

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

In the Matter of the Application of)	
)	
GARDEN ISLE CABLEVISION, L.P.)	Docket No. 90-05
)	
For Approval of Cable Franchise)	
Renewal to Provide Cable)	
Communications Services)	
_____)	

DECISION AND ORDER NO. 143

I. Introduction.

On September 12, 1990, the Director of Commerce and Consumer Affairs ("Director") accepted an application for franchise renewal from Garden Isle Cablevision, L.P. ("Garden Isle Cablevision"). Garden Isle Cablevision provides cable communications services on the island of Kauai in Census Tract Areas 402, 403, 404, 405, 406, 407, 408, and 409.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held on October 16, 1990 at the Kauai County Council Chambers, 4396 Rice Street, Lihue, Kauai. Notice of the hearing was published in The Sunday Star-Bulletin and Advertiser and The Garden Island on September 23 and 30, 1990.

II. The Law.

A. State Law

The regulatory powers of the Director regarding the renewal of a cable communications franchise are set forth in Sections 440G-10, 440G-7, and 440G-8 of the Hawaii Cable Communications Systems Law ("Hawaii Cable Law"), Chapter 440G, Hawaii Revised Statutes.^{1/} These sections require the Director's approval before any renewal of a cable franchise occurs. The application for renewal 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 State views transfers and renewals of cable franchises as being fundamentally different. In the latter, the State's consideration of the applicant's proposals and qualifications is made in the context of the State's ability to set the length of the term as well as other requirements for the current cable operator. The franchise renewal process is therefore somewhat analogous to the negotiation of a new contract. This is not the case in a transfer, where the length of the applicant's term is fixed by the remaining years of the franchise. The consideration of an application for transfer is more analogous to the amendment of an existing contract, in which a new party steps into the shoes of the existing cable operator. Thus, in a transfer, the State's ability to change the terms and conditions of the franchise, for instance, by requiring a significantly higher level of access capital expenditures, is significantly limited.

An illustration of how the distinction between transfers and renewals affects the decisionmaking process is evident in the difference between the access capital requirements made of Paradise Cable Partners and Garden Isle Cablevision. For the Garden Isle Cablevision renewal proceedings, the State's access consultant ascertained the needs for public, educational, and governmental access facilities and equipment for the island of Kauai, then recommended an allocation of costs to Garden Isle Cablevision based on the entire community's needs and interests, giving due consideration to the communities Garden Isle Cablevision actually serves. In the case of Paradise Cable Partners, which was recently approved as the transferee of the cable franchise previously held by The Seven Twenty Limited Partnership, the State viewed the transfer to Paradise Cable Partners as an appropriate point to modify the franchise terms and conditions to better serve the needs and interests of the community it serves. However, because of the limitations of the transfer consideration, the State's access consultant was not asked to determine the access capital needs for Paradise Cable Partners. The State assumed that the access capital requirements responsive to the needs of the geographical area served by Paradise Cable Partners would be set in the next renewal proceeding of the franchise, ten years hence.

- "(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:

Consequently, reliance on the access capital requirements of Paradise Cable Partners to determine the level of PEG capital requirements for Garden Isle Cablevision would not be appropriate. The access capital requirements must arise from the assessments done in the community. As has been noted, this was not done for Paradise Cable Partners.

In addition, it should be noted that the franchise areas held by Garden Isle Cablevision and Paradise Cable Partners on the island of Kauai are unique in the State of Hawaii because they are largely overlapping. However, other than two small overbuild areas in which the companies compete directly with each other for subscribers, Garden Isle Cablevision and Paradise Cable Partners serve geographically distinct portions of the island. While the franchise agreement for each company allows it to overbuild in areas served by the other, Garden Isle Cablevision and Paradise Cable Partners have for the most part chosen not to do so. Consequently, although all of Garden Isle Cablevision's theoretical franchise area was surveyed to determine access needs and, therefore, these needs might be considered to be shared by Paradise Cable Partners' franchise area, the access capital contributions made by Paradise Cable Partners cannot be relied upon to determine the level of access capital requirements for Garden Isle Cablevision. The access requirements for Garden Isle Cablevision were set in the context of a renewal proceeding and are based on a different geographic service area. Capital requirements for Paradise Cable Partners reflect the Director's acceptance of the company's access capital contribution proposal, made in the setting of a transfer proceeding.

