

I. SUMMARY

In the present application, Comtec has proposed to offer service to the Honokaa, Haina, and Paauhau communities in the Hamakua District on the island of Hawaii. It has requested the issuance of a new permit for the requested service area, rather than an extension of its existing permit.

Although the new permit area would have a completely separate physical plant and one full-time employee, it appears from the documentation submitted by Comtec that the company intends to administer it as part of Comtec's overall cable operation. Certain technical and administrative resources would be provided by the existing operation to the new franchise. Additionally, it appears that Comtec proposes to offset initial cash deficiencies projected for the Hamakua operation with cash generated by operation of its existing system.

To issue a new permit, the Director of Commerce and Consumer Affairs ("Director") must be satisfied that such issuance will be in the public interest. In determining whether the public interest will be served by the issuance of a permit, the Director is admonished by statute to consider the public need for the service, as well as the ability of the applicant to offer the service at a reasonable cost, the suitability of the applicant, the ability of the applicant to perform efficiently the service for which authority is requested, and any objections arising from public hearings or other sources.

It appears that there is a public need for the service. No cable service is now available in the proposed service area. Comtec stated that of 259 residents surveyed, 76 percent were in favor of service proposed. No objections to the service or the proposed rates were heard by the Department.

The Director believes that, under the provisions of the federal Cable Communications Policy Act of 1984 ("Policy Act") and implementing regulations

promulgated by the Federal Communications Commission, he is prohibited at this time from regulating the rates Comtec would charge for service in the proposed service area. The Director therefore reserves comment with respect to whether the rates proposed for the Honokaa system are fair and reasonable.

With respect to its ability to offer service at a reasonable cost, suitability, financial responsibility, and ability to perform efficiently the service for which authority is requested, the Director believes that Comtec, by virtue of its successful operation of its existing cable system, has demonstrated these qualities.

Accordingly, the Director believes that it would be in the public interest to approve the application of Comtec to serve the Hamakua area. However, for the reasons discussed below, the Director believes that certain conditions should be placed on this approval by the Director. These conditions would seek to assure:

1. That approval of the requested permit will not result in unwarranted upward pressure on the rates charged both Comtec's existing and potential subscribers;
2. That needed and desired improvements in both service areas are not inhibited by the terms of loans required to construct the proposed system; and
3. That services provided in the new permit area are of an acceptable quality and quantity.

II. LAW

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

- (a) 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.

The authority of the Director 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 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.

III. DESCRIPTION OF APPLICANT

Comtec is an existing cable company, licensed in 1971 by the DCCA to provide cable communications services to the residents of the South Hilo District. Its initial service area was extended in 1979 and 1985 to include portions of the Puna District (Census Tracts 201 through 211) and the Ka'u District (Census Tract 212). Comtec presently serves approximately 10,000 subscribers in these areas.

Comtec is a wholly-owned subsidiary of The Realty Investment Company, Limited ("Realty Investment"). In addition to its cable television business, Realty Investment is engaged in insurance, construction and broadcasting activities, a finance company, an investment company and an automobile dealership. Approximately 66 per cent of Realty Investment's shares are owned by the Richard Henderson family (Application Exhibit E).

IV. SERVICE AREA

Comtec has requested the issuance of a new 20-year permit for Census Tract 219 rather than an extension of its existing permit to include this additional service area (Application, December 10, 1985 letter). The 1980 Census reported Census Tract 219 to have 1,031 houses (1985 State Data Book). Comtec's proposed distribution system is designed to pass substantially all of the residences in Honokaa, Haina and Paauhau, or approximately 616 houses (Application, March 12, 1986 letter).

V. PUBLIC NEED

No cable service is now available in Census Tract 219. In January 1985, Comtec interviewed 259 residents regarding the proposed service. Seventy-six per cent of

these residents indicated interest in the service. Information provided by Comtec indicates that there is a public need for cable service in the proposed permit area.

