS § 440G-8. The statute sets out various factors that are to be considered when determining whether there is a public interest and what the service area should be.

In order for the public interest test to be met, the applicant must demonstrate that 1) there is a public need for the service, 2) the applicant has the ability to offer the service at a reasonable cost, 3) the applicant is suitable, 4) the applicant is financially responsible, and 5) the applicant has the ability to perform efficiently the service for which authorization is requested. Also, any objections to the application from the public or other sources must be considered.

Currently, the residents of North Kohala are able to receive off-air transmissions of four broadcast channels which originate on Oahu and are rebroadcast from a transmitter on the top of Mt. Haleakala on Maui. The quality of off-air signals received by the North Kohala residents is acceptable and cable service is not necessary for the reception of these four broadcast channels. However, the communities in this district are small and the residents have expressed interest in cable television as a means of providing additional entertainment to the area. There is extensive interest in the additional channels that can be offered via receipt of satellite transmissions and the offering of premium services such as Home Box Office and The Disney Channel. The comments received at the public hearing and the results of the surveys taken by each of the applicants demonstrate that there is a public need for the proposed service.

Each applicant will be a new limited partnership with its first and sole undertaking the provision of cable service to North Kohala. However, the composition of each partnership is such that the applicants will have the expertise necessary to offer cable services. A preliminary agreement has been reached between SUN and KAM whereby SUN will provide support in the administrative, technical, manpower and equipment areas to KAM. Sidney Mizukami, who is the general manager of SUN's operations in Kona, will be the managing partner of KAM. The general partner of KOHALA is COMTEC, which operates a cable system in Hilo. Without reference to the quality of the current operations of SUN versus COMTEC, each applicant, by virtue of its affiliation with a currently regulated cable operator, does show the requisite ability to perform the service for which authority is requested.

The applicants propose to be financed by means of a limited partnership. Each has secured a commitment from a major lending institution to loan the capital needed in addition to the capital contributions of the partners to fund construction and ensure an adequate cash flow through the initial years of operation. Thus, the applicants have demonstrated that they each have the financial responsibility to receive a cable permit.

The proposed rates are similar and the pro forma income and revenue statements evidence that the proposed service can be offered at a reasonable cost.



Throughout the course of these proceedings, no objections to either applicant have been received.

Following the test contained in HRS § 440-G-8 for the issuance of a cable permit, the remaining criterion is the suitability of the applicant. By its nature, this test is subjective. However, as the remaining sections of this recommended decision discuss, there are differences between the applicants. On the basis of these differences, the Hearings Officer recommends that the Director find and conclude that the more suitable applicant to service the North Kohala district is KAM.

As is set forth in HRS § 440G-8(c), in determining the area to be serviced, the Director must consider the present and planned or potential expansion of the applicant. The map attached hereto as Exhibit 100 shows that SUN's current service area borders the North Kohala district. Of particular importance here is the fact that SUN currently provides or will soon provide cable services to the Mauna Lani and Mauna Kea Beach resort areas, both located on the South Kohala coast. Distribution systems bringing service to these areas will provide the mechanism to facilitate the expansion of cable service into the coastal area of the North Kohala district. Furthermore, such expansion into the proposed coastal urban residential area of North Kohala could make it economically feasible to provide cable services to the small South Kohala community of Kawaihae, on the coast north of the resort areas. Also, the microwave site for the transmission of signals to the Kohala coastal area is within a short driving distance of SUN's main offices in Kailua-Kona. When the necessity to make repairs at the microwave reception and transmission site arises or for general maintenance work, SUN technicians have easy access to the site and can respond quickly. COMTEC and SUN now share off-air and microwave reception equipment at Mahukona and Kaupulehu. SUN maintains this equipment for both companies. COMTEC, on the other hand, is located on the other side of the island in Hilo and has a lengthy drive to the transmission site. Also, COMTEC would have to install additional microwave transmission equipment to provide service to the coastal area of the North Kohala district. SUN would have the ability to utilize its existing microwave antenna to transmit to this area. Being mindful of the potential for development in the coastal area, the Hearings Officer concludes that KAM, because of its affiliation with SUN, is the more suitable applicant to receive the permit to provide cable service to the North Kohala district.

