

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

In the Matter of the Application of)	
DANIELS COMMUNICATION PARTNERS)	
LIMITED PARTNERSHIP)	DOCKET NO. 07-87-01
)	ORDER NO. <u>127</u>
For Transfer of the CATV Permits of)	
<u>Hawaiian Cable Vision Company to It.</u>)	

DECISION AND ORDER

I. INTRODUCTION

On December 15, 1986, DANIELS COMMUNICATION PARTNERS LIMITED PARTNERSHIP ("DCP"), by its managing agent, Daniels & Associates ("Daniels"), Perry Leff and Global Telecommunications Corp. ("Global") filed an application with the Department of Commerce and Consumer Affairs ("Department") for approval of the transfer of permits and partnership interests in Hawaiian Cable Vision Company ("Hawaiian") from Mr. Leff and Global to DCP. DCP proposes to terminate the Hawaiian partnership at the time of the transfer of interests and subsequently to operate substantially all of the assets formerly owned by Hawaiian, including the permits. Hawaiian provides cable communication services to the Lahaina District of the island of Maui ("West Maui"), Census Tracts 314 and 315.

To afford the public the opportunity to participate in regulatory decision-making, a public meeting on this application was held on March 9, 1987, in the Lahaina District Courtroom, 628 Wharf Street, Lahaina, Maui, Hawaii, beginning at 7:30 p.m. Notice of the hearing was published in the Honolulu Star-Bulletin and the Maui News on February 22 and March 1, 1987. The Department received no objections to the application before, at, or following the public hearing.

In addition to the public hearing, the Department undertook an investigation of several volumes of justification submitted by DCP in support of its application. These documents included DCP's five-volume application and its responses to the Department's information request issued on February 10, 1987. Certain matters relating to the application were further clarified at a meeting between the applicants and the Cable Television Division staff on April 27, 1987.

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 Director must consider, among other things, whether the applicant has demonstrated 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. PUBLIC NEED FOR ACQUISITION

Hawaiian's cable subscribers presently receive a limited range of cable programming services. A full range of programming services is unlikely until ownership of the cable system is transferred to owners with a commitment to full development and utilization of cable plant, facilities, and services.

In the last ten years, Hawaiian has been slow in making improvements to the system. Whatever improvements that have been made resulted generally from subscriber complaints or demands for improved services. Hawaiian's technical and operating staff have responded to installation, repair, and disconnect requests; however, little work has been done by the system's staff to bring the cable system to its fullest technical and programming potential of 300 MHz and 35-channel capacity. In its operation, Hawaiian appears to be quietly awaiting sale to an aggressive, market-oriented management.

In pre-application studies, DCP has identified system and community needs and committed itself to taking action where needed to improve and increase system channel capacity and the receipt and distribution of cable signals, thus making possible better cable services for West Maui.

DCP plans to provide cable converters to all of its residential subscribers. This action will, by increasing the individual subscribers' channel capacity, form the basis for increased basic program services. Accompanying the converters will be DCP's introduction of programming services designed to meet the special needs of teenagers and children. DCP plans to introduce other programming services in the future to meet the total needs of West Maui's cable subscriber population.

In its pre-application efforts and oral and written presentations, DCP has demonstrated a commitment to the full development and utilization of West Maui's cable plant, facilities, and services. DCP's proposed purchase of Hawaiian appears to fulfill a public need.

IV. ABILITY OF THE APPLICANT TO OFFER SERVICE AT A REASONABLE COST TO THE SUBSCRIBERS

Key elements in maintaining a reasonable cost of service level include the ability of the cable operator to: (1) continually broaden the revenue base of the cable operation; and (2) improve operating efficiencies in the delivery of cable services.

Over the past decade, it has become increasingly difficult for small, traditional, single or cluster cable television system owners to provide the level of technical expertise, employee training, customer services and programming demanded by a more sophisticated consumer population. Hawaiian, as a stand-alone, sole proprietorship, is an example of a small system which may benefit from the economies of scale in equipment and programming purchases, high-level engineering expertise, employee training programs and sophisticated financing techniques available through a responsible multiple system operator such as Daniels.