VI. SUITABILITY OF APPLICANT

The information submitted by Comtec further indicates that the company has successfully operated its existing cable system. The system proposed by Comtec is similar in basic design and proposed operation to that of Comtec's existing system. By virtue of its experience, the Director believes that Comtec has demonstrated its ability to offer service at reasonable cost, as well as its suitability, financial responsibility, and ability to perform efficiently the services it proposes to provide.

VII. PROPOSED OPERATIONS

Comtec proposes to offer the following as basic service:

| | |
|--------------------------------------|----------------------|
| KAIH (NBC affiliate) | KMAU (ABC affiliate) |
| KGMV (CBS affiliate) | KMED (PBS affiliate) |
| Public Access | Government Access |
| Educational Access | CNN - 24-Hour News |
| ESPN - 24-Hour Sports | WTBS - Superstation |
| Nashville Network - Country; Variety | C-SPAN - Government |
| | 2 FM Radio |

Comtec would also offer HBO, Showtime, Cinemax, and The Disney Channel at additional cost. If sufficient interest were demonstrated, the company would consider providing Japanese pay programming via NGN/Fuji tapes (Application Exhibit B).

Comtec proposes to employ one full-time Honokaa-based employee to handle both customer service and technical duties after construction and initial installation have been completed (Application, Supplemental Information, item 22). Although it will be physically separate from Comtec's existing cable system, the new system will also receive administrative support for billing and access programming and technical support for

unusual repair circumstances from Comtec's Hilo headquarters (Application, Supplemental Information, items 6, 7, 8, and 31).

Richard Henderson is president of Realty Investment and Comtec. John Warren, Comtec's vice president-general manager, and John Cunningham, Comtec's vice president for engineering, would hold operational responsibility for the proposed Hamakua system (Application Exhibit E).

VIII. CONSTRUCTION

Comtec proposes to construct a discrete 300 MHz system with plant extensions no longer than two miles in any direction from the system's headend. The system would be supported by standby power supplies (Application: Exhibit C; Supplemental Information, items 31 and 33). Comtec proposes to receive Galaxy I satellite transmissions by using a five-meter dish antenna with a 55-degree low-noise amplifier (January 7, 1986 letter). Comtec states that this equipment, when configured as proposed, meets the performance level of the company's existing ten-meter dish which uses 120 degree low-noise amplifiers (January 7, 1986 letter). Comtec indicates that it expects to complete construction of the earth station and the distribution system in the Hamakua franchise within 90 working days after the cable permit is granted (Application: Exhibit N).

IX. RATES

The Director believes that, under the provisions of the Policy Act and implementing regulations promulgated by the Federal Communications Commission, he is prohibited at this time from regulating the rates Comtec would charge for service in the

proposed service area. The Director therefore reserves comment with respect to whether the rates proposed for the Hamakua system are fair and reasonable.

X. FINANCING

Comtec proposes to finance system construction and working capital requirements through a line of credit, which would ripen into long-term debt to be serviced by cash flow derived from the operation of the Hamakua franchise.

Comtec indicates that system construction and initial operating needs will be financed through a \$200,000 line of credit provided by the First Hawaiian Bank (Application: Exhibit J). The documentation submitted by Comtec further indicates that it will draw against this line of credit an amount equal to construction costs. It projects this amount at \$181,800 (Application: Supplemental Information, item 21). The documents submitted by Comtec indicate that it proposes to make no capital contributions in connection with the proposed franchise (Application: Exhibit K; Supplemental Information, item 21).

However, Comtec has also submitted documentation indicating that the company projects the Hamakua franchise will have insufficient working capital of approximately \$30,000 in its first two years of operation (Application: Exhibit K). The documentation submitted by Comtec shows that the company does not plan to borrow more than the \$181,800 projected for construction and that it does not propose capital contributions to cover projected cash shortages (Application: Exhibit K; Supplemental Information, item 21). Therefore, the information submitted indicates that Comtec will have insufficient funds in the Hamakua system to meet projected operational losses.