#### I. LAW

The requirements for filing an application for a permit to provide cable television services are set forth in HRS § 440G-6(a), which reads:

No CATV permit or renewal of a CATV permit shall be issued except upon written application therefor to the director, accompanied by a fee of \$100, and on an application form to be prescribed by the director. The form shall set forth such facts as the director may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the person seeking to operate the CATV system, and complete information as to the

principals and ultimate beneficial owners (including in the case of a corporation, all stockholders both nominal and beneficial, owning ten per cent or more of the issued and outstanding stock, and in the case of unincorporated associations, all members and ultimate beneficial owners, however designated) and such other information as the director deems appropriate or necessary.

...

Each application shall set forth the rates to be charged, the services to be offered, the facilities to be employed, the general routes of the wires, cables, conduits, or other devices used in the redistribution of signals, the service area or areas, the commencement and completion dates of construction of the CATV system, and the proposed date service will be available to the areas named.

(Emphasis added.)

The authority of the Director of DCCA to approve an application and issue a CATV permit is provided for in HRS § 440G-8, which section also sets forth the criteria to be considered in determining whether a permit shall be issued and what area shall be serviced. HRS § 440G-8 reads, in pertinent part:

(b) The director, after a public hearing as provided in this chapter, shall issue a CATV permit to the applicant when he is convinced that it is in the public interest to do so. In determining whether a CATV permit shall be issued, the director shall take into consideration, among other things, the public need for the proposed service or acquisition, the ability of the applicant to offer service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the ability of the applicant to perform efficiently the service for which authority is requested, and any objections arising from the public hearing, the CATV advisory committee, or elsewhere.

(c) In determining the area which is to be serviced by the CATV company, the director shall take into account the geography and topography of the proposed service area, and both the present operations and the planned and potential expansion of the applicant's and other CATV companies.

(Emphasis added.)

## II. DESCRIPTION OF APPLICANTS

KAM is a Hawaii limited partnership between Richard W. Budinger, C. Thompson Wells, Jr., Sidney T. Mizukami, and Signet Cablevision Co., a Michigan corporation, as general partners, and Stephen M. Blossom, Warren Equis, Edgar Spencer, and Paula Pacheco, as initial limited partners, with provisions for the admission of additional limited partners in the future. All partners are either owners, management personnel, employees, or affiliates of SUN.

SUN operates a cable television system serving the South Kohala and North and South Kona districts on the island of Hawaii (Census Tracts 213 through 217), shown on

Exhibit 100, attached hereto. Mr. Mizukami, the general manager of SUN, is the proposed managing partner for KAM.

KOHALA is a Hawaii limited partnership formed by COMTEC, as general partner, and Richard Henderson, John Cunningham, D. W. Rose, R. Gregg Hall, Michael S. Chagami, Jonathan L. Jurevic, John W. Warren, Larry Isemoto, Richard Henderson II, and David F. Henderson, as initial limited partners. All limited partners are either associated with The Realty Investment Co., Ltd. or its wholly-owned subsidiary, COMTEC.

COMTEC operates a cable television system serving the South Hilo district and parts of the Puna district on the island of Hawaii (Census Tracts 201 through 211), shown on Exhibit 100. Mr. Warren, COMTEC's vice president and general manager, and Mr. Cunningham, COMTEC's vice president of engineering, would share oversight responsibilities for the proposed KOHALA operation.

### III. SERVICE AREA

Both applicants have requested a permit to provide cable television service to the North Kohala district (Census Tract 218) on the island of Hawaii, shown on the map attached hereto as Exhibit 100. As of the 1980 census, Census Tract 218 was reported to have 1,121 houses, of which 99 were vacant. Both KAM and KOHALA have submitted maps which show that plant construction in a narrow area along the Akoni Pule Highway will provide service to the communities of Hawi, Honomaka'u, Kapa'au, and Hala'ula and estimate that their distribution systems would pass approximately 90 percent of the homes in the proposed service area (Transcript 9/6/84, p. 92). Based on this figure, approximately 1,008 homes could potentially be served by the proposed cable systems.