"(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."

The regulatory powers enable the Director to determine the length of the franchise renewal term. Section 440G-10, Hawaii Revised Statutes, states that:

"Any cable franchise issued pursuant to this chapter may be renewed by the director upon approval of a cable operator's application or proposal therefor. The form of the application or proposal shall be prescribed by the director. The periods of renewal shall not be less than five nor more than twenty years each. The director shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational, or governmental access facilities."

Finally, Section 440G-8(d), Hawaii Revised Statutes, delineates the Director's authority in making a determination of the terms and conditions of the franchise:

"(d) In issuing a cable franchise under this chapter, the director is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the by the cable franchise terms, limitations, and conditions which the director deems the public interest may require . . . "

B. The Privilege of a Franchise

The grant of a cable franchise, whether at initial issuance or by a renewal 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, and 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 it has offered for the past two and one-half years. The Garden Isle Cablevision cable system now provides cable communications service to approximately 7,000 subscribers on the island of Kauai, most of whom would be without cable service if Garden Isle Cablevision ceased to provide that service. This clearly indicates that there is a need for continued cable communications services as proposed and provided by the applicant.

B. Suitability of the Applicant

In reviewing the suitability of the applicant, the State looked at the interrelationship between three entities, Garden Isle Cablevision, Garden Isle Management, L.P., and Garden Isle Management Corp. of Colorado. These three entities are inextricably tied in operating the cable system.

Garden Isle Cablevision is a limited partnership. Its general partner is Garden Isle Management, L.P., and its sole limited partner is Monroe M. Rifkin. The general partner, Garden Isle Management, L.P. ("GIM") is also a limited partnership. GIM's

general partner is Garden Isle Management Corp. of Colorado ("GIM Corp.") and its limited partners are individuals affiliated with Rifkin & Associates, Inc. GIM Corp. has three shareholders, Monroe M. Rifkin the majority shareholder, an officer and director of GIM, Corp., Narragansett Capital Partners - A, L.P. and Narragansett/Garden Isle Investments, Inc. Mr. Rifkin is associated with both Narragansett Capital Partners - A, L.P. and Narragansett/Garden Isle Investments, Inc. Further, Garden Isle Cablevision has a management contract with Rifkin & Associates, Inc. of which Mr. Rifkin is the chairman of the Board.

It appears that the applicant is suitable based on the past ownership and operation of the system by Garden Isle Cablevision, Garden Isle Management, L.P., and Garden Isle Management of Colorado.

C. Operational Ability of the Applicant

The local management staff of Garden Isle Cablevision has not changed significantly since the transfer in 1987. The general manager has managed the day-to-day operations of Garden Isle Cablevision under the direction of Rifkin & Associates, Inc. Rifkin & Associates, Inc. currently manages forty-two (42) cable systems in thirteen (13) states, all of which are owned by affiliates of Monroe M. Rifkin.

It appears that the applicant has the operational ability to provide cable communications service: (1) the existing staff of Garden Isle Cablevision which has demonstrated its capacity to operate the cable system reasonably and (2) the expertise of Rifkin & Associates, Inc. is also available to support the managerial and administrative capabilities of the existing staff.

D. Technical Ability of the Applicant

Since the transfer in 1987, Garden Isle Cablevision's technical staff has completed several technical and operational improvements. These improvements increased the number of channels of programming as well as decreased the number of outages experienced by its subscribers. Therefore, based on its past performance, the applicant has demonstrated its technical ability to operate the cable system.

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

Garden Isle Cablevision has been operating the cable system since 1987. The financial plan presented by Garden Isle Cablevision is based on several favorable factors: (1) increased revenues through increased subscriber growth and penetration on Kauai, (2) rate increases, and (3) increased revenues from premium services and ancillary services. Based on the financial plan, it appears Garden Isle Cablevision has the ability to provide service at a reasonable cost.

Garden Isle Cablevision used its loan, from First Interstate Bank of Denver, N.A., to purchase its system from Derby Cablevision, Inc. and to make capital improvements to its system.

