

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

In the Matter of the Application of)	
)	
JONES SPACELINK OF HAWAII, INC.)	Docket No. 90-09
)	
For Approval of Cable Franchise Renewal)	
to Provide Cable Communications Service)	
_____)	

DECISION AND ORDER NO. 149

I. Introduction.

On September 28, 1990, the Director of Commerce and Consumer Affairs ("Director") accepted an application for franchise renewal from Jones Spacelink of Hawaii, Inc. ("Jones Spacelink of Hawaii"). Jones Spacelink of Hawaii provides cable communications service for the island of Hawaii in Census Tract Areas 211 through 219, inclusive.

Jones Spacelink of Hawaii's application requests the consolidation of the franchise granted by the Director to provide cable communications services to the South Hilo District and portions of the Puna and Ka'u Districts with the separate franchise granted to provide cable communications services to the Honokaa, Haina, and Paahau communities of the Hamakua District. The application would also establish a common franchise expiration date for all Jones Spacelink of Hawaii cable systems and facilities on the island of Hawaii.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held on November 8, 1990 at the State Office Building in Hilo on the island of Hawaii. Notice of the hearing was published in the Sunday Star-Bulletin and Advertiser and The Hawaii Tribune-Herald on October 14 and 21, 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. 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 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."

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 the 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 communications services it now offers. The Jones Spacelink of Hawaii system now provides cable communications service to approximately 14,600 subscribers, or eighty-one percent (81%) of the homes passed by cable in its service areas. These subscribers would be without cable service if it were not provided by Jones. Jones Spacelink of Hawaii's service area includes the Volcano area, where television reception is almost non-existent. Subscribers in this area rely on the cable system for video communications.

B. Suitability of the Applicant

Jones Spacelink of Hawaii is a wholly owned subsidiary of Jones Spacelink, Ltd. ("Spacelink, Ltd.") and acquired the cable system from Comtec, Inc. in 1988. Before acquisition of the cable system, Jones Spacelink of Hawaii noted that the system had problems. Since acquisition of the cable system, Jones Spacelink of Hawaii has improved the reliability and signal quality of the cable system for its subscribers.

Since its inception, Jones International, Ltd. has owned the majority of shares of Spacelink, Ltd. Jones Spacelink of Hawaii is wholly-owned by Spacelink, Ltd. Jones International, Ltd. is wholly owned by Glenn R. Jones, who is also the Chairman of the Board, Chief Executive Officer, and President of Spacelink, Ltd. Spacelink, Ltd. owns and operates cable communications systems throughout the United States and also serves as manager of cable communications systems owned by affiliated limited partnerships.

It appears the applicant is suitable based on: (1) the ownership and management of the Hawaii systems by Jones Spacelink of Hawaii and Spacelink, Ltd., (2) Spacelink's status as the ninth (9th) largest multiple systems operator in the United States, and (3) Jones Spacelink of Hawaii's general improvement of the Hawaii systems and their responsiveness to community needs since it assumed ownership in 1988.

C. Operational Ability of the Applicant

Jones Spacelink of Hawaii has operated the system since the transfer of ownership in August 1988. Jones Spacelink of Hawaii has demonstrated a capacity to operate its cable systems in a manner generally attuned to the needs and requirements of its subscribers.

D. Technical Ability of the Applicant

Since the acquisition in 1988, the applicant has continued to improve the picture quality and reduce the number of outages experienced by its subscribers by improving maintenance of the plant. It has also achieved compliance with the Federal Communications Commission's Cumulative Leak Index test criteria.

The technical staff are competent, well-trained, and capable of meeting the daily technical requirements of the cable communications facilities. The staff has demonstrated its competence in routinely maintaining the cable facilities. Jones Spacelink of Hawaii has also augmented staffing as needed to meet technical and engineering needs. The applicant has demonstrated its technical ability to operate the cable systems in Hawaii.