KOHALA projects that no new homes will be added to the potential subscriber base, since ". . . a lot of those units [new homes built in the last 10 years] are the gentlemen farmer type of guy that comes from the Mainland and builds a place up in the hills somewhere. And it's not in the community that we're talking about as far as cable service." (Transcript, 9/6/84, p. 90.) KAM agreed that most areas having gentlemen farmers would not be served by cable. (Transcript, 9/6/84, p. 90.) However, KAM estimates that 28 new homes per year will be built in areas where service will be available or where KAM's proposed line extension policy will make service available at a reasonable additional cost to subscribers.

In addition to considering the area proposed to be served initially and the applicants' views of the growth potential of this area, the Hearings Officer notes that the Director must consider possible future development in the district. In March 1983, the County of Hawaii contracted with Phillips, Brandt, Reddick and Associates to prepare a Community Development Plan ("CDP") for North Kohala. Exhibit 101 is a copy of figure 5 of the CDP which shows the present zoning of the North Kohala district and Exhibit 102 is a copy of figure 7 of the CDP which shows the land use concept of the North Kohala CDP. The CDP describes future development of residential homes as being clustered around

existing single-family residential areas except for an area on the west coast of the island of Hawaii, near the border between the North and South Kohala districts. This proposed coastal urban residential area would be of medium density, 15 units per acre, similar to that of Hawi, Kapa'au, and Hala'ula.

SUN now provides cable service by microwave transmission to the Mauna Lani resort and the community of Waimea. In the near future, SUN will also provide service to the Mauna Kea Beach resort. Although the interconnection of KAM and SUN whereby the proposed coastal urban residential area in North Kohala could be served from SUN's current microwave transmission site at Kaupulehu was not proposed in KAM's application, sharing of such physical plant appears to be technically feasible. This potential for sharing of resources between KAM and SUN, and thereby achieving some cost economies, would not be as readily available to KOHALA from COMTEC. Thus, KAM should be in a much better position than KOHALA to provide service to the proposed coastal urban residential area, should it develop as planned. Additionally, an extension of cable distribution plant from one of SUN's microwave reception sites in the coastal resort area north to the proposed coastal urban residential area in North Kohala could pass Kawaihae, which currently has no cable services, making it economically feasible to service this tiny South Kohala community. Exhibit 103 shows the relative locations of SUN's and COMTEC's offices, the Kawaihae and proposed coastal urban residential communities, and microwave transmission paths from Kaupulehu to the Mauna Lani resort, Mauna Kea Beach resort, and Waimea.

#### IV. PROPOSED OPERATIONS

Programming. The following lists the cable channels currently proposed to be offered by both applicants as basic service:

	KAM	KOHALA
KAH-TV	yes	yes
KMAU-TV	yes	yes
KGMV-TV	yes	yes
KMEB-TV	yes	yes
Public Access	yes	yes
Government Access	yes	yes
Educational Access	yes	yes
CNN	yes	yes
CNN-Headline News	yes	yes
Christian Broadcast Network	yes	yes
C-SPAN	yes <sup>1/</sup>	yes
ESPN	yes	yes
Lifetime	yes	no
Nashville Network	yes	yes
Nickelodeon	yes	no
WTBS	yes	yes
WOR	no	yes

<sup>1/</sup>Shared with Government Access channel.

Each applicant also intends to offer premium services such as HBO. Despite minor differences in selection of specific programming sources, both applicants propose to offer a mix of news, sports, religious, children's, health, access, and independent network programming.

Customer service. Both applicants propose to base one full-time employee in North Kohala, who will be responsible for performing installations, repairs, and clerical and administrative work. The applicants both plan to receive administrative and technical support from their general partners or affiliates.

The proposed allocation of hours for the Kohala-based employee is also similar:

KAM 2 hours in the office; 6 hours in the field (Transcript, 9/6/84, pp. 38, 39)

KOHALA 3 hours in the office; 5 hours in the field (Transcript, 9/6/84, p. 40)

However, the applicants' proposals differ in two major customer service areas, the handling of billing disputes and after-hour repairs.

Billing inquiries and disputes:

KAM All billing records would be kept in Kohala. Billing disputes would be handled by the KAM employee.

KOHALA All billing records would be housed in Hilo, but would be accessible via a computer terminal in Kohala. Billing disputes would be resolved by the Hilo office.