The Narragansett Capital Partners - A, L.P., Narragansett Capital Partners - B, L.P., Narragansett/Garden Isle Investments, Inc., Garden Isle Management, L.P., and Garden Isle Management Corp. of Colorado have provided substantial subordinated debt financing for the system. The financing provided by these entities is necessary to the operation of the system.

Based on Garden Isle Cablevision's past operation of the system, its growing revenue stream and the information provided in the application, it appears that the applicant is able to offer the proposed service at a reasonable cost and that it meets the minimum requirement for financial capacity.

F. Public Hearing

Testimony was received from individual subscribers and organizations regarding access programming, cable rates and the service provided by Garden Isle Cablevision. Concerns were raised about the lack of public, educational and governmental ("PEG") access programming available to the island of Kauai. A lack of facilities and equipment to produce PEG access programming was noted. Testimony was also received indicating that Garden Isle Cablevision has increased public awareness of various community groups and programs through PEG programming.

Concerns were raised about the high cost of cable television and the increases in cable rates charged by Garden Isle Cablevision. Further, concerns were raised about interruptions in cable service. Several organizations expressed satisfaction with the level of service provided by Garden Isle Cablevision.

G. Other Matters

1) Control

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 Garden Isle Cablevision is the applicant for the franchise, it is Rifkin & Associates, Inc. with whom the State has been negotiating with during the renewal process. The franchise will be issued to Garden Isle Cablevision alone. However, through this issuance, Garden Isle Management, L.P., Garden Isle Management Corp. of Colorado, and Rifkin & Associates, Inc., all assume the obligations for operating the system.

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, Garden Isle Cablevision and its general partner are both limited partnerships. The general partner of Garden Isle Cablevision is Garden Isle Management Corp. of Colorado which consists of three shareholders, Monroe M. Rifkin, who is the majority shareholder and an officer and director, Narragansett Capital Partners-A, L.P., and Narragansett/Garden Isle Investments, Inc.

Organizational structure is also inextricably tied to the issue of ownership. Thus, the State is also concerned about the entity who will own the system. One of the terms of Garden Isle Cablevision's partnership agreement was a termination of the partnership

by December 31, 1999. The State has required Garden Isle Cablevision to extend its partnership life if Garden Isle Cablevision completes the emergency override system, the forty-channel upgrade, and the sixty-channel feasibility study. If Garden Isle Cablevision completes these items by December 31, 1995, then it will be awarded an additional five (5) years of franchise term. The State has received assurances from Garden Isle Cablevision that it will extend its partnership life to approximate the franchise renewal term.

2) Channel Capacity

Garden Isle Cablevision proposes to upgrade its cable system to carry forty (40) channels by December 31, 1995. The Director is not requiring an upgrade of the system to carry sixty (60) channels at this time. However, the factors of (1) economics and population growth, (2) the desire by the community for public, educational, and governmental access programming, and (3) competition in the overbuild area serving approximately 1,200 subscribers in Census Tract 402, may necessitate further channel upgrades in the future to meet the needs and desires of the community Garden Isle Cablevision serves. A study of the feasibility of a sixty-channel upgrade is therefore being required to be submitted by December 31, 1995.

3) Public, Educational, and Governmental Access

As previously discussed, the State recognizes that there is a demand for public, educational, and governmental access by the residents of Kauai. For purposes of efficiency and because this demand exceeds the resources available for access purposes on the island of Kauai, 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.

4) Extension of Franchise Term

The Director notes that the franchise term for Garden Isle Cablevision's system was extended two times: (1) for no more than one month, from October 21, 1990 to the earlier of November 21, 1990 or the date of the issuance of a final order, and (2) from

November 21, 1990 to November 26, 1990. These extensions were made under the authority of Section 440G-12, Hawaii Revised Statutes.

IV. 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 renewal of the franchise.

Pursuant to Section 440G-10, Hawaii Revised Statutes, the cable franchise term shall be for approximately five years, expiring on December 31, 1995. The permit areas served by Garden Isle Cablevision are Census Tract Areas 402, 403, 404, 405, 406, 407, 408, and 409. In the event Garden Isle Cablevision completes Condition 2.1(b) set forth in the Terms and Conditions which are incorporated by reference herein, Garden Isle Cablevision shall receive an additional term of five (5) years on its franchise, expiring on December 31, 2000.