With Daniels' in-house specialists providing marketing, operations, engineering and accounting support and leadership services, a new growth-service orientation may now be implemented for the West Maui cable system. Such a new orientation would allow sophisticated marketing not only for increased basic subscriber penetration but also for expanded pay programming services to existing subscribers.

With this new orientation, the West Maui system could be expected to respond more aggressively to market needs and to consider new, related commercial endeavors rather than limiting its activities to traditional cable television services. Present reliance on subscriber-initiated growth would be replaced with aggressive marketing of cable facilities and services. This expansion would utilize new approaches and technologies to allow extension of service to potential cable subscribers. This should result in an increased revenue base for the West Maui system.

As evidenced by its engineering analysis, Daniels' in-house engineering staff has evaluated the West Maui cable system to determine its strengths and weaknesses. The action plan put forth by DCP commits the proposed cable operator to early action to increase the system's capacity and effect increased efficiencies in the cable system operations.

The new growth orientation, which will result in an increased revenue base, together with increased efficiencies in cable operations proposed by DCP, should lead to maintaining a reasonable cost of service level for the West Maui cable system in the immediate future and thus enable DCP to offer the services it proposes at a reasonable cost to subscribers.

V. SUITABILITY OF APPLICANT

It appears that a small Hawaii cable system, such as Hawaiian, can be operated most effectively when local management is allowed virtually complete autonomy while still being able to draw upon headquarters support services in accounting, engineering, finance and operations.

With its distance from Daniels' Denver headquarters, West Maui's cable system must possess sufficient autonomy in systems operations to respond on a timely basis to the needs, problems and requirements of its existing and potential subscribers, as well as to regulatory concerns. Its local system manager must have the power and the authority to act for the system owners in all matters relating to the provision of cable television services to the permit area. Together with this power and authority to facilitate operations of the cable system, the local system's manager must have ready access to revenues and funds, as well as to all books and records of the cable system. When confronted by problems normally beyond the capability of a local

systems manager, the manager should have ready access to a competent headquarters staff capable of assisting him in solving problems.

Daniels represents that its local systems operations have autonomy and retain local operational decision-making. It also claims that its systems benefit from economies of scale in purchasing and finance and from headquarters expertise in accounting, engineering, financing, marketing and operations. It further indicates that it has the ability to pay attention to matters which increase the efficiency and effectiveness of systems operations and subscriber services, while not creating barriers to timely response to subscriber needs and problems.

Assuming that Daniels representations are fully applied to its Hawaii operations, and in consideration of DCP's demonstration of its abilities to provide services at a reasonable cost to subscribers, to provide necessary financial resources, and to perform efficiently, the Director believes DCP has shown that it is a suitable applicant to meet the needs of the West Maui cable system.

VI. FINANCIAL RESPONSIBILITY

DCP is a Delaware limited partnership which was organized in 1985 for the purposes of acquiring, owning, investing in, selling or otherwise disposing of cable television systems. DCP-85, Ltd., general partner of DCP, is a Colorado limited partnership. The general partner of DCP-85, Ltd. is Daniels Holdings, Inc., a Delaware corporation. DCP-85, Ltd., as the general partner, has full responsibility and exclusive and complete discretion in the management and control of DCP. On October 11, 1985, Daniels & Associates, Inc. entered into a management agreement with DCP. That management agreement provides that Daniels will render supervisory services in connection with DCP's maintenance, operation, expansion, financing and disposition of cable television systems. As compensation for these services, DCP pays Daniels

annually not more than 7% of DCP's gross revenues from the operations of cable systems. Daniels also is entitled to receive separate compensation for acquisition of systems of an amount equal to 1% of the purchase price. In addition, Daniels will be reimbursed for direct out-of-pocket and indirect expenses.