One of the common reasons subscribers contact their cable television companies is that they have questions about their bills. As proposed, KAM and KOHALA appear to have similar capability to answer simple inquiries about billing balances. However, KOHALA proposes to have billing disputes handled in Hilo. Because KAM proposes to maintain its billing records in the Kohala office and handle disputes locally, KAM appears to be in a better position to resolve quickly any billing disputes that may arise.

Repair service during evening hours and on weekends:

KAM In general, a pool of technicians, comprised of the KAM employee and technicians from SUN, would be available on call on a rotating basis.

KOHALA In general, a pool of technicians associated with COMTEC would be available on call on a rotating basis.

Each applicant expects to receive support services from its general partners or their affiliates. However, it appears that, because of the proximity of SUN's current operations to those proposed in North Kohala, KAM would be in a better position than KOHALA to handle after-hour service problems.

COMTEC's current service areas are on the east and southeast of the island of Hawaii, a considerable distance from North Kohala. (See Exhibits 100 and 103.) Although COMTEC proposes that personnel could be flown from Hilo to the North Kohala airport, heavy equipment or materials would require ground transportation. (Transcript, 9/6/84, p. 49.) COMTEC estimates driving time from Hilo to North Kohala to be about two and

one-half hours. By contrast, SUN's current service areas are adjacent to and immediately south of the proposed service area. SUN estimates that its technicians could drive to the North Kohala area in one hour from Kona or 25 minutes from Kamuela, where its chief technician resides.

Additionally, in adverse weather conditions, which is when the cable system would be most likely to fail, it is reasonable to expect that the difference in driving time to North Kohala from Hilo via the winding and hilly Hawaii Belt-Kawaihae roads and from Kona via the arrow-straight Queen Kaahumanu Highway would be even greater. Bad weather conditions could also prevent a small plane from flying into Upolu Point in North Kohala. Reliance on flying personnel in from Hilo might also require KOHALA to leave a service vehicle at the airport in North Kohala so that incoming personnel would have a vehicle available to find and repair system faults. While not an insurmountable obstacle, this represents an additional opportunity for cost and problems to arise in COMTEC's proposal to provide after-hours service to North Kohala subscribers.

#### V. OWNERSHIP

Although both applicants propose to utilize a limited partnership form as a means of financing construction and initial operation of their respective cable systems, there is a difference in the composition and background of the proposed ownership of the companies.

The four general partners of KAM would each invest \$10,000 for an 80 percent share in the limited partnership, while the remaining five partners would each invest \$2,000 for an aggregate 20 percent share in the limited partnership. In KOHALA, COMTEC, as the general partner, would invest \$10,000 for a 10 percent interest, with the ten limited partners each investing \$10,000 for the remaining 90 percent interest in the partnership.

A significant difference between these partnerships is that the proposed limited partners in KAM are clerical and technical as well as managerial personnel of SUN and KAM, while the proposed limited partners in KOHALA are officers and/or directors of The Realty Investment Company, Ltd. and its subsidiaries. This difference in partnership participation and KAM's investment threshold of \$2,000 versus KOHALA's of \$10,000 suggest that SUN and KAM would utilize the limited partnership as an incentive opportunity for their employees, while KOHALA would offer ownership opportunities only to managerial personnel.

#### VI. RATES

At the present time, it is not clear whether cable service rates and charges in the North Kohala area may be regulated by the Director. The federal Cable Communications Policy Act of 1984, which went into effect on December 29, 1984, allows the rates in new franchise areas to be regulated only if the communities involved are not

subject to "effective competition." Federal Communications Commission ("FCC") rules defining effective competition and the framework to be used by franchising authorities in implementing the federal law in areas lacking effective competition are scheduled to be issued in April 1985.

The applicants have proposed the following rates:

	KAM	KOHALA
<b>INSTALLATION</b>		
First outlet	\$ 40.00	\$ 40.00
Each additional outlet	20.00	20.00
<b>MONTHLY SERVICE CHARGE</b>		
First outlet	12.95	12.50
Each additional outlet	2.50	2.50
<b>RELOCATION OF OUTLET</b>	20.00	20.00
<b>RE-CONNECTION (TRANSFER TO DIFFERENT ADDRESS)</b>	20.00	20.00
<b>CUSTOM WIRING</b>		
First hour	40.00	40.00
Each additional hour	18.00	18.50

Both applicants propose to provide converters as part of their basic monthly service. These converters will allow basic service subscribers to receive the proposed basic programming.