V. Order.

NOW, THEREFORE, the application for renewal of Garden Isle Cablevision, L.P. to continue to provide cable television service on the island of Kauai is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, November 26, 1990.



ROBERT A. ALM
Director of Commerce and
Consumer Affairs

GARDEN ISLE CABLEVISION, L.P.

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TERMS AND CONDITIONS OF ORDER NO. 143

Section One

Definitions

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

"Access fee" means the annual fee to be paid by Garden Isle Cablevision to the Director or his designee for public, educational or governmental uses pursuant to paragraph 7.2.

"Basic service" means the lowest cost tier of cable service offered by Garden Isle Cablevision 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" and "system" mean the cable system on the island of Kauai doing business as Garden Isle 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 Garden Isle Cablevision 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 Garden Isle Cablevision for use by educational authorities such as the Hawaii State Department of Education, and other accredited educational institutions for non-commercial educational purposes.

"Garden Isle Cablevision" means Garden Isle Cablevision, L.P., a limited partnership formed under the Colorado Uniform Limited Partnership Act of 1981.

"Garden Isle Management, L.P." means Garden Isle Management, L.P., a limited partnership formed under the Colorado Uniform Limited Partnership Act of 1981.

"Garden Isle Management Corp." means Garden Isle Management Corp., a Colorado corporation.

"Government access channel" means a 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 Garden Isle Cablevision, its affiliates, subsidiaries, and any other person or entity in which Garden Isle Cablevision has a financial interest or which has a financial interest in Garden Isle Cablevision 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 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 the Garden Isle Cablevision or others described above in consideration of performance by

Garden Isle Cablevision 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 Garden Isle Cablevision as management fees and fees in the nature of general and administrative allocations.

"Leased access channel" means any 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.

"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 the State of Hawaii.

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

Section Two
Franchise Term

2.1 Franchise Term

(a) Initial franchise term

November 26, 1990 - December 31, 1995

(b) If all of the following items are accomplished by December 31, 1995, then Garden Isle Cablevision shall receive an additional franchise term of five (5) years with the franchise to expire on December 31, 2000.

-- December 31, 1991

- Emergency override system

-- December 31, 1995

- Forty channel upgrade
- Study re: sixty channel upgrade

(c) Notwithstanding 2.1(a) and 2.1(b), taken as a whole, the provisions of this Order represent the optimum balance of interests in this case. Each provision has been weighed and balanced to form an integrated document. The elimination of any portion of this Order would consequently undermine the entire document. Therefore, if any section, subsection, sentence, clause, phrase or other portion of this Order is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, and the State determines that the unenforceable or unlawful provision(s) represent a substantial breach to the integral nature of this Order, then the franchise term for Garden Isle Cablevision will revert to:

- A five (5) year franchise (measured from the date the franchise was originally awarded if the invalidation occurs within the first two (2) years of operations); or
- A three (3) year franchise (measured from the date of the invalidation if such action occurs after the first two (2) years of operations, but in no event will the amended franchise term exceed the original franchise term).

Section Three

Management

3.1 Citizens Advisory Committee

Within sixty (60) days of the effective date of this Order, Garden Isle Cablevision 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 Garden Isle Cablevision on community needs, concerns, and interests, including local origination and PEG access programming.

3.2 Limited and General Partners

(a) Any change of ownership one percent or greater of the general partner(s) and limited partner(s) of Garden Isle Cablevision shall be filed with the Director within ten (10) working days from such change.

(b) If Garden Isle Cablevision completes the items set forth in paragraph 2.1(b), Garden Isle Cablevision and Garden Isle Management, L.P. shall extend their respective partnership terms to at least December 31, 2001. By December 31, 1998, Garden Isle Cablevision and Garden Isle Management, L.P. shall submit to the Director written documentation of this extension.

3.3 Books and Records

Except as hereinafter provided in this paragraph, Garden Isle Cablevision 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 these records are not available locally within five (5) working days of the request:

- (1) Garden Isle Cablevision, agrees to pay an administrative fine of \$1,000 per day for each day that these records have not been produced; or
- (2) Garden Isle Cablevision shall make appropriate office space available and pay for air fare, hotel, other related travel expenses, and the salary and fringe benefits necessary to allow the Director's representative(s) to review the requested records wherever they are located.