The Director was notified that Mr. Leff elected on March 18, 1987 to provide seller financing through an installment sale arrangement. Prior to closing, DCP shall borrow from Provident National Bank ("Bank") an amount to pay off promissory notes to Limited Partners of 1984, employee bonuses, trade payables and certain closing costs. Mr. Leff, prior to closing, will assume a portion of DCP's debt to the Bank to reduce DCP's remaining debt to an amount between \$3,200,000 and \$4,000,000. Subsequent to closing, DCP shall provide to Mr. Leff two promissory notes totaling about \$11 million, subject to certain adjustments. Both notes with any accrued but unpaid interest, shall be due and payable upon completion of the fifth year after transfer. DCP shall pay to Mr. Leff at the end of the fifth year an additional payment equal to 30% of that year's annual cash flow times twelve.

DCP's pro forma statements on Sources and Uses of Funds show that in the fifth year, the operating system plans to borrow approximately \$13 million to retire its outstanding debts. DCP's projections reflect adequate cash flow for operations, capital expenditures, management fees, debt retirement, and interest payments for a ten-year period.

Hence, the Director finds that DCP appears to be financially capable of consummating the anticipated acquisition of Hawaiian's assets. The Director, however, cautions DCP to evaluate more closely its cash flow projections since DCP's own limited study shows that there may be a ceiling on how much West Maui subscribers are willing to pay for cable services which are lower than average subscriber revenues

assumed in DCP's cash flow projections. The Director may therefore require additional periodic monitoring of DCP's financial condition.

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

Operational efficiency requires close attention to new developments in cable standards, equipment and facilities, as well as to the day-to-day operations of an existing cable system.

Daniels' engineering and operations staff is recognized for its professional competence within the cable industry. The staff is continuously involved in the evaluation and monitoring of cable systems for its cable brokerage and cable investment banking business. Consequently, it is fully capable of analyzing and following through on analyses of cable systems not performing to their optimum efficiency and capacity.

Customer Service

Subscriber encounters with an operator's customer service representatives often influence subsequent perceptions and relationships with the cable company. A positive encounter will often lead to ever-expanding relationships which are mutually beneficial as far as services requested and delivered. Negative encounters, if not limited to a passive relationship, often spread to other subscribers, fanning discontent with actual or perceived cable system inadequacies.

Hawaiian's staff may best be described as on-the-job-trained with a sole mission of keeping the cable system in operation. It has a staff capable of performing minimum services to a subscribership of its size. Staff activities are primarily to collect bill payments, schedule and perform installation, repair and disconnect services. Staff performs little in the way of marketing cable services and services to meet

individual existing and potential subscribers' needs. It generally has not capitalized on opportunities to improve the system's revenue base and subscriber satisfaction such as promoting pay television services and greater subscriber penetration into multi-unit residential structures. In short, the cable system's staff has not acted aggressively on opportunities for expanding and developing cable communications services in West Maui.

Daniels has a long history of experience in assessing the strengths and deficiencies in cable systems. DCP has represented that Daniels will provide training and development staff services and will make changes in systems procedures. These changes will provide a marketing and systems orientation for the West Maui staff. The following actions to improve West Maui's customer services will be undertaken:

1. Improve and expand employee training.
2. Improve internal communications, stressing proper delegation, accountability, and managerial followup.
3. Involve local management and department heads in Daniels' Regional Manager meetings.
4. Expand staff to accommodate anticipated growth in system.
5. Provide headquarters' guidance, supervision and support to ensure proper functions at the local operations level.
6. Establish measures of effectiveness for customer services and systems procedures.

Given the present need for proper preparation of West Maui's staff for a new growth-service orientation, DCP's plan appears to represent a good first step towards improving customer and marketing services in the West Maui system. Continued support from headquarters personnel will be necessary for continued progress toward good customer service for West Hawaii.

With the training, a new marketing and growth orientation, and additional employees it has proposed, DCP will improve West Maui's capacity for improving customer services and expanding cable facilities and services.

Technical Performance

Hawaiian, with its limited support resources, now operates at less than peak technical efficiency. Certain improvements need to be made to enable West Maui's cable system to realize its 300 MHz capability and to improve its signal quality and dependability.