Considering the construction specifications, program offerings, service standards, and financing proposed, the applicants' offered rates and charges appear reasonable. If the new federal regulations, when they are published, allow the Director to regulate rates in the North Kohala franchise area, the Hearings Officer recommends that provisions be made to assure that the rates charged in the first year do not exceed the proposed rates.

For those areas subject to rate regulation, the federal statute allows cable companies to raise their regulated rates five percent per year, without seeking approval of the franchising authority. Therefore, the Hearings Officer believes that the rates authorized by the Director should be those rates, which, if raised five percent in the first year by the operator, will result in the rates proposed in the application.

Rates charged for premium services are not regulated by the state; however, the applicants provide the following information regarding pay services. KAM proposes to offer The Disney Channel, HBO, and Showtime as pay services at a \$13.00 monthly charge for each. KOHALA proposes to offer The Disney Channel, HBO, Cinemax, and Showtime, if the latter is available, at \$12.00 per month per pay service.

## VII. CONSTRUCTION

With insignificant differences, both applicants propose:

1. Construction of ten miles of cable plant and facilities covering the same area of North Kohala;
2. Cable systems with channel capacity, two-way capability and signal-to-noise specifications which exceed the minimum state requirements;
3. Installation of seven-meter satellite receive dishes modified to receive signals from two satellites simultaneously;
4. Construction utilizing personnel from their affiliated cable companies;
5. Completion of actual construction of cable systems and facilities within 60 days of receiving necessary approvals and completion of make-ready work; and
6. Free line extension where there are at least 27 subscribers per mile.

The routes, facilities, and construction schedules proposed by both applicants are reasonable approaches to providing cable communication services to North Kohala.

## VIII. FINANCING

Both applicants propose to finance construction and initial operation of their respective cable systems with a combination of bank credit lines and limited partnership equity contributions. Both have submitted commitment letters from their respective banks to lend funds which, when combined with partners' equity, would provide the \$250,000 necessary for construction and initial operation of the proposed systems. Consequently, both applicants appear to possess the necessary financial resources for the construction and initial operation of their proposed cable systems for North Kohala.

## IX. OVERLAPPING PERMITS

The positive response by North Kohala residents to surveys done by both applicants indicate overwhelming public interest in the provision of cable service for the area. As indicated in previous sections, the applicants demonstrate similar capacity to provide cable communications service to the North Kohala district. Both applicants satisfy the minimum criteria for issuance of a permit under the Hawaii Cable Television Systems Law, HRS Chapter 440G. Consequently, it is necessary to determine whether one or both applicants should be granted permits to provide cable services in the same area.

Communities for which dual permits have been issued have been characterized by (a) more costly construction; (b) substantially diminished profit incentives; (c) delayed commencement of service; and (d) continuing safety, construction, marketing and pricing problems. The economic feasibility and financing of each applicant's proposal rests on the potential number of subscribers passed by the cable plant, the number of homes subject to the line extension rule, the future growth in numbers of subscribers, the



amount and cost of the plant to service the area, and the rates charged. Even though their projections are based on the assumption that there would be a single cable operator in North Kohala, neither applicant projects retained earnings in the first five years of operation.

Each applicant was asked at the staff hearing for its assessment of the hypothetical situation where both applicants received permits. Their responses were extremely negative. Mr. Mizukami of SUN said, "Kohala couldn't possibly support two systems." Mr. Warren of COMTEC said, "I don't think it would serve the best interest of the public." (Transcript, p. 140.)

The Hearings Officer is of the opinion that the issuance of overlapping permits for the lightly-populated North Kohala area would not be in the public interest and that a single cable permit should be issued for the North Kohala district.

#### IX. RECOMMENDATIONS

For the reasons set forth above, the Hearings Officer recommends that the Director (1) deny the application submitted by Kohala Cable Television and (2) grant the application submitted by Kam Cablevision Company to provide cable communication services to the North Kohala district (Census Tract 218), subject to the conditions set forth below.