3.4 Other Business Activity

Garden Isle Cablevision 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.

3.5 Tariff

Garden Isle Cablevision, shall amend its schedule of its rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, at least fourteen (14) days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

3.6 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, Garden Isle Cablevision 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 Garden Isle Cablevision proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, Garden Isle Cablevision 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 Garden Isle Cablevision proposes to take with respect to the violation.

(c) By April 30 of each year, Garden Isle Cablevision 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 Garden Isle Cablevision has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if Garden Isle Cablevision has not observed or performed all of the conditions contained in this Order, it shall specify the nature and period of the violation and what action Garden Isle Cablevision has taken or proposes to take with respect to the violation.

Section Four

Financial

4.1 Changes in Loan Agreement

Any material change in the terms and conditions of the Revolving Credit and Term Loan Agreement dated April 1, 1987 by and between First Interstate Bank of Denver, N.A. and Garden Isle Cablevision, L.P. ("First Interstate Bank of Denver, N.A. loan") as approved by Decision and Order No. 122 subsequent to the date of this Order for the

financing of the expansion or operation of the Kauai cable system shall require the prior approval of the Director.

4.2 Changes in Subordinated Debt

Any material change in the terms and conditions of the Stock, Note and Limited Partnership Interest Purchase Agreement by and among Narragansett Capital Partners-A, L.P., Narragansett Capital Partners-B, L.P., Narragansett/Garden Isle Investments, Inc., Garden Isle Cablevision, L.P., Garden Isle Management, L.P., and Garden Isle Management Corp. of Colorado, dated April 1, 1987, as approved by Decision and Order No. 122 subsequent to the date of this Order for the financing of the expansion or operation of the Kauai cable system shall require prior approval of the Director.

4.3 Covenant Violations

Any violation of a covenant of any agreement involving financing for Garden Isle Cablevision shall be reported promptly in writing to the Director.

4.4 Collateralization of System Assets

The assets of Garden Isle Cablevision 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.

4.5 Additional Borrowing

Excluding trade accounts, secured financings of vehicle 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 Garden Isle Cablevision from whatever source and under whatever condition, shall require prior approval of the Director, except the foregoing shall not prohibit Garden Isle Cablevision 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 therefor.

4.6 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 First Interstate Bank of Denver, N.A. under the Revolving Credit and Term Loan Agreement dated April 1, 1987; and

(b) Payments to the partners or shareholders in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 4.5 above, provided that the First Interstate Bank of Denver, N.A. loan has been fully satisfied.

4.7 Annual Financial Statements

(a) By April 30 of each year, Garden Isle Cablevision 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, a statement of cash flows, and notes to the financial statements. 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 4.7(a) shall be accompanied by a statement showing the basis for computing and the amounts paid by Garden Isle Cablevision 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.

4.8 Loan Agreement Compliance

Garden Isle Cablevision shall furnish to the Director, promptly upon their mailing or transmittal, all documents which show Garden Isle Cablevision's compliance with the provisions of the First Interstate Bank of Denver, N.A. loan including, but not limited to, Sections 5.09 Quarterly Net Operating Cash Flow to Total Scheduled Debt Service, 5.10 Quarterly Net Operating Cash Flow to Scheduled Senior Debt Service, and 6.09 Capital Expenditures.

Section Five Construction

5.1 Forty Channel Upgrade

(a) Garden Isle Cablevision shall upgrade its system to a minimum bandwidth of 330 MHz or forty (40) channels capable by December 31, 1995.

(b) Six (6) months prior to commencing construction, Garden Isle Cablevision 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 or forty (40) channel capable 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.

(c) If by January 1, 1996 the rebuild or upgrade is not completed, Garden Isle Cablevision shall set aside an amount equal to \$539,000 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, shall determine the reasonableness of the amount necessary to complete the upgrade.

5.2 Additional Funding

Where additional funds are required to cover capital expenditures in excess of those originally proposed in paragraphs 5.1 and 5.3, Garden Isle Cablevision 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 4.5 above.

5.3 Emergency Override System

(a) On or before December 31, 1991, Garden Isle Cablevision 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 Administrator 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 5.3(a), Garden Isle Cablevision 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 \$10,000, then the difference shall be paid to an account designated by the Director to be used for public, educational, and governmental access. Garden Isle Cablevision acknowledges that this amount, if any, will have no effect on the public, educational, and governmental access payments required elsewhere under this Order.

