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

In the Matter of the Application of PARADISE CABLE PARTNERS For Transfer of a Cable Franchise Held By The Seven Twenty Limited Partnership dba Kauai Cable TV	)	Docket No. 83-90-01

DECISION AND ORDER NO. 138

I. Introduction.

On March 2, 1990, Paradise Cable Partners ("Paradise") filed an application with the Director of Commerce and Consumer Affairs ("Director") for the purchase of the assets and transfer to it of the cable franchise of The Seven Twenty Limited Partnership ("Seven Twenty"). Seven Twenty operates Kauai Cable TV, which provides cable communication services on the island of Kauai.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held at 7:30 p.m. on May 7, 1990 at the Lihue Public Library, 4344 Hardy Street, Lihue, Kauai. Notice of the hearing was published in The Sunday Star-Bulletin and Advertiser and The Garden Island on April 15 and 22, 1990.

II. The Law.

A. State Law

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in Sections 440G-10.1, 440G-7, and 440G-8 of the Hawaii Cable Communications Systems Law ("Hawaii Cable Law"), Chapter 440G, Hawaii Revised Statutes. These sections require the Director's approval before any transfer of a cable franchise occurs. The application for transfer contains substantially the same information as an original application for a grant of cable franchise. Section 440G-6(b), Hawaii Revised Statutes, requires the Director to obtain information regarding:

> "(1) The citizenship and character of the applicant;
> (2) The financial, technical, and other qualifications of the applicant;
> (3) The principals and ultimate beneficial owners of the applicant;
> (4) The public interest to be served by the requested issuance of a cable franchise; and
> (5) Any other matters deemed appropriate and necessary by the director including the proposed plans and schedule of expenditures for or in support of the use of public, educational, and governmental access facilities."

While Section 440G-6, Hawaii Revised Statutes, specifies the information to be obtained from each applicant, it is Section 440G-8(b), Hawaii Revised Statutes, which establishes the criteria to be considered by the Director prior to issuing a cable franchise:

> "(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable

advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances."

B. The Privilege of a Franchise

The grant of a cable franchise, whether at initial issuance or by a transfer of authority, gives the recipient a right to use and occupy public places, highways, and easements which are of a limited and scarce nature. Substantial economic benefits may flow to the holder of the franchise as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both responsive and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, enhancing its community's communications capabilities by supporting public, educational, and governmental access.

III. Statutory Criteria.

A. Public Need for the Proposed Service

The applicant has proposed to provide the same cable programming services now offered by the seller, The Seven Twenty Limited Partnership. The Kauai Cable system now provides cable communications service to approximately 8,400 subscribers on the island of Kauai, most of whom would be without cable service if Kauai Cable ceased to provide that service. This clearly indicates that there is a need for continued cable communications services as proposed by the applicant.

It is the Director's understanding that the partners comprising Seven Twenty have been seeking a purchaser for the system for several years. This in and of itself does not mean that the requested transfer, if denied, would lead to the termination of service in Kauai Cable's service area. However, it does suggest that Seven Twenty is not interested in continuing to operate the cable system. At a time when the cable communications industry is in a state of tremendous change and adjustment--in technology, programming, and its regulatory environment--cable systems need dynamic leadership which looks forward to these challenges. It appears that a change in ownership of the Kauai Cable system is appropriate at this time.

B. Suitability of the Applicant

In reviewing the suitability of Paradise Cable Partners, the State first looked at the three limited partnerships, Paradise Cable Partners, InterMedia Partners, and InterMedia Capital Management, which comprise the entity proposing to own and operate Kauai Cable TV. Because all three partnerships were only recently formed, they have no track record of operating cable systems.

Because the three limited partnerships have no track record, the State then looked at the principals, Leo J. Hindery, Jr., Edward M. Allen, and David G. Rozzelle, who are the general partners of InterMedia Capital Management. InterMedia Capital Management is the general partner of InterMedia Partners, which is the general partner of Paradise Cable Partners.

Messrs. Hindery, Allen, and Rozzelle all have significant prior experience in the cable industry. Their experience and stature in the cable industry have allowed them to raise in excess of $200 million from major concerns having experience in the cable field. Based on the experience of the principals, the Director finds that the applicant is suitable.