The recommended conditions are as follows:

##### Finance

1. KAM shall provide the Director within thirty days of the issuance of the order:
  - a. Certification by a regulated financial institution that \$200,000 is available for immediate call down by KAM for a period
  - b. A performance bond in an amount not less than \$125,000, in accordance with § 440G-6(b)(5).

##### Construction

2. KAM shall begin construction of the cable television system within forty-five days of the issuance of the order. Construction shall be completed in accordance with the schedule and specifications proposed in KAM's Exhibit N of its application, unless KAM obtains the Director's prior approval of requested changes. KAM shall file a written construction status report with the Cable Television Division on a bi-weekly basis.
3. Prospective subscribers in newly-constructed dwellings located within the permit area, but not included in KAM's original construction schedule, shall be provided service within six months of their applications for service, subject to KAM's line extension policy.

#### Access

4. KAM shall provide the equipment and support services proposed in its response to the Initial Request for Information to encourage use of the mandated public, educational, and governmental access channels.

#### Management

5. The Director's prior approval shall be required for all changes in ownership involving one percent or more of the units of the general or limited partnerships.

6. KAM shall secure the Director's prior approval for any proposed sale, exchange, or transfer of assets having an original acquisition or present market value, whichever is greater, in excess of the sum of \$5,000 to any person, other than for the payment of legitimate costs incurred in operating the cable television system.

7. KAM shall secure the Director's prior approval before engaging in any business activity other than allowed in this permit.

8. KAM shall maintain all financial and business records, including individual billing records, at the cable television system's principal offices in the North Kohala district.

9. KAM shall maintain a responsible managing employee in offices in North Kohala who shall have the power to act for KAM in providing effective cable television service to the district. The name of the responsible managing employee shall be provided promptly to the Cable Television Division. Any change in responsible managing employee shall be reported to the Division within ten days of the change.

#### Programming

10. Subject to the provisions of Section 625 of the Cable Communications Policy Act of 1984, KAM shall maintain the mix, quality, and level of programming proposed. In specific, KAM shall provide a mix of services which includes children's, news, sports, religious, general interest, and access programming. KAM shall notify the Cable Television Division of planned changes in specific program services at least thirty days in advance of the change.

#### Customer Service

12. KAM shall, prior to offering cable services to the public, submit in a form specified by the Cable Television Division a schedule setting forth the terms, conditions, and rates for all cable services to be provided to the designated service area, including, for informational purposes, all premium programming services. All terms and conditions of service, including customer service standards, shall be subject to the Director's prior approval.

#### Rates

13. Pursuant to the Cable Communications Policy Act of 1984, the FCC is scheduled to promulgate rules in April 1985 relating to rate regulation of basic service in communities lacking effective competition. If KAM is found to be subject to rate regulation following publication of these rules:

a. KAM may charge the following rates plus tax for basic cable service:

- i. Monthly service charge \$12.33
- ii. Installation of first outlet \$38.10

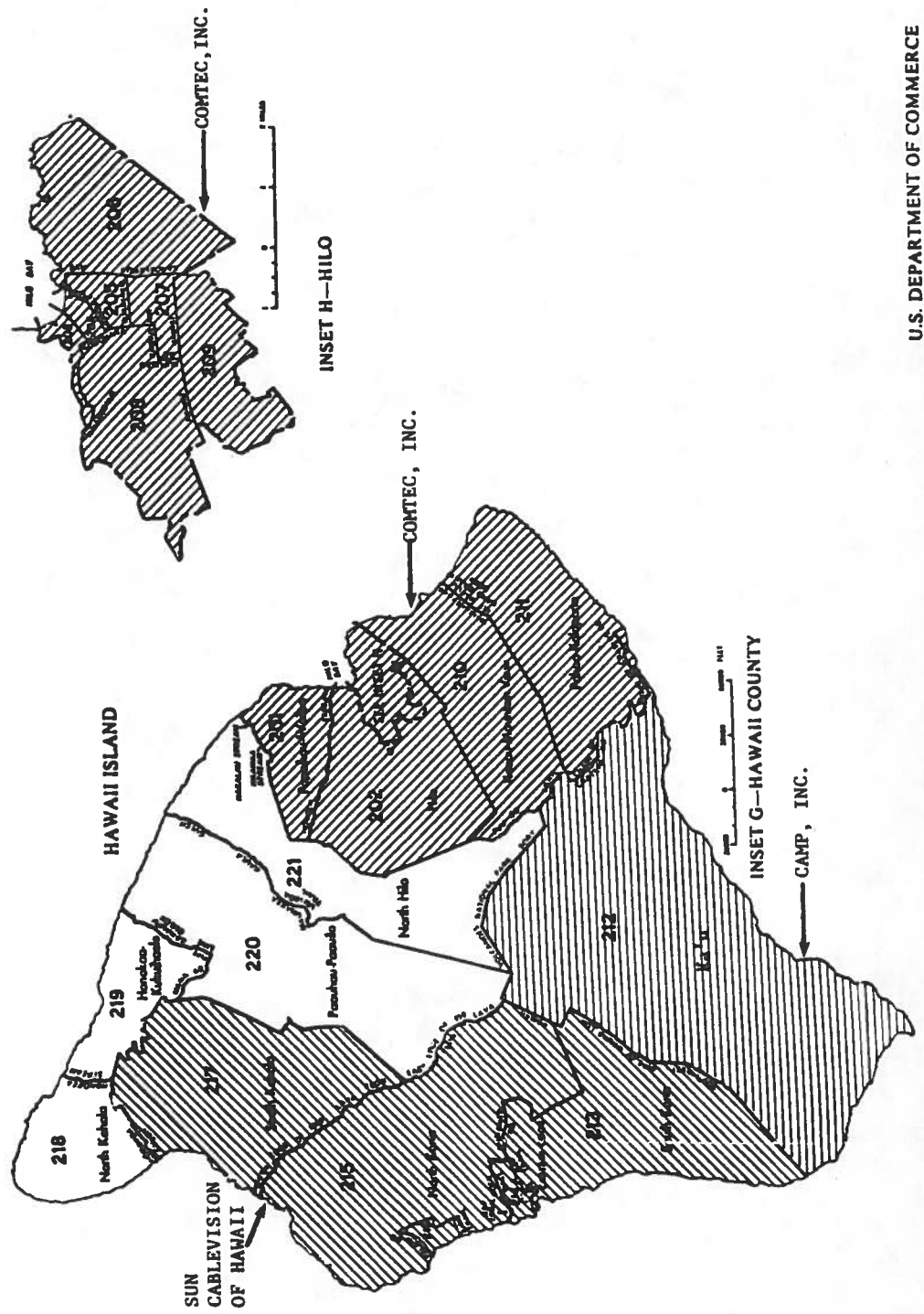
b. The Director may issue a subsequent order specifying the amounts of other rates and charges allowed by the FCC's rules to be regulated.

c. KAM may raise its regulated rates no more than five percent per year without seeking the Director's approval, in accordance with Section 623(e)(1) of the Cable Communications Policy Act of 1984.

14. KAM's construction and operation of a cable system in the North Kohala district shall be subject to the provisions and requirements of the Cable Communications Policy Act of 1984 and amendments thereto, applicable FCC rules, the Hawaii Cable Television Systems Law, Chapter 440G, HRS, and amendments thereto, and rules and orders issued by the Director.