5.4 Construction Reports

Upon commencement of construction and continuing until all scheduled system improvements have been completed pursuant to paragraphs 5.1 and 5.3, Garden Isle Cablevision shall file monthly written construction status reports with the Director.

5.5 Sixty-Channel Upgrade

On or before December 31, 1995, Garden Isle Cablevision shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 450 MHz or sixty (60) channels capacity.

5.6 Institutional Network

(a) At no charge or cost to the State except for Garden Isle Cablevision's cost for labor and materials, Garden Isle Cablevision shall within six (6) months of a request by the Director provide and maintain two-way fiber optics interconnections between sites to be determined by the Director.

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

(c) Garden Isle Cablevision will cooperate with Kauai Cablevision to complete connectivity between the institutional network and sites within Garden Isle Cablevision's service area to be determined by the Director.

(d) Garden Isle Cablevision shall work with the Director's staff, consultants, and others designated by the Director to design the institutional network.

5.7 Interconnection for Access Purposes

On a schedule and in a manner to be determined in the plan described in paragraph 7.1 below, Garden Isle Cablevision shall effect an interconnection with other cable systems on Kauai for the purpose of carrying access programming.

5.8 Kauai Community College Interconnection

(a) On or before December 31, 1991, Garden Isle Cablevision 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.

5.9 Interconnection with HITS

Garden Isle Cablevision shall continue to support and provide carriage of HITS (Hawaii Interactive Television System) programming on its cable systems in accordance with the Access Plan set forth in paragraph 7.1.

5.10 Completion of Franchise Requirements

Any proposed transfer of the franchise shall require completion of paragraphs 5.1, 5.3, and 5.5 above before such transfer application will be considered for approval by the Director.

Section Six Programming Services

6.1 Mix, Quality, and Level of Service

Garden Isle Cablevision shall not alter its current mix, quality and level of programming services for its basic service tier without the prior approval of the Director.

6.2 Basic Service Tier Broad Categories of Programming

(a) Subject to availability, Garden Isle Cablevision 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; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) Except as provided below, no broad category of video programming may be deleted without the prior approval of the Director. Prior approval shall not be required for the following:

- (1) Programming is discontinued without notice to Garden Isle Cablevision; and
- (2) Programming changes beyond the control of Garden Isle Cablevision.

(c) Garden Isle Cablevision shall provide notice to the Director at least fourteen (14) days in advance of any changes in its channel lineup.

Section Seven

Public, Educational, and Governmental Access

7.1 Access Plan and Implementation

Garden Isle Cablevision 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 including local origination programming;
- (e) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (HAWAII Wide Area Integrated Information Access Network) or any other interconnects; and
- (f) Coordination of access with the Institutional Network as set forth in paragraph 5.6 above.

7.2 Access Fee

(a) Except as hereinafter provided in paragraph 7.2(b), during each and every year for the remaining term of the franchise, Garden Isle Cablevision 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, Garden Isle Cablevision 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:

<u>Due Date</u>	<u>PEG Access Fee</u>
December 31, 1990	\$ 6,000.00
December 31, 1991	\$44,000.00
December 31, 1992	\$47,000.00
December 31, 1993	\$50,000.00
December 31, 1994	\$54,000.00
December 31, 1995	\$58,000.00

(c) 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 Garden Isle Cablevision's annual financial statements to the Director. For the year ending December 31, 1990, the Access Fee shall be calculated from the Gross Revenues for the period from the effective date of this Decision and Order to December 31, 1990. If Garden Isle Cablevision is entitled to a refund, the Director or his designee shall grant a credit toward the next payment of the Access Fee, or make a refund if the last payment of the Access Fee has been paid. The Director may require Garden Isle Cablevision to submit to an audit by the Director's accountant.

(d) The amount of the Access Fee required pursuant to paragraphs 7.2(a) and 7.2(b) may be reconsidered by the Director at the following times:

- (1) By December 31, 1995, if Garden Isle Cablevision completes the items set forth in paragraph 2.1(b) to determine the Access Fee for the years ending December 31, 1996 through December 31, 2000.
- (2) Upon the transfer of the franchise.

