

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

In the Matter of the Application of )  
GARDEN ISLE CABLEVISION LP )  
For Sale of Assets and Transfer )  
of Derby Cablevision, Inc. )

DOCKET NO. 00-84-03

ORDER NO. 120

DECISION AND ORDER

I. Introduction

On July 5, 1985, Garden Isle Cablevision LP ("GIC") and Derby Cablevision ("Derby") filed an application with the Director of Commerce and Consumer Affairs ("Director") for approval of the transfer of Derby's cable television permits and other assets to GIC. That initial application has been supplemented and amended several times through subsequent filings by the applicants. In connection with the transfer, GIC requests approval of an increase in the system's basic services rates from \$12.43 to \$13.50.

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., February 27, 1985, in the War Memorial Convention Hall in Lihue, Kauai. Notice of the meeting was published in The Garden Island and the Honolulu Star-Bulletin on February 13, 1985 and February 20, 1985. All oral and written comments received from the public regarding the application have been considered by the Director in reaching his decision.

II. EVALUATION CRITERIA

Section 440G-8, Hawaii Revised Statutes, 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. In the past, these same criteria have guided the approval of transfer applications.

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, the Director must consider any objections to the transfer received from the public or other sources.

### III. FINDINGS

The Director has reviewed the application and finds that GIC has failed to demonstrate the qualities required for issuance of a cable permit in the state of Hawaii:

**A. GIC Cannot Provide the Proposed Services at Reasonable Cost:**

**(1) Ability to provide proposed services:**

GIC recognizes that the Derby cable system is presently technically deficient. However, it has tested only part of the system. It assumes that the cable system will carry the full array of proposed services at required quality levels. It makes no financial provisions for resolving problems in the untested part of the system which could prevent carriage of proposed signals. This situation casts doubt on GIC's ability to provide its proposed services.

**(2) Ability to offer services at reasonable cost:**

GIC proposes rates which are significantly higher than rates charged by other local cable systems for comparable services. The proposed rates are not competitive with those of the cable company which would directly compete with GIC in overbuild areas. The debt structure of GIC requires that it charge the rates proposed in order to service its senior debt. Therefore, GIC cannot offer the services proposed at reasonable cost to the consumer without significantly altering its financial plan.

**B. GIC Has Not Demonstrated That It's Suitable**

GIC has failed to take reasonable steps to ascertain the condition of the existing system, which condition is essential to the accomplishment of its business plan. GIC is unwilling to take these steps even though it insists that it's capable of responsibly operating a cable system. GIC proposes to rely for managerial expertise on an entity which is related only by management contract and a small limited partnership investment. This structure is not conducive to proper and accountable cable operations, but rather to the minimization of investors' exposure. These are not qualities consistent with a finding of suitability.

**C. GIC Is Not Financially Responsible**

GIC has planned to make a maximum of \$700,000 in capital improvements, regardless of the condition of the existing Derby system. This total amount is already allocated to certain proposed improvements. GIC has not tested the

distribution system, yet proposes a financial plan which allows no room for correcting possible deficiencies except by substituting them for other necessary improvements included in its proposal. Therefore, the Director does not believe that GIC has demonstrated its ability to perform efficiently. GIC has failed to exercise due diligence in evaluating the Derby system, both operationally and technically. The vagueness of its application reflects this lack of attention to detail. GIC has made assumptions which cannot prudently be drawn from the facts available. This is a characteristic inconsistent with operator efficiency.

In consideration of these findings, as well as objections received from the public, the Director hereby orders that the application of Garden Isle Cablevision LP and Derby Cablevision for the transfer of Derby's cable television permits and other assets to GIC be DENIED.

Dated at Honolulu, Hawaii, 9/30, 1985.



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RUSSEL S. NAGATA  
Director of Commerce and Consumer Affairs

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Order No. 120 in Docket No. 00-00-03, dated September 30, 1985, was served upon the following by mailing the same, postage paid, on this 30th day of September, 1985:

Charles R. Morris, III  
Garden Isle Cablevision LP  
360 South Monroe Street, Suite 250  
Denver CO 80209

Wayne Minami, Esq.  
820 Mililani Street, Suite 611  
Honolulu, Hawaii 96813

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4347 Rice Street, Suite 203  
Lihue, Hawaii 96766

Raymond Derby  
California Industrial Products, Inc.  
11525 South Shoemaker Street  
Santa Fe Springs, California 90670



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R. Takamoto

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

In the Matter of the Application of )  
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GARDEN ISLE CABLEVISION LP )  
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For Sale of Assets and Transfer )  
of Permits of Derby Cablevision, Inc. )

DOCKET NO. 00-84-03

AMENDED ORDER NO. 120

**AMENDED DECISION AND ORDER**

**I. Introduction**

On July 5, 1984, Garden Isle Cablevision LP ("GIC") [and Derby Cablevision ("Derby")] filed an application with the Director of Commerce and Consumer Affairs ("Director") for approval of the transfer of Derby[']s Cablevision, Inc.'s ("Derby's") cable television permits and other assets to GIC. That initial application has been supplemented and amended several times through subsequent filings by [the applicants] GIC and Derby, its joint applicant. In connection with the transfer, GIC requests approval of an increase in the system's basic services rates from \$12.43 to \$13.50.