It should be noted that although many of the limited partners involved at each of the three tiers of limited partnerships are experienced in the cable communications field. However, the suitability determination was not based on a review of any limited partners. As a consequence, for instance, the finding of suitability as it relates to Paradise may not be read as a determination of the suitability of Tele-Communications, Inc. ("TCI"), which holds a forty-nine (49) percent interest in InterMedia Partners through its TCI Development Corporation.

C. Operational Ability of the Applicant

Paradise has proposed to retain Kauai Cable's present manager and staff following the transfer of the franchise. These individuals have been intimately involved in running the cable communications system for the last six years or more. They have demonstrated a capacity to operate a cable operation generally attuned to the needs and requirements of Kauai subscribers.

The expertise of the staff of InterMedia Capital Management will enchance the managerial and administrative capabilities of the existing staff.

D. Technical Ability of the Applicant

Among the smaller cable systems in Hawaii, the Seventy Twenty cable system boasts a highly competent and well-trained technical staff capable of meeting the daily technical requirements of its cable communication facilities. This staff has demonstrated its competence in planning and executing upgrades. Consequently, if as represented in the application, current staff were to be retained and supplemented by technical consultants, Paradise should be capable of meeting technical system needs for the foreseeable future.

The remaining term of the franchise is approximately ten (10) years. The development of communications infrastructure sufficient to meet the demands of the community served is of significant concern. The role that cable systems will eventually play in the telecommunications industry is unknown; however, expansion of the capacity of the present cable system would provide the flexibility needed to accommodate future uses yet to be determined.

Paradise has proposed that by December 31, 1993 it will increase its channel service from twenty-eight channels to thirty-five channels. This upgrade would require (1) the installation of additional microwave equipment, (2) the lowering of the output levels of the microwave transmitters by about 1.5 dbs due to the additional loading, (3) the replacement of a ten foot receive dish by a twelve foot dish at Anahola to maintain the existing signal-to-noise ratio levels, (4) the installation of seven satellite receivers with descramblers, and (5) the installation of seven channel modulators.

The existing cable trunk and feeder lines are operational to 300 MHz bandwidth and require no upgrade to carry thirty-five (35) channels. All cable lines have been adjusted and swept to 300 MHz.

Paradise further proposes in a Special Application Addendum to increase, by December 31, 1995, its channel capacity from the present twenty-eight channels to forty channels in two stages. The proposal provided the following cost estimates, in 1990 dollars:

Trunk upgrade	$179,595.00
Distribution upgrade	74,795.00
Converter replacement	118,750.00
Microwave upgrade	146,605.00
Headend additions	36,841.00
Fiber-optic link	147,400.00
Mt. Kahili repeater site move	150,000.00
Cable replacement contingency	30,000.00
Sub-total	$883,986.00
Tax, shipping (10%)	88,399.00
Total	$972,385.00

About $100,466 of the $972,385 is part of the first stage upgrade to bring the system up to a thirty-five (35) channel capacity by December 31, 1993.

It appears that the proposed forty (40) channel upgrade will provide sufficient capacity to meet the needs of the franchise area during the relatively short remaining term of the franchise. Although a sixty (60) channel upgrade is not being required at this time, due to the upward pressure it would create on rates, this issue will be reexamined during the course of the franchise.

E. Ability to Provide Service at Reasonable Cost and Financial Capability

To assist in the evaluation of these key criteria, the Director sought the advice of Price Waterhouse, a nationally recognized expert in the area of cable accounting.

As noted by Price Waterhouse, the financial plan presented by Paradise is based on a number of favorable assumptions. Paradise has proposed to bring a number of benefits to its subscribers, including upgrades of the cable system, while only raising rates slightly above the rate of inflation.

The Bank of Hawaii is providing the financing for the proposed acquisition of the system. Throughout the processing of the application, the State has raised a number of issues with the Bank of Hawaii. The Bank has favorably addressed these concerns in the structuring of the loan agreement. The most significant of these concerns was Paradise's ability to meet its debt covenants. As a consequence of this, there was the subordination and deferral of management fees to be paid to InterMedia Partners. What this means is that, except where Paradise is experiencing the most critical of cash shortages, the management fee will be applied to the repayment of the loan. This is critical to the viability of the application and financial plan.

It should be noted that overhead allocations in addition to management fees were built into the financial plan. The Director notes that this is an area which will be monitored to assure that the purpose of subordinating and deferring the management fee is not circumvented.