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

The financial plan presented by Jones Spacelink of Hawaii is based on several favorable factors: (1) increased revenues through increased subscriber growth and penetration, (2) rate increases, and (3) increased revenues from premium services and ancillary services. In addition, the State has recently approved the refinancing of Spacelink, Ltd. The refinancing was structured using three credit facilities termed Facility A, Facility B and Facility C. The financing provided by these credit facilities is necessary to the operation of the system and appropriate terms and conditions relating to these facilities are included as part of this Decision and Order.

Based on Jones Spacelink of Hawaii'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 capability.

F. Public Hearing

Testimony was received from individual subscribers and organizations regarding public, educational, and governmental ("PEG") access programming, cable rates, and the service provided by Jones Spacelink of Hawaii. The testimony related to PEG access programming centered around (1) the benefits this type of programming would bring to the community Jones Spacelink of Hawaii serves and (2) the current lack of facilities and equipment to produce PEG access programming.

Testimony was received in support of the renewal of Jones Spacelink of Hawaii's franchise and indicated general satisfaction with the service provided by the company. However, concern was expressed regarding increased subscriber rates under Jones Spacelink of Hawaii's ownership and poor signal reception on some of its channels.

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.

2. Channel Capacity. A key consideration in the State's review of cable system franchises in Hawaii is to assure that they are technically capable of meeting the future needs and desires of the communities they serve. The Director has generally accepted the operator's proposals for increasing channel capacity. The Hilo system will be upgraded to increase its channel capacity from thirty-five (35) to forty (40) channels by the end of 1995.

3. Public, Educational, and Governmental Access. The issue of PEG access was the focus of most of the public testimony in this proceeding. The Director has, through the requirements of this Order, sought to meet the needs for access resources expressed by the communities served by Jones Spacelink of Hawaii.

The Director intends to establish a planning process on the island of Hawaii which brings together all cable systems and interested parties to create and implement coordinated plans for access activities which make the most effective use of the resources available. Specific concerns with respect to lack of equipment and facilities, channel time, and other matters will be addressed in the development of these plans.

The needs for Jones Spacelink of Hawaii's service areas were considered by the State's PEG access consultant. The operator's plans for continuing its local origination and public access efforts were included in this consideration. The PEG access capital requirements were based on the consultant's recommendations.

4. Franchise Renewal Term. The Director notes that Jones Spacelink of Hawaii submitted one renewal application for all of its permits, although its Honokaa permit expires in 2006. For purposes of economy and efficiency, the Director has accepted Jones Spacelink of Hawaii's proposal to consolidate its Hawaii systems, in order to

review one application for renewal rather than two separate and individual applications for renewal for the franchise areas.

The discussions between the State and Jones Spacelink of Hawaii have been based on the Directors' acceptance of the view that the applicant's Hawaii systems should be consolidated in a single franchise. Consequently, the Director has considered the following factors as a whole in his consolidated review of the application: (1) public need for the proposed service, (2) suitability of the applicant, (3) the operational ability of the applicant, (4) the technical ability of the applicant, and (5) the ability of the applicant to offer service at a reasonable cost and the financial capability of the applicant. The Director did not have the opportunity to consider what separate terms and conditions would be appropriate for the Honokaa permit area and for Jones Spacelink of Hawaii's other permit areas in the same manner as he would have if the applications were individually and separately submitted.

V. Conclusion.

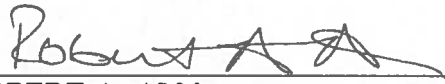
Based on the information presented in the application and the evaluation of this information, the Director believes that it is in the public interest to approve the renewal and consolidation of Jones Spacelink of Hawaii's franchises in the State of Hawaii. The applicant appears to possess the requisite capabilities for the renewal of its franchises.

Pursuant to Section 440G-10, Hawaii Revised Statutes, the initial cable franchise term shall be for approximately five (5) years. An extension of the term for an additional five (5) years will be granted upon satisfaction of certain terms and conditions. The area served by Jones Spacelink of Hawaii shall be Census Tract Areas 211 through 219, inclusive, in the County of Hawaii.

VI. Order.

NOW, THEREFORE, the application of Jones Spacelink of Hawaii to renew its cable franchise permits is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, March 15, 1991.