This matter is of concern to the Director because the existing operations of Comtec appear to be the only likely source of funding for the cash shortages projected for

the proposed Hamakua system. As discussed below, this could impose unwarranted burdens on current subscribers of Comtec, as documentation submitted by Comtec shows that it is in a weak cash position, even though it operates profitably.

Comtec's financial statements for the fiscal years ending September 30, 1981, 1982, 1983 and 1984, submitted in support of its application for increases in rates and charges (Docket No. 14-84-01), indicate that Comtec's year-end cash assets have remained at a relatively low level during these years, despite substantial net income. This appears to be explained in part by the fact that, since 1981, Comtec has transferred substantially all of its available cash to its parent, Realty Investment. The net amount of these intercompany transfers is reported as a receivable by Comtec. In 1983, Comtec's receivable due from parent was \$951,475 (Docket No. 14-84-01: Exhibit E). This receivable was reduced to \$795,174 in 1984 (Docket No. 14-84-01: September 30, 1984 Financial Statements). Comtec's September 30, 1985 balance sheet shows an amount due from affiliates of only \$174,101 (Application: Audited Financial Statements).

In a note to Comtec's 1985 balance sheet, the following was reported with respect to changes in the company's long-term debt:

During 1985, Realty assumed a \$915,846 real estate mortgage note of the company. In exchange therefor, the company reduced its receivable from Realty.

(Application: Audited Financial Statements, Note 2)

Based on the information provided by Comtec, if Comtec's receivable from Realty Investment at the time of this offset had been at its 1984 level of \$795,174, the reported non-cash transaction would have resulted in a payable from Comtec to Realty Investment of $(\$915,846 - \$795,173 =) \$120,672$. The existence of a receivable from Realty Investment of \$174,101, notwithstanding the reported offset, suggests that Comtec

made additional cash advances to Realty Investment during the 1985 fiscal year of (\$915,846 - \$795,173 + \$174,101 =) \$294,772.

In documentation submitted in the present application, Comtec reported not only that it had no available cash at the end of its 1985 fiscal year, but also that it had a cash overdraft of \$13,172 (Application: Audited Financial Statements). This deficit cash position occurred despite the fact that Comtec's available working capital, which included \$474,544 from operations, as well as the proceeds of a \$575,000 loan, far exceeded its cash requirements for additions to property and other assets and for reduction of its long-term debt (Application: Audited Financial Statements).

These matters are of concern to the Director because the information provided by Comtec suggests that cash transfers were made to Realty Investment even though they caused Comtec to be placed in a negative cash position. This suggests that the interests of Realty Investment may have been placed above those of the cable company and its subscribers. The documentation submitted by Comtec further appears to indicate that Realty Investment is relying on the ability of the cable company to provide cash to aid the parent's continuing operations. This further suggests that, despite the reported receivable due from parent, cash generated by Comtec's operations, once transferred to Realty Investment, is unavailable to fund cable company needs.

These circumstances have the potential to result in unwarranted rate increases and other adverse consequences for Comtec's existing subscribers. Adding the Hamakua area to Comtec's operations under the conditions proposed by the company would impose additional cash requirements on the cable company which could both increase the likelihood of such negative consequences for Comtec's existing subscribers and expose potential subscribers in the proposed service area to similar risks. Consequently, it would

be desirable to isolate the costs of the Hamakua area from those of Comtec's other service areas.

Additionally, the Director notes that the terms and conditions upon which banks have historically made cable loans include ceilings on capital expenditures for future years, ceilings on the amount of borrowing per subscriber, and requirements that the cable operator maintain certain levels of cash flow for the duration of the loan. Accordingly, the terms and conditions of such loans are critical in determining whether proposed operations can in fact be accomplished and whether the loans allow sufficient flexibility to assure future expansion or the provision of additional desired services. The documents submitted by Comtec do not contain a bank commitment detailing the terms and conditions attendant to the proposed initial line of credit financing and subsequent long-term loan.