F. Public Hearing

Various individuals and organizations appeared at the public hearing. They generally expressed the view that public, educational, and governmental access was a significant concern on the island of Kauai.

The resources available for access purposes on the island of Kauai are limited. Consequently, the Director intends to bring all cable systems and interested parties together to create and implement a coordinated plan for cable access. Concerns with respect to a lack of equipment and channel time will be addressed in the development of this plan.

G. Other Matters

The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the threshold requirements for holding a cable franchise, and is responsible and accountable to the State.

While it is not the only factor, organizational structure is inextricably tied to the issue of control. By definition, limited partners in a limited partnership have no managerial authority; that authority is vested in the limited partnership's general partner. The structure of the entities involved in the present case is that the applicant, Paradise, is a limited partnership. Its general partner is itself a limited partnership, InterMedia Partners. InterMedia Partners' general partner is also a limited partnership, InterMedia Capital Management. The managing general partner of InterMedia Capital Management is an individual, Leo J. Hindery, Jr., and it is Mr. Hindery who will ultimately control the operations of the Kauai Cable system.

While Paradise is the applicant for the franchise, it is Mr. Hindery and InterMedia Partners with whom the State has been negotiating with during the transfer process. The franchise will be issued to Paradise alone. However, through this issuance, InterMedia Partners, InterMedia Capital Management, and Mr. Hindery, as well as Paradise, all assume the obligations for operating the system.

Taken individually, none of the entities has all of the capabilities needed to meet the threshold requirements for holding a cable franchise. Taken as a whole, however, the Director finds that all of the requisite critera are met.

V. Conclusion.

Based on the information presented in the application and the evaluation of this information, the Director believes that it is in the public interest to approve this application. The applicant appears to possess the requisite capabilities for the issuance of the franchise. New ownership will provide additional funds to increase the channel capacity of the system and improve signal quality. New ownership will also mean that system management can focus on running, rather than selling, the system. The transfer will also bring new resources to the island of Kauai for public, educational, and governmental access.

VI. Order.

NOW, THEREFORE, the application of Paradise Cable Partners to purchase the assets of The Seven Twenty Limited Partnership and for transfer to it of the cable franchise held by Seven Twenty is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, July 16, 1990.

ROBERT A. ALM
Director of Commerce and
Consumer Affairs

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Section One
Definitions

"Access channel" means any channel on the system made available for public, educational or governmental (hereinafter referred to as "Access" or "PEG") use.

"Access fee" means the annual fee to be paid by Paradise Cable Partners to the Director or his designee for public, educational or governmental uses pursuant to paragraph 6.1.

"Basic service" means the lowest cost tier of cable service offered by Paradise Cable Partners to all its subscribers which includes the delivery of local television broadcast signals, access channels, and local origination.

"Cable franchise" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Cable service" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Cable system" and "system" mean the cable system on the island of Kauai doing business as Kauai Cablevision and shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Channel" means a minimum of six megahertz (6 MHz) bandwidth in the electromagnetic spectrum which is capable of carrying any type of transmission which Paradise Cable Partners is authorized to provide to subscribers.

"Director" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Educational access channel" means any channel on the system which is made available by Paradise Cable Partners for use by educational authorities such as the Hawaii State Department of Education, Kauai Community College, and other accredited educational institutions for non-commercial educational purposes.

"Government access channel" means any channel on the system made available for use by county, state, and federal government agencies.

"Gross revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Paradise Cable Partners, its affiliates, subsidiaries, and any other person or entity in which Paradise Cable Partners has a financial interest or which has a financial interest in Paradise Cable Partners arising from or attributable to operation of the cable system, including but not limited to:

(a) revenue from all charges for entertainment and non-entertainment services provided to subscribers;

(b) revenue from all charges for the insertion of commercial advertisements upon the cable system;

(c) revenue from all charges for the leased use of a studio or cable channel;

(d) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable system and the provision of subscriber and other service; and

(e) revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross revenues shall include, valued at agreed upon or contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Paradise Cable Partners or others described above in consideration of performance by Paradise Cable Partners or others described above of any advertising or other service in connection with the cable system.

Gross revenues shall exclude any amounts received by others described above from Paradise Cable Partners as management fees, fees in the nature of general and administrative allocations, and partnership distributions.

"InterMedia Capital Management" means InterMedia Capital Management, a California limited partnership, which is the general partner of InterMedia Partners.