ROBERT A. ALM
Director of Commerce and Consumer
Affairs

Hillside Pond
25% COTTON, CONVENT

JONES SPACELINK OF HAWAII

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TERMS AND CONDITIONS OF ORDER NO. 149

Section One

Definitions

"Access channel" means any channel on the system made available for public, educational or governmental use.

"Access fee" means the annual fee to be paid by Jones Spacelink of Hawaii to the Director or the Director's designee for public, educational or governmental uses pursuant to paragraph 7.2.

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

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

"Channel" means a minimum of six megahertz (6 MHz) bandwidth in the electromagnetic spectrum which is capable of carrying any type of transmission which Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii for use by educational authorities such as the Hawaii State

Department of Education, 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 Jones Spacelink of Hawaii, its affiliates, subsidiaries, parents, and any other person or entity in which Jones Spacelink of Hawaii has a financial interest or which has a financial interest in Jones Spacelink of Hawaii, 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 studios or channels;
- (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) 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 Jones Spacelink of Hawaii or others described above in consideration of performance by Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii as management fees and fees in the nature of general and administrative allocations.

"Jones Spacelink, Ltd." means Jones Spacelink, Ltd., a Colorado corporation.

"Jones Spacelink of Hawaii" mean Jones Spacelink of Hawaii, Inc., a wholly-owned subsidiary of Jones Spacelink, Ltd.

"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.

"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

Franchise Term

2.1. Franchise Term

(a) Initial franchise term:

March 15, 1991 to December 31, 1996.

(b) If the following items are accomplished by December 31, 1996, then Jones Spacelink of Hawaii shall receive an additional franchise term of five (5) years with the franchise to expire on December 31, 2001.

- ° December 31, 1992: Emergency override system (paragraph 5.3)

- ° December 31, 1995: Forty-channel upgrade (paragraph 5.2)
Study re: sixty-channel upgrade (paragraph 5.11)

(c) Notwithstanding paragraphs 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 in the event that Jones Spacelink of Hawaii fails to continue its performance of the obligations imposed by such invalid provisions, 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 Jones Spacelink of Hawaii 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).

2.2. Consideration

(a) In consideration of the award of the franchise granted herein which permits Jones Spacelink of Hawaii to use and occupy Public Places and Public Highways to operate its cable systems, Jones Spacelink of Hawaii shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as it may be amended from time to time, pay all monies specified herein, and provide all channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other paragraph herein, the total amount of the Annual Fee as specified in Chapter 440G, Hawaii Revised Statutes, including the annual Access Fee, shall not exceed the greater of five percent (5%) of Jones Spacelink of Hawaii's annual Gross Revenues or the maximum amount permitted by the applicable provisions of federal or State law, as said law may be amended or modified throughout the term of this Order.

Section Three Management

3.1. Books and Records

(a) Except as hereinafter provided in this paragraph, Jones Spacelink of Hawaii shall maintain at its principal place of business in the State 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 transaction of its business in the State. All books and records not maintained and available for review at the local office shall, upon request, be made available locally within five (5) working days.

(b) If these books and records are not available locally within five (5) working days of the request:

- (1) Jones Spacelink of Hawaii agrees to pay an administrative fine of \$1,000 per day for each day that these books and records have not been produced;
- (2) Jones Spacelink of Hawaii 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; or
- (3) Jones Spacelink of Hawaii may petition the Director for an extension of time in which to produce the requested books and records and a waiver of the fine of \$1,000 per day.

3.2. Other Business Activity

Jones Spacelink of Hawaii shall not cause or permit its Hawaii cable television operations (the "Hawaii System") to engage in any type of business activity involving cable communications in Hawaii or elsewhere which is not related to the operation of its Hawaii System without the prior written approval of the Director.

3.3. Tariff

Jones Spacelink of Hawaii 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.

3.4. 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, Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii proposes to take with respect to the violation.

(c) By April 30 of each year, Jones Spacelink of Hawaii shall submit to the Director a statement to the effect that no violation of this Order has occurred and is continuing and that Jones Spacelink of Hawaii has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii has taken or proposes to take with respect to the violation.