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., February 27, 1985, in the War Memorial Convention Hall in Lihue, Kauai. Notice of the meeting was published in The Garden Island and the Honolulu Star-Bulletin on February 13, 1985 and February 20, 1985. All oral and written comments received from the public regarding the application have been considered by the Director in reaching his decision.

**II. EVALUATION CRITERIA**

Section 440G-8, Hawaii Revised Statutes, 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. In the past, these same criteria have guided the approval of transfer applications.

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, the Director must consider any objections to the transfer received from the public or other sources.

### **III. FINDINGS**

The Director has reviewed the application and finds that GIC has failed to demonstrate the qualities required for issuance of a cable permit in the state of Hawaii:

#### **A. GIC Cannot Provide the Proposed Services at Reasonable Cost:**

##### **(1) Ability to provide proposed services:**

GIC recognizes that the Derby cable system is presently technically deficient. However, it has tested only part of the system. It assumes that the cable system will carry the full array of proposed services at required quality levels. It makes no financial provisions for resolving problems in the untested part of the system which could prevent carriage of proposed signals. This situation casts doubt on GIC's ability to provide its proposed services.

##### **(2) Ability to offer services at reasonable cost:**

GIC proposes rates which are significantly higher than rates charged by other local cable systems for comparable services. The proposed rates are not competitive with those of the cable company which would directly compete with GIC in overbuild areas. The debt structure of GIC requires that it charge the rates proposed in order to service its senior debt. Therefore, GIC cannot offer the services proposed at reasonable cost to the consumer without significantly altering its financial plan.

**B. GIC Has Not Demonstrated That [It's] It Is Suitable.**

GIC has failed to take reasonable steps to ascertain the condition of the existing system, which condition is essential to the accomplishment of its business plan. GIC is unwilling to take these steps even though it insists that [it's] it is capable of responsibly operating a cable system. GIC proposes to rely for managerial expertise on an entity which is related only by management contract and a small limited partnership investment. This structure is not conducive to proper and accountable cable operations, but rather to the minimization of investors' exposure. These are not qualities consistent with a finding of suitability.

**C. GIC Is Not Financially Responsible.**

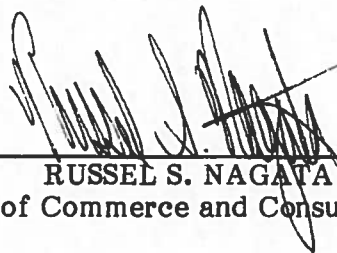
GIC has planned to make a maximum of \$700,000 in capital improvements, regardless of the condition of the existing Derby system. This total amount is already allocated to certain proposed improvements. GIC has not tested the distribution system, yet proposes a financial plan which allows no room for correcting possible deficiencies except by substituting them for other necessary improvements included in its proposal. Therefore, the Director does not believe that GIC has demonstrated [its ability to perform efficiently] financial responsibility.

**D. GIC Has Not Demonstrated Its Ability to Perform Efficiently the Service for Which Authorization is Requested.**

GIC has failed to exercise due diligence in evaluating the Derby system, both operationally and technically. The vagueness of its application reflects this lack of attention to detail. GIC has made assumptions which cannot prudently be drawn from the facts available. This is a characteristic inconsistent with operator efficiency.

In consideration of these findings, as well as objections received from the public, the Director hereby orders that the application of Garden Isle Cablevision LP and Derby Cablevision for the transfer of Derby's cable television permits and other assets to GIC be DENIED.

Dated at Honolulu, Hawaii, October 18, 1985.



A handwritten signature in black ink, appearing to read "Russel S. Nagata", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

**RUSSEL S. NAGATA**  
Director of Commerce and Consumer Affairs




**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Amended Order No. 120 in Docket No. 00-84-03 dated October 18, 1985, was served upon the following by mailing the same, postage paid, on this 21st day of October, 1985:

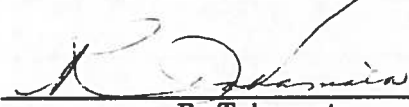
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11525 South Shoemaker Street  
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\_\_\_\_\_  
R. Takamoto

This is to certify that the original is on file in the Department of Commerce and Consumer Affairs.

  
\_\_\_\_\_  
R. Takamoto