"InterMedia Partners" means InterMedia Partners, a California limited partnership, which is the general partner of Paradise Cable Partners.

"Leased access channel" means a channel made available to producers or programming services wishing to purchase channel time. Leased access may be commercial in nature.

"Local origination programming" means any program produced by or for the cable system and where the cable operator maintains editorial control over programming and scheduling.

"Paradise Cable Partners" means Paradise Cable Partners, a Hawaii limited partnership, and its successors.

"Person" means and includes any individual, partnership, firm, corporation, association, trust or other enterprise.

"PEG access programming" means any programming on any access channel developed by or made for the public, educational or governmental entities.

"Public access channel" means any channel on the system made available for use by individuals and organizations for non-commercial purposes.

"Public, educational, and governmental access facilities and equipment" means (1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for the use of that channel capacity.

"State" means State of Hawaii.

"Subscriber" means any person lawfully receiving any cable service.

Section Two
Management

2.1 Citizens Advisory Committee

Within sixty (60) days of the effective date of this Order, Paradise Cable Partners shall organize a Citizens Advisory Committee composed of residents of the island of Kauai. This advisory committee shall meet regularly to advise the management of Paradise Cable Partners on community needs, concerns, and interests, including local origination and public, educational, and governmental access programming.

2.2 Limited and General Partners

(a) For the duration of the franchise term:

(1) Except in the case of death or disability, Leo J. Hindery, Jr. shall remain the managing general partner of InterMedia Capital Management.

(2) InterMedia Capital Management shall remain the general partner of InterMedia Partners.

(3) InterMedia Partners shall remain the general partner of Paradise Cable Partners.

(b) Any change in the limited partners of Paradise Cable Partners shall be filed with the Director within ten (10) working days from such change.

(c) InterMedia Capital Management and InterMedia Partners will extend their respective partnership terms to at least August 4, 2001. By December 31, 2000, InterMedia Capital Management and InterMedia Partners shall submit to the Director written documentation of this extension.

2.3 Books and Records

Except as hereinafter provided in this paragraph 2.3, Paradise Cable Partners shall maintain at its principal place of business on the island of Kauai a complete set of books and records, including but not limited to subscriber records, monthly profit-and-loss statements, and other documentation relating to the operation of the cable system. All records not maintained and available for review at the local office shall, upon request, be made available locally within five (5) working days. If records cannot be made available locally within five (5) working days, Paradise Cable Partners shall make appropriate office space available and pay for air fare, hotel, and other related travel expenses necessary to allow the Director's representative to review the requested records wherever they are located.

2.4 Other Business Activity

Paradise Cable Partners shall not engage in any type of business activity in Hawaii or elsewhere which is not related to the operation of its cable system without the prior written approval of the Director.

2.5 Tariff

By August 1, 1990, Paradise Cable Partners shall file with the Director a schedule of its rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

2.6 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, Paradise Cable Partners shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that Paradise Cable Partners proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, Paradise Cable Partners shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that Paradise Cable Partners proposes to take with respect to the violation.

(c) By April 30 of each year, Paradise Cable Partners shall submit to the Director a statement from its General Partner to the effect that no violation of this Order has occurred and is continuing and that Paradise Cable Partners has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if Paradise Cable Partners has not observed or performed all of the conditions contained in this Order, it will specify the nature and period of the violation and what action Paradise Cable Partners has taken or proposes to take to with respect to the violation.

Section Three
Financial

3.1 Changes in Loan Agreement

Any material change in the terms and conditions of the loan agreement made with the Bank of Hawaii for the financing of the acquisition, expansion or operation of the Kauai cable system as reviewed and approved in this Docket shall require prior approval of the Director.

3.2 Covenant Violations

Any violation of a covenant of any agreement involving financing for Paradise Cable Partners shall be reported promptly in writing to the Director.

3.3 Collateralization of System Assets

The system assets shall not be pledged as collateral for any borrowings which are not solely for the benefit of the cable system. All additional collateralization of the system shall be reported to the Director.

3.4 Additional Borrowing

Excluding trade accounts, secured financings of vehicles and equipment in the aggregate principal amount of $100,000, and advances, equity contributions, and subordinated borrowings from its partners, any borrowing or financing exceeding $5,000 by Paradise Cable Partners from whatever source and under whatever condition, shall require prior approval of the Director, except the foregoing shall not prohibit Paradise Cable Partners from guaranteeing the debt of its partners in connection with any advances, equity contributions, and subordinated borrowings from its partners, and the prior approval of the Director shall not be required therfor.