Section Four

Financial

4.1 Changes in Credit Facility

Any material change in the terms and conditions of the credit facilities termed Facility A, the Credit Agreement between Jones Spacelink, Ltd. and CIBC, Inc., as Agent, and Mellon Bank, N.A., as Administrative Agent ("Facility A"), Facility B, the Credit Agreement among Jones Spacelink, Ltd., the Banks named therein, and Mellon Bank, N.A., as Agent ("Facility B"), and Facility C, the uncommitted Line of Credit Agreement between a newly formed subsidiary of Jones Spacelink, Ltd. and Mellon Bank, N.A. ("Facility C"), for the financing of the expansion or operation of the Hawaii System as reviewed and approved in this Docket shall require the prior approval of the Director.

4.2 Covenant Violations

Any violation of a covenant of any agreement involving financing for Jones Spacelink of Hawaii shall be reported promptly in writing to the Director.

4.3 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 Jones Spacelink, Ltd. and its related entities, any borrowing or financing exceeding \$5,000 by Jones Spacelink of Hawaii from whatever source and under whatever condition, shall require prior approval of the Director, except the foregoing shall not prohibit Jones Spacelink of Hawaii from guaranteeing the debt of Jones Spacelink, Ltd. and its related entities in connection with any advances, equity contributions, and subordinated borrowings from Jones Spacelink, Ltd. and its related entities, and the prior approval of the Director shall not be required therefor.

4.4 Transfers or Payments

Any transfer or payment of a sum in excess of \$50,000 and not related to the cost of operating the Jones Spacelink of Hawaii cable systems (including debt service) shall require the prior approval of the Director. Prior approval shall not be required for payments to Jones Spacelink, Ltd. and its related entities in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 4.3 above, provided that the credit facilities in paragraph 4.1 have been fully satisfied.

4.5 Annual Financial Statements

(a) Within one hundred twenty (120) days of its fiscal year end, Jones Spacelink of Hawaii shall submit to the Director its annual financial statements for the preceding fiscal 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 Hawaii System on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 4.5(a) shall be accompanied by a statement showing the basis for computing any amount paid by Jones Spacelink of Hawaii or any subsidiary to its parent, affiliates, subsidiaries, or any person for management fees and fees in the nature of general and administrative allocations.

4.6. Credit Facility Compliance

(a) Any subsequent material amendment or modification to Facility A, Facility B or Facility C, pursuant to paragraph 4.1, shall require the written consent of the Director.

(b) Upon acquiring knowledge of the existence of a violation of any condition of Facility A, Facility B or Facility C, pursuant to paragraph 4.1, Jones Spacelink, Ltd. through Jones Spacelink of Hawaii shall promptly inform the Director in writing of the following:

- (1) The nature of the violation;
- (2) The period in which the violation has been in existence; and
- (3) The actions that Jones Spacelink, Ltd. proposes to take with respect to the violation.

(c) As soon as available, but in no event more than forty-five (45) days after the end of each of the first three fiscal quarters of Jones Spacelink, Ltd., Jones Spacelink, Ltd. through Jones Spacelink of Hawaii shall submit to the Director a statement from its Chief Financial Officer stating whether any event has occurred which constitutes a violation of any condition of Facility A, Facility B or Facility C for the fiscal quarter then ended and, if so, stating the facts with respect thereto.

(d) As soon as available, but in no event more than one hundred twenty (120) days after the end of Jones Spacelink, Ltd.'s fiscal year, Jones Spacelink, Ltd. through Jones Spacelink of Hawaii shall submit to the Director a statement from its Chief Financial

Officer stating whether any event has occurred which constitutes a violation of any condition of Facility A, Facility B or Facility C, for the fiscal year then ended and, if so, stating the facts with respect thereto.

(e) As soon as available, but in no event more than one hundred twenty (120) days after the end of Jones Spacelink, Ltd.'s fiscal year, Jones Spacelink, Ltd. through Jones Spacelink of Hawaii shall submit to the Director a certificate, signed by Jones Spacelink, Ltd.'s independent certified public accountants to the effect that their examination of the books and records of Jones Spacelink, Ltd. and subsidiaries, for the fiscal year then ended, did not reveal that any default has occurred under Facility A, Facility B or Facility C, or if such default has occurred, a detailed statement as to the nature thereof.