7.3 Facilities and Equipment

(a) For the years ending December 31, 1990 through December 31, 1995, Garden Isle Cablevision shall, on the due dates shown, provide to the Director or his designee

PEG capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1990	\$10,000.00
December 31, 1991	\$74,400.00
December 31, 1992	\$69,850.00
December 31, 1993	\$ -0-
December 31, 1994	\$ -0-
December 31, 1995	\$ -0-

(b) Any funds provided in accordance with paragraphs 7.3(a) and 7.3(c) above shall be used for public, educational, and governmental access equipment and facilities.

(c) If Garden Isle Cablevision completes the items set forth in paragraph 2.1(b), Garden Isle Cablevision shall on the due dates shown, provide to the Director or his designee PEG capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1996	\$21,700.00
December 31, 1997	\$26,949.00
December 31, 1998	\$39,478.00
December 31, 1999	\$33,096.00
December 31, 2000	\$ -0-

(d) The PEG capital funds required to be paid by Garden Isle Cablevision may be reconsidered by the Director by December 31, 1995, to determine the PEG capital funds for the years ending December 31, 1996 through December 31, 2000, in accordance with paragraph 7.1 and based on community needs and interests.

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

(f) Any transfer of the cable system shall require the payment to the Director or his designee of the outstanding capital funds for public, educational, and governmental access pursuant to paragraph 7.3 before the effective date of the transfer. The Director reserves the right to waive or to reduce the amount due under this paragraph for good cause.

(g) For purposes of paragraph 7.3, "PEG capital funds" means the sum of money set apart specifically for public, educational, and governmental access facilities and equipment.

7.4 Access Channels

(a) By December 31, 1990, Garden Isle Cablevision shall designate to the Director one full-time activated channel for public, educational, and governmental access. Two (2) additional channels shall be designated by February 28, 1991; however, Garden Isle Cablevision 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 7.1 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 Garden Isle Cablevision's basic service tier.

(d) Garden Isle Cablevision 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 Garden Isle Cablevision 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 7.1.

(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.

7.5 Access Organization

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

7.6 Access Transition

(a) Garden Isle Cablevision 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 7.1 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 7.5 above.

(c) All expenses relating to access operations paid within a given calendar year by Garden Isle Cablevision 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 7.5 and 7.6(b) above shall not be credited toward the payment of any access fee.

7.7 Reporting Requirements

(a) By April 30 of each year, Garden Isle Cablevision shall submit to the Director a report of local origination expenses and a report for access programming expenses for the preceding calendar year.

(b) For the purposes of accounting for amounts expended for local origination and access programming, Garden Isle Cablevision shall only include an appropriate portion of Garden Isle Cablevision's 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 an 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 Garden Isle Cablevision's annual financial report. Garden Isle Cablevision 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, Garden Isle Cablevision may continue to account for local origination and access programming expenses in the same manner as it has in the past. If the State has not required changes within six months of the State's actual receipt of Garden Isle Cablevision's local origination and access programming expenditure reports, then Garden Isle Cablevision's accounting for local origination and access programming shall be deemed accepted by the State.

Section Eight

Miscellaneous

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

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

8.3 (a) This Order shall not be construed as exempting Garden Isle Cablevision 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.

8.4 Garden Isle Cablevision, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the Garden Isle Cablevision cable system. If Garden Isle Cablevision discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, Garden Isle Cablevision shall promptly report it to the Director in writing. Garden Isle Cablevision, 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. Garden Isle Cablevision 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.

8.5 The failure of the State at any time to require performance by Garden Isle Cablevision 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.

8.6 Garden Isle Cablevision 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.

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

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

8.9 The State may, from time to time, adopt or issue such rules, orders, or other directives governing Garden Isle Cablevision 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 Garden Isle Cablevision as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. Garden Isle Cablevision agrees to comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

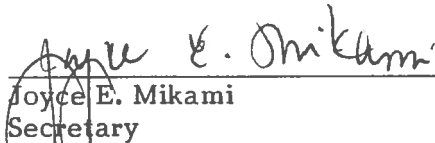
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 143 in Docket No. 90-05 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 26th day of November 1990:

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Joyce E. Mikami
Secretary