Daniels' engineering staff has conducted what appears to be a thorough engineering analysis of Hawaiian's cable plant and facilities. The analysis, which has been accepted in principle by DCP for implementation, involves the following:

1. The entire micro-wave headend complex should be reviewed on a site-by-site basis. All engineering should be reviewed relative to the microwave system, including path analysis, fade margins, wave guide and antenna configurations.
2. The satellite signal equipment should be evaluated and adjusted for proper installation and alignment.
3. The 11-meter antenna should be cleaned on a scheduled basis.
4. A common grid should be constructed to interconnect all cable equipment racks, tower, and earth station to the electric company neutral power line in accordance with E.D. 203.
5. An interim headend cleanup should be undertaken and should involve the replacement of inappropriate interconnect cable, the proper alignment of the various electronic headend components, improved mixing and a general cleanup of the facility.
6. Approximately two miles of "412" cable severely damaged by pressure tapping should be replaced.

7. A set of as-built maps should be completed for troubleshooting and engineering analysis.

8. A complete trunk-flow chart should be generated.

9. All hotel/condo systems should be evaluated for proper interface, operating levels and distribution wiring. Corrective action should be taken on a case-by-case basis.

10. A AGC/ASC-level control module should be installed in all trunk amplifiers. Thermal compensation networks should be installed in all aerial line extenders.

11. The preventive maintenance program should be continued and expanded.

12. System grounding should be upgraded to E.D. 2.01 and 2.02 standards.

DCP has represented that implementation of the above, together with future incremental systems facilities upgrading, will enable the West Maui cable system to operate at its 300 MHz capability with improved signal quality and dependability. Thus, these improvements will enable the cable system to operate with the efficiency contemplated in the permit transferred in 1978.

VIII. CHANNEL CAPACITY

DCP, in Section III. E. of its application states in part:

"As to future plans, these will be dictated by market forces. The existing plant has the capacity to carry 35 channels of service, which should be sufficient to meet all foreseeable needs over the next decade."
(Emphasis added)

While this statement infers that there is no need for concern over channel capacity, statements made in other sections of the application indicate otherwise.

Section III. D., which relates to mandated channels, states in part:

"Because of channel space limitations of the Maui system physical plant, Cablevision intends to place all local origination and public access programming on a single channel. ..." (Emphasis added)

This disparity of statements made by DCP is of concern to the Director. Hence, the Director will require that a study be made by DCP concerning whether the existing capacity is sufficient to meet the current demands and projected needs for use during the next decade. This study shall be completed within six months of the transfer. Should it be determined that the existing capacity is insufficient, then DCP shall include as part of the study the nature of the work that will be required to expand the channel capacity and an estimate of associated costs. DCP shall also include how funding of any expansion for channel capacity is to be provided by DCP.

IX. SERVICES

The Cable Television Division in its Request for Information asked DCP to provide a listing, description, and schedule of additional programming, if any, to be added as basic service. DCP stated that following approval of the transfer, it will conduct a survey to determine customer preferences for future offerings, and that those preferences would eventually be considered in selecting new cable services.

DCP has conducted two preliminary studies for West Maui. The first was an ascertainment study which recommended that no premium channels be added. Furthermore, the study concluded that the community's needs and desires would best be served if the additions were all applied to enhance the basic service package. The strongest candidates for additional basic services are Nickelodeon, CNNHN, CBN, and the Discovery Channel. The second study was a focus group study that concluded that subscribers may be receptive to a basic service with the addition of five more basic channels, an FM stereo service, a free VCR hookup, and a remote control for \$15.95

per month. This study further noted that there may be a rate ceiling of about \$25 per month for combined basic and pay service. The Director realizes that the study group was small, and may not be representative of the West Maui subscribers as a whole. However, DCP should consider additional studies relating to rates if DCP plans additional rate increases.