  
VIRGINIA LEA CRANDALL  
Hearings Officer

Dated: March 15, 1985



**SINGLE FAMILY RESIDENTIAL DISTRICT**

**80-10**

**RESIDENTIAL & AGRICULTURAL DISTRICT**

**8A-8a**

**AGRICULTURAL DISTRICTS**

**A-20a**

**A-10a**

**A-5a**

**A-3a**

**A-1a**

**COMMERCIAL DISTRICTS**

**C1-10 (Singlehood Commercial)**

**C1-10 (Range Commercial)**

**INDUSTRIAL DISTRICTS**

**M1-50 (Limited Industrial)**

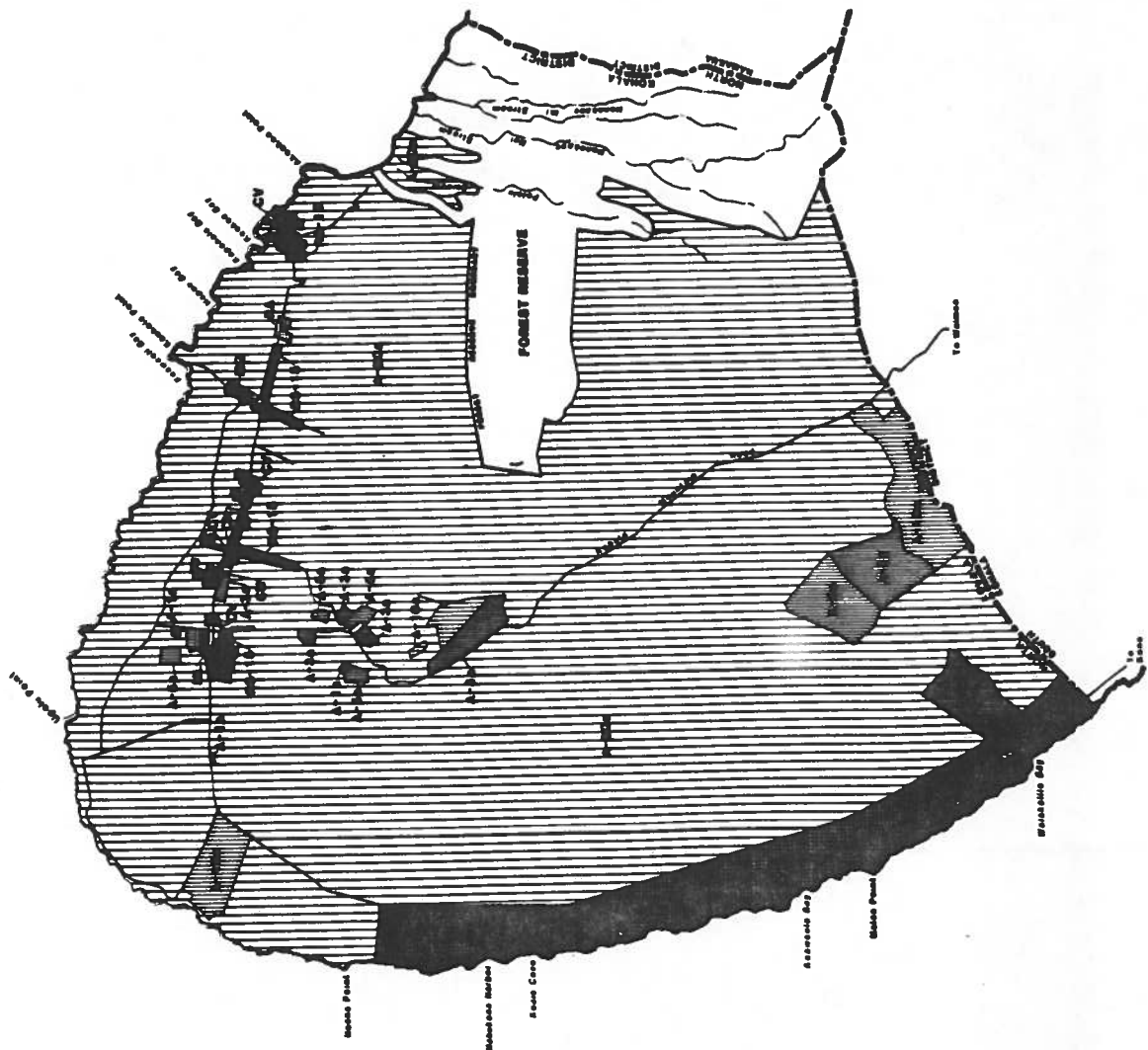
**M1-10a (General Industrial)**

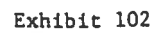
**UNPLANNED DISTRICT**

**U**



EXPANSION FOR  
 THE CENTURY OF BUSINESS  
 EXPANSION IN  
 PRODUCTIVITY, QUALITY,  
 EFFICIENCY, PROFITABILITY, GROWTH





**Figure 7**  
**LAND USE**  
**CONCEPT**  
**NORTH KOHALA**  
**COMMUNITY**  
**DEVELOPMENT**  
**PLAN**