Section Five

Construction

5.1. Test Results

As soon as available, but in no event more than thirty (30) days after the date of the test, Jones Spacelink of Hawaii shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.

5.2. Forty-Channel Upgrade

(a) By December 31, 1995, Jones Spacelink of Hawaii shall upgrade its Hawaii System to a minimum bandwidth of 330 MHz having the capacity for a minimum of forty (40) channels.

(b) Six (6) months prior to commencing construction, Jones Spacelink of Hawaii 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 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.

(c) If by January 1, 1996 the rebuild or upgrade is not completed, Jones Spacelink of Hawaii shall set aside an amount equal to \$381,000.00 less the accumulated amount expended to date for this upgrade, but not less than what is estimated to be needed to complete the upgrade. The Director, in his sole discretion, shall determine the reasonableness of the amount necessary to complete the upgrade.

5.3. Emergency Override System

On or before December 31, 1992, Jones Spacelink of Hawaii shall configure and maintain its system to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by this system. Emergency authorities shall include the County of Hawaii Administrator of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

5.4. Institutional Network

(a) At no charge or cost to the State except for Jones Spacelink of Hawaii's cost for labor and materials, Jones Spacelink of Hawaii shall within six (6) months of a request by the Director provide and maintain two-way fiber optic interconnections between the cable system, government and public institutions, and public, educational, and governmental access sites to be determined by the Director, including the following:

- ° Jones Spacelink of Hawaii
- ° County Office Building
- ° State Office Building
- ° Judiciary Building
- ° Police Station
- ° UH-Hilo

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

(c) Jones Spacelink of Hawaii shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(d) Upon written request by Jones Spacelink of Hawaii, the Director may grant an extension for the installation of the interconnections in paragraph 5.4(a) for good cause.

(e) The State shall bear the following actual costs for labor and materials incurred by Jones Spacelink of Hawaii in providing and maintaining such interconnections. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as the Director may require, the State shall promptly reimburse Jones Spacelink of Hawaii for the costs of such interconnections, which shall include the cost of materials utilized, including applicable taxes and shipping charges; cost of labor, including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; and the rental value of equipment.

(f) Jones Spacelink of Hawaii may construct the institutional networks required by this section in a manner it deems appropriate, consistent with paragraph 5.4(c). Jones Spacelink of Hawaii may utilize contractors to construct and/or maintain any or all portions of such institutional networks.

5.5. Interconnection with HITS

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

5.6. Interconnection for Access Purposes

(a) If it is determined pursuant to the planning process contemplated in paragraph 7.1 that interconnections with other cable systems on the island of Hawaii for

the purpose of carrying access programming shall be constructed, Jones Spacelink of Hawaii shall effect the required interconnections on the schedule and in the manner determined in the Access Plan.

(b) Three months prior to construction, Jones Spacelink of Hawaii shall submit for the Director's approval its plan for constructing the required interconnections. If the Director does not disapprove said plan within thirty (30) days, Jones Spacelink of Hawaii may proceed with the plan submitted. If the Director disapproves the construction plan, Jones Spacelink of Hawaii shall cooperate with the Director and his staff regarding the Director's concerns.

(c) The costs of the interconnections to be constructed shall be allocated among each of the cable franchise areas on the island of Hawaii. For the costs of construction allocated to the areas served by it, Jones Spacelink of Hawaii shall receive a credit for its actual costs for labor and materials to be applied against its requirement to pay the Access Fee described in paragraph 7.2 herein or PEG capital funds described in paragraph 7.3 herein. The taking of any credit by Jones Spacelink of Hawaii shall require the Director's prior approval. Jones Spacelink of Hawaii shall provide the Director or his designee with such verification of costs as may be requested.