Consequently, the Director will impose conditions upon the issuance of the permit of Comtec which are designed to assure that adequate funding is available for construction, contingencies and initial operation of the Hamakua cable system and that the terms and conditions of the financing obtained by Comtec are compatible with the system's current and future needs.

NOW, THEREFORE, it is hereby ordered that the application of Comtec for authority to provide cable communications services in Census Tract 219 of the island of Hawaii, be approved with the following conditions:

Finance

1. Comtec shall provide the Director within forty-five days of the issuance of this order:

a. Evidence of funding for this project in a minimum amount of \$240,000, of which no less than \$40,000 shall be an infusion of equity. The terms and conditions upon which any institutional financing will be made available must be approved by the Director. The proposed terms and conditions shall be filed with the Director no later than thirty days following the issuance of the Director's order. *ok*

b. A performance bond in an amount not less than \$100,000, in accordance with Section 440G-6(b)(5), HRS. *ok*

Construction

2. Comtec shall begin construction of the cable television system within sixty days of the issuance of this order. Construction shall be completed in accordance with the schedule and specifications in Comtec's Exhibit N, Construction Schedule, and Part IX. System Design, item 33 of the Supplemental Information submitted in its application.

3. Comtec shall construct its satellite receive site using the five-meter dish with 55-degree low-noise amplifier proposed, operating at a performance level matching that of its existing ten-meter dish with 120-degree low-noise amplifiers, or shall install satellite receive system equipment of equivalent or better quality and performance. *ok*

4. Comtec shall file a written construction status report with the Division on a bi-weekly basis until initial construction has been completed, and as required by rule thereafter.

5. Changes in construction schedule or specifications must receive prior approval from the Director.

6. Prospective subscribers located within the permit area, but not included in Comtec's original construction schedule, shall be provided service within six months of their applications for service, subject to Comtec's proposed line extension policy.

Access

7. Comtec shall provide, at minimum, technical assistance and equipment to encourage use of the mandated public, educational, and governmental access channels.

Management

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

9. Comtec shall maintain all records relating to the operation of the Honokaa franchise as follows:

a. All financial and business records, including individual subscriber billing and service records, for the Honokaa service shall be maintained as for a separate cable system; and

b. All reports required by state rules or as a condition of the permit for the Honokaa area shall be submitted to the Director as for a separate cable system.

Programming

10. Comtec shall initially provide and maintain at minimum the mix, quality and level of programming proposed in Exhibit B of its application. In specific, Comtec shall provide a mix of services which includes children's, news, sports, general interest, and access programming. Comtec shall notify the Division of planned changes in specific program services at least thirty days in advance of the change.

Customer Service

11. Comtec shall, prior to offering cable services to the public in Honokaa and no later than sixty days after the issuance of this order, 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 but not limited to, 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.

Miscellaneous

12. Comtec's construction and operation of a cable system in the Honokaa area shall be subject to the provisions and requirements of the Policy Act and amendments thereto, applicable Federal Communications Commission rules, the Hawaii Cable Television Systems Law, Chapter 440G, HRS, and amendments thereto, and rules and orders issued by the Director.

DATED: Honolulu, Hawaii, May 23, 1986.

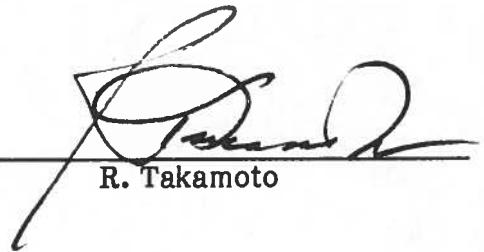


RUSSEL S. NAGATA
Director of Commerce and
Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of Order No. 121 in Docket No. 14-85-02 dated
was served upon the following by mailing the same, postage paid, on this 23rd day of
May, 1986:

Comtec, Inc.
Box 747
Hilo, Hawaii 96720



R. Takamoto