3.5 Transfers or Payments

Except as provided below, any transfer or payment of a sum in excess of $50,000 and not related to the cost of operating the Kauai Cable System (including debt service) shall require the prior approval of the Director. Prior approval shall not be required for the following:

(a) Payments to the Bank of Hawaii under the Loan Agreement with Paradise Cable Partners; and

(b) Payments to the partners of Paradise in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 3.4 above, provided that the loan with the Bank of Hawaii has been fully satisfied.

3.6 Annual Financial Statements

(a) By April 30 of each year, Paradise Cable Partners shall submit to the Director its annual financial statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, and a statement of cash flows. Each such financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be presented in sufficient detail to allow the analysis of the cable system on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 3.6(a) shall be accompanied by a statement showing the basis for computing and the amounts paid by Paradise Cable Partners or any subsidiary to its parents, affiliates, subsidiaries, general partners or any person for management fees and fees in the nature of general and administrative allocations.

3.7 Credit Agreement Compliance

Paradise Cable Partners shall furnish to the Director, promptly upon their mailing or transmittal, all documents which show Paradise Cable Partners' compliance with the provisions of the Credit Agreement dated July 16, 1990 between Paradise Cable Partners and Bank of Hawaii Sections 5.12(a), (b), (c), (d), (e), (f), (g), 5.13(a) and (b), and correctly state the ratio of Funded Debt to Quarterly Operating Cash Flow, the Ratio of Operating Cash Flow to Pro Forma Debt Service, Capital Expenditures, and subscriber penetration levels.

Section Four
Construction

4.1 Thirty-Five Channel Upgrade

(a) Paradise Cable Partners shall upgrade its system to a minimum bandwidth of 300 MHz by December 31, 1993 and provide a minimum of thirty-five (35) available channels.

(b) Six (6) months prior to commencing construction, Paradise Cable Partners shall submit to the Director a construction schedule complete with construction milestones and relevant dates of completion so as to enable the Director to verify the progress of construction of the upgrade to provide thirty-five (35) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1993 timetable.

(c) If by January 1, 1994 the upgrade is not completed, Paradise Cable Partners shall set aside an amount equal to $100,466 less the accumulated amount expended to that date for this upgrade, but not less than what is estimated to complete the upgrade. The Director, in his sole discretion, will determine the reasonableness of the amount necessary to complete the upgrade.

4.2 Forty-Channel Upgrade

(a) Paradise Cable Partners shall upgrade its system to a minimum bandwidth of 330 MHz by December 31, 1995 and provide a minimum of forty (40) available channels.

(b) This upgrade shall include the construction of fiber optic facilities linking the communities of Anahola and Princeville and shall provide the equipment, facilities, and means to distribute such transmitted signals to subscribers located between those communities.

(c) Six (6) months prior to commencing construction, Paradise Cable Partners shall submit to the Director a construction schedule complete with construction milestones and relevant dates of completion so as to enable the Director to verify the progress of construction to rebuild or upgrade its cable system to a minimum bandwidth of 330 MHz for forty (40) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1995 timetable.

(d) If by January 1, 1996 the rebuild or upgrade is not completed, Paradise Cable Partners shall set aside an amount equal to $871,919 less the accumulated amount expended to date for this upgrade, but not less than what is estimated to complete the upgrade. The Director, in his sole discretion, will determine the reasonableness of the amount necessary to complete the upgrade.

4.3 Additional Funding

Where additional funds are required to cover capital expenditures in excess of those originally proposed in paragraph 4.1 or 4.2 above, Paradise Cable Partners shall submit to the Director the sources of funding. If additional funds are to be made available in the form of equity, the source or sources of equity funding and the amounts to be contributed shall be fully disclosed. If additional funds are to be made available in the form of debt, such funding is subject to paragraph 3.4 above.

4.4 Construction Reports

Upon commencement of construction and continuing until all scheduled system improvements have been completed pursuant to paragraphs 4.1 and 4.2, Paradise Cable Partners shall file monthly written construction status reports with the Director.

4.5 Sixty-Channel Upgrade

On or before December 31, 1998, Paradise Cable Partners shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 450 MHz or sixty (60) channels for cable services.