In Section VII.B.c., Proposed Changes Specifically for the Maui System, of DCP's application, DCP states that it will, during the first year, add channels that are designed for children and teenagers (e.g., Nickelodeon, MTV, and VH-1). DCP assures the Director that services will be added, but not until a survey is performed. Thus, DCP shall be required to conduct the proposed survey and provide the Director with a listing of channels to be added to basic and pay services within 90 days of this Order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the request for transfer of the cable television permits of Hawaiian Cable Vision Company to Daniels Communication Partners Limited Partnership be APPROVED, with the following conditions:

1. Control. DCP shall not allow a transfer of a controlling interest in its general partnership without the Director's prior approval. By February 1 of each year, DCP shall provide in writing to the Director a listing of ownership interests in its general partner.

2. Management. Daniels shall be the manager of DCP. DCP shall not, without the Director's approval, enter into any contract, agreement or arrangement with any other person or entity for the same or substantially similar management services. DCP shall maintain, in Lahaina, a responsible managing employee who shall have the power and authority to act for DCP in all matters relating to providing cable

television service to the permit area. Any change in this responsible managing employee shall be reported to the Director ten (10) days prior to such a change.

3. Receipts and Disbursements. All revenues received by DCP shall be deposited to accounts maintained with a bank or financial institution authorized under the laws of the State of Hawaii to engage in general banking business. With the exception of extraordinary disbursements which may be issued from a DCP or Daniels bank account located in Denver, Colorado, all disbursements related to the daily operations of DCP's cable television permit shall be made through accounts maintained with a bank or financial institution authorized under the laws of the State of Hawaii to engage in general banking business.

4. Business Records. DCP shall maintain, at its Hawaii offices, a complete set of books and records, including but not limited to invoices, subscriber records, bank statements, monthly profit and loss statements, and other documentation and records of customer accounts relating to the operation of the cable television system.

5. Other Business Activity. DCP shall secure prior written approval of the Director before engaging in any non-cable related or other business activity where such activity will have a material, adverse affect on the financial structure and/or operations of DCP.

6. Programming. DCP shall initially maintain, at a minimum, the mix, quality and level of programming presently offered by Hawaiian and shall inform the Director of planned changes in specific programming services which result from the marketing studies to be undertaken by DCP. A listing of channels to be added to both basic and pay service shall be submitted to the Director within 90 days of this Order. Any other subsequent changes in specific programming services shall be reported to the Director thirty (30) days prior to implementation.

7. Free Drop. DCP shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area; provided that service is actually being delivered within a reasonable distance from the school or institution of higher education which request service.

8. Financing. If DCP utilizes debt financing other than that provided by Mr. Leff for the acquisition of Hawaiian, the terms of such financing shall be subject to approval by the Director. The closing of the proposed acquisition shall occur not later than ninety (90) days following the issuance of this Order, unless extended by the Director. The Department shall complete its review and approval process in a timely fashion following the receipt of all relevant documents evidencing such financing.

9. Disposition of Assets. DCP shall not, without the Director's prior approval, sell, transfer or otherwise dispose of assets with a value in excess of \$5,000 which are reasonably necessary to provide effective cable television services within its franchise areas unless such assets are replaced with assets reasonably sufficient for accomplishing such purpose.

10. Schedule for Improvements. Within 30 days of this Order, DCP shall submit a time schedule for the Director's approval for upgrading Hawaiian's facilities as proposed in Appendix WW of the application.

11. Channel Capacity. Within six months of this Order, DCP shall submit to the Director a study of whether Hawaiian's existing capacity is sufficient to meet present demands and projected needs for use in the next decade. DCP shall consult with the Director in the development of the study.

12. Tariff. No later than 60 days after the issuance of the Director's Order, Daniels shall submit a tariff in a form specified by the Cable Television

Division, setting forth the terms and conditions for all cable services to be provided in the designated service area, including, for informational purposes, all rates and programming services. All regulated rates and terms and conditions of service shall be subject to the Director's prior approval.

13. Existing Franchise Obligations. All conditions imposed by Cable Orders 7, 64 (Amended) and 108 which are not superseded or amended by this Order shall remain in effect subsequent to the date of this Order.

DATED: Honolulu, Hawaii, this 14th day of May, 1987.



ROBERT A . ALM
Director of Commerce and Consumer Affairs