4.6 Kauai Community College Interconnection

(a) On or before December 31, 1991, Paradise Cable Partners shall provide and activate in one direction an interconnection between its cable system and the main campus facilities of Kauai Community College.

(b) This interconnection shall be provided at no charge to the State.

(c) This interconnection shall be capable of carrying T-1 circuits for data, voice, and video in both directions.

4.7 Institutional Network

(a) At no charge or cost to the State except for Paradise Cable Partners' cost for labor and materials, Paradise Cable Partners shall provide and maintain two-way interconnections between its cable system and sites to be determined by the Director.

(b) These interconnections shall be capable of carrying T-1 circuits for data, voice, and video in both directions.

4.8 Interconnection for Access Purposes

On a schedule and in a manner to be determined in the plan described in paragraph 6.2 below, Paradise Cable Partners will effect an interconnection with other cable systems on Kauai for the purpose of carrying access programming.

4.9 Interconnection with Hawaii Interactive Television System

Within three (3) months of a request by the Director, Paradise Cable Partners shall provide for a single channel interface between the Hawaii Interactive Television System (HITS) and its cable system at no cost or charge to the State and at a cost to Paradise Cable Partners not in excess of $10,000. This shall include an ITFS down-converter, a receiving antenna dish, modulator, other hardware, and the cost of installation.

4.10 Emergency Override System

(a) On or before December 31, 1991, Paradise Cable Partners shall configure and maintain its system to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by the cable system. Emergency authorities shall include the County of Kauai Director of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

(b) Upon completion of the emergency override system referred to in paragraph 4.10(a), Paradise Cable Partners shall report to the Director in writing its cost, including an allowance for maintenance. If the cost of the emergency override system is less than $25,000, then the difference shall be paid to an account designated by the Director to be used for public, educational, and governmental access. Paradise Cable Partners acknowledges that this amount, if any, will have no effect on the public, educational, and governmental access payments required elsewhere under this Order.

4.11 Completion of Franchise Requirements

Any proposed transfer of the franchise shall require completion of paragraphs 4.1, 4.2, 4.6, 4.9, and 4.10 above before such transfer application will be considered for approval by the Director.

Section Five
Programming Services

5.1 Mix, Quality, and Level of Service

Paradise Cable Partners shall not alter its current mix, quality, and level of programming services for basic service without prior approval of the Director.

5.2 Broad Categories of Programming

(a) Paradise Cable Partners has offered to provide the video programming set forth in section H.7.1 of its application.

(b) Subject to availability, Paradise Cable Partners shall carry programming in each of the following broad categories of service on its basic service tier:

(1) Public access programming;
(2) Educational access programming;
(3) Governmental access programming;
(4) Local origination programming;
(5) Public non-profit station with national programming;
(6) National sports programming;
(7) National news programming;
(8) Broadcast television stations as required by the Federal Communications Commission or applicable law; and
(9) General entertainment including, for example, music, children's, cultural, and special interest programming.

(c) No broad category of video programming may be deleted without the prior approval of the Director.

(d) Paradise Cable Partners shall provide notice to the Director at least fourteen (14) days in advance of any changes in its channel lineup.

Section Six

Public, Educational, and Governmental Access

6.1 Access Fee

(a) As hereinafter provided in paragraphs 6.1(b) and 6.1(c), during each and every year for the remaining term of the franchise, Paradise Cable Partners shall pay to an account designated by the Director or his designee an amount up to three (3) percent of its Gross Revenues. These payments shall be used for public, educational, and governmental access uses.

(b) For the years ending December 31, 1990 through December 31, 1995, Paradise Cable Partners shall pay on the due dates shown an annual Access Fee equal to the greater of the amounts shown below or two (2) percent of Gross Revenues:

Due Date	PEG Access Fee
December 31, 1990	$ 36,000.00
December 31, 1991	$ 74,000.00
December 31, 1992	$ 80,000.00
December 31, 1993	$ 93,000.00
December 31, 1994	$ 99,000.00
December 31, 1995	$114,000.00

(c) For the years ending December 31, 1996 through August 4, 2001, the Access Fee shall be three (3) percent of Gross Revenues.

(d) The Access Fee shall be calculated on the estimated annual Gross Revenues for the calendar year. Adjustments to the Access Fee due to differences between the estimated and actual Gross Revenues will be made within thirty (30) days after the submission of Paradise Cable Partner's annual financial statements to the Director.

(e) The amount of the Access Fee required pursuant to paragraph 6.1(c) may be reconsidered by the Director.

6.2 Access Plan and Implementation

Paradise Cable Partners shall work with the Director's staff, consultants, and others designated by the Director to develop for the Director's approval and to implement a coordinated plan for the use of public, educational, and governmental access facilities and equipment on the island of Kauai. The plan shall at a minimum consider the following:

(a) Resources available on the island of Kauai for access use;

(b) User needs and interests;

(c) Models for providing public, educational, and government access;

(d) Management of access facilities and equipment, including the interconnection of all cable systems on Kauai, the activation of additional access channels, the scheduling of channel capacity, guidelines for the interim use of access channel(s) by the cable operator, and the provision of facilities and equipment for the production of programming; and

(e) Coordination of access with HITS, Community Of Interests Network (COIN) or any other interconnects.

6.3 Access Channels

(a) By September 30, 1990, Paradise Cable Partners shall designate to the Director one full-time activated channel for public, educational, and governmental access. Two (2) additional channels shall be designated by December 31, 1990; however, Paradise Cable Partners may use the designated access channels as provided in this paragraph until such time as those channels are activated in accordance with the policies and procedures for activation determined under paragraph 6.2 above.

(b) The two additional channels designated for access use may be activated after December 31, 1993.

(c) All access channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on Paradise Cable Partners' basic service.

(d) Paradise Cable Partners shall be permitted to use time on the access channel(s) whenever such access channel is not scheduled for use; provided that any such use by Paradise Cable Partners shall at all times be subordinated to access programming and shall be preempted by access programming. Any such use shall be subject to guidelines established by the Director or Director's designee or as established pursuant to paragraph 6.2.

(e) All non-access programming on access channel(s) shall be identified as such by an appropriate announcement made prior to and following each non-access use.

6.4 Facilities and Equipment

(a) For the years ending December 31, 1990 through December 31, 2000, Paradise Cable Partners shall, on the due dates shown, provide to the Director or his designee capital funds for facilities and equipment for public, educational, and governmental access in accordance with the following schedule:

Due Date	Amount
December 31, 1990	$ 4,278.00
December 31, 1991	$ 8,223.00
December 31, 1992	$ 8,874.00
December 31, 1993	$ 9,408.00
December 31, 1994	$10,060.00
December 31, 1995	$10,778.00
December 31, 1996	$11,640.00
December 31, 1997	$12,478.00
December 31, 1998	$13,358.00
December 31, 1999	$14,102.00
December 31, 2000	$14,807.00

(b) Any funds provided in accordance with paragraph 4.10(b) above shall be used for access equipment and facilities.

(c) The capital funds required to be paid by Paradise Cable Partners may be reconsidered by the Director pursuant to paragraph 6.2 above.

(d) Any capital funds paid pursuant to this paragraph shall not be credited to the Access Fee.

6.5 Access Organization

The Director may designate one or more entities to fund, control, manage or operate access facilities and equipment.

6.6 Access Transition

(a) Paradise Cable Partners shall continue to fund and operate its existing access facilities and equipment until it receives notice from the Director to alter its present activities pursuant to paragraph 6.2 above. Access shall be made available for non-commercial use on a first-come, nondiscriminatory basis to all persons or groups requesting use of public, educational, and governmental channels.

(b) All equipment presently devoted exclusively to access use shall be transferred upon the receipt of notice from the Director pursuant to paragraph 6.5 above.

(c) All expenses relating to access operations paid within a given calendar year by Paradise Cable Partners shall be credited towards the next annual access fee payment; however, the value of any facilities and equipment required to be transferred pursuant to paragraphs 6.5 and 6.6(b) above shall not be credited toward the payment of any access fee.

6.7 Reporting Requirements

(a) A report shall be prepared for local origination expenses. In addition, a report shall be prepared for access programming expenses.

(b) For the purposes of accounting for amounts expended for local origination and access programming, Paradise Cable Partners shall only include an appropriate portion of Paradise Cable Partners' total operating expenses associated with local origination and access programming. Such portions of the total operating expenses shall reflect only necessary and reasonable expenses which can be specifically identified with, or allocated to, local origination and access programming in accordance with the benefits provided by the resources presented by the expenses. For the purposes of this paragraph, resources used for local origination and to comply with the access requirements shall be deemed to benefit local origination and access programming. In addition to operating expenses, amounts expended for local origination and access programming may include annual depreciation allowance for local origination and access related equipment and facilities, as calculated over the assets' useful lives.

(c) Amounts expended for local origination and access programming shall be subject to the State's review in conjunction with the State's review of Paradise Cable Partners' annual financial report. Paradise Cable Partners shall make such changes in its accounting for local origination and access programming expenditures as the State may reasonably require consistent with generally accepted accounting principles. Unless and until any such change is required, Paradise Cable Partners may continue to account for local origination and access programming expenses in the same manner as it had in the past. If the State has not required changes within six months of the State's actual receipt of Paradise Cable Partners' local origination and access programming expenditure reports, then Paradise Cable Partners' accounting for local origination and access programming shall be deemed accepted by the State.

6.8 Payment by The Seven Twenty Limited Partnership

(a) Within thirty (30) days from the date of this Order, The Seven Twenty Limited Partnership shall pay to the Director the amount of $55,000. This shall be in full and complete satisfaction of all past obligations under paragraph 5 of Order No. 83. These funds shall be used to support public, educational, and governmental access for the island of Kauai.

(b) Paradise Cable Partners understands that the Director and The Seven Twenty Limited Partnership have agreed that the amount paid pursuant to paragraph 6.8(a) is not a payment in return for renewing, extending, transferring or issuing a cable franchise.

(c) Paradise Cable Partners acknowledges that the amount paid by The Seven Twenty Limited Partnership pursuant to paragraph 6.8(a) will have no effect on the Access Fee paid pursuant to paragraph 6.1 or capital funds paid pursuant to paragraph 6.4.

Section Seven
Miscellaneous

7.1 The Director hereby expressly reserves the right to regulate rates to the extent permitted by law.

7.2 Consistent with Section 612(b) of the Cable Communications Policy Act of 1984, on or before December 31, 1990, Paradise Cable Partners shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of cable channels for commercial use.

7.3 (a) This Order shall not be construed as exempting Paradise Cable Partners or any affiliated or controlling entities from any antitrust law.

(b) This Order does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

7.4 Paradise Cable Partners, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the Paradise Cable Partners cable system. If Paradise Cable Partners discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, Paradise Cable Partners shall promptly report it to the Director in writing. Paradise Cable Partners, its employees, and agents, shall comply with all applicable federal, state, and local laws, rules and regulations issued pursuant thereto and shall indemnify the State against any loss, liability or damage occasioned by reason of a violation of this paragraph. Except as noted below, Paradise Cable Partners and the Director have carefully reviewed this

Order, and believe that all of its provisions are in full compliance with all federal and state statutory requirements in effect on the date of this Order, including the Cable Communications Policy Act of 1984. With respect to paragraph 5.1, Paradise Cable Partners reserves all of its rights and remedies under the Cable Communications Policy Act of 1984.

7.5 The failure of the State at any time to require performance by Paradise Cable Partners of any condition of this Order shall in no way affect the right of the State to enforce the same. The waiver by the State of any breach of any condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such condition or as a waiver of the condition itself.

7.6 Paradise Cable Partners shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the Franchise or exercising its rights or performing its duties under this Franchise.

7.7 Conditions 4 and 7(g) of Order No. 83 shall remain in full force and effect.

7.8 The Director reserves the right to waive any condition of this Order for good cause.

7.9 Time is of the essence with respect to this Order.

7.10 The State may, from time to time, adopt or issue such rules, orders, or other directives governing Paradise Cable Partners as it shall find necessary or appropriate in the exercise of its police power. The Director may, from time to time, issue such orders governing Paradise Cable Partners as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. Paradise Cable Partners agrees to comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

7.11 Within thirty (30) days of the effective date of the Order, Paradise Cable Partners shall submit to the Director executed copies of, including, without limitation, the Paradise Cable Partners Partnership Agreement, the Purchase Agreement relating to the purchase of the Kauai Cable TV system, the Management Agreement between

Paradise Cable Partners and InterMedia Partners, the Loan Agreement with Bank of Hawaii and its related instruments pertaining to this transaction.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 138 in Docket No. 83-90-01 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 16th day of July, 1990:

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Joyce E. Mikami

Joyce E. Mikami
Secretary