5.7. University of Hawaii, Hilo Campus Interconnection

(a) At no charge or cost to the State, on or before December 31, 1991, Jones Spacelink of Hawaii shall install, maintain, and activate in two directions an interconnection between its cable system and the main campus facilities of the University of Hawaii, Hilo Campus.

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

5.8. Additional Funding

Where additional funds are required to cover capital expenditures in excess of those originally proposed in paragraph 5.2 above, Jones Spacelink of Hawaii 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 4.3 above.

5.9. Construction Reports

Upon commencement of construction and continuing until all scheduled system improvements have been completed pursuant to paragraphs 5.2 and 5.3, Jones Spacelink of Hawaii shall submit monthly written construction status reports to the Director.

5.10. Completion of Franchise Requirements

Any proposed transfer of the franchise, during the franchise term, shall require completion of paragraphs 5.2 and 5.3 before such transfer application shall be considered for approval by the Director.

5.11. Sixty-Channel Upgrade

On or before December 31, 1995, Jones Spacelink of Hawaii shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 450 MHz or sixty (60) channels for its Hawaii System.

Section Six

Programming Services

6.1. Mix, Quality, and Level of Service

Except to the extent permitted by federal law, Jones Spacelink of Hawaii shall not alter its current mix, quality, and level of programming services for its basic service tier, except as allowed in paragraph 6.2(c), without the prior approval of the Director.

6.2. Basic Service Tier Broad Categories of Programming

(a) Subject to availability, Jones Spacelink of Hawaii 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) Broadcast television stations as required by the Federal Communications Commission or applicable law; and
- (7) General entertainment including, for example, music, children's, cultural, and special interest programming.

(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 that is discontinued without notice to Jones Spacelink of Hawaii; and
- (2) Programming changes beyond the control of Jones Spacelink of Hawaii.

(c) Jones Spacelink of Hawaii, on its own accord, may add broad categories of video programming to its basic service tier and the prior approval of the Director shall not be required therefor.

(d) Jones Spacelink of Hawaii 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

(a) Jones Spacelink of Hawaii 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 for the County of Hawaii. The plan shall at a minimum consider the following:

- (1) Resources available in the County of Hawaii for access use;
- (2) User needs and interests;
- (3) Models for providing public, educational, and governmental access;
- (4) Management of access facilities and equipment, including the interconnection of the cable systems within the County of Hawaii, 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 original programming;
- (5) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (HAWAII Wide Area Integrated Information Access Network) or any other interconnects; and
- (6) Coordination of access with the Institutional Network as set forth above in paragraph 5.4.

(b) The access plan for the Hawaii System shall be developed within the context of this Order and may not materially change Jones Spacelink of Hawaii's obligations under the Terms and Conditions of this Order. Jones Spacelink of Hawaii, on its own accord, may exceed the performance parameters of the obligations imposed by this Order. In said situation, the requirements of the access plan may be modified by mutual agreement between the Director, Jones Spacelink of Hawaii, and others designated by the Director.

7.2. Access Fee

(a) By April 15, 1991, Jones Spacelink of Hawaii shall pay to an account designated by the Director or his designee, \$20,000, in final satisfaction of Condition No. 12 of Decision and Order No. 133.

(b) As hereinafter provided in paragraphs 7.2(c), 7.2(d), and 7.2(e), during each and every year for the remaining term of the franchise, Jones Spacelink of Hawaii shall pay to an account designated by the Director or his designee an amount up to three percent (3%) of its Gross Revenues. These payments shall be used for public, educational, and governmental access uses.

(c) Jones Spacelink of Hawaii shall pay an annual Access Fee for the fiscal years ending May 31, 1991 through May 31, 1993 as follows:

- (1) On the due dates shown, an amount equal to the greater of the amount shown below or one percent (1%) of Gross Revenues:

<u>Fiscal Year Ending</u>	<u>Due Date</u>	<u>PEG Access Fee</u>
May 31, 1991	May 31, 1991	\$ 9,300.00
May 31, 1992	Quarterly as follows:	
	August 31, 1991	\$12,000.00
	November 30, 1991	\$12,000.00
	February 28, 1992	\$12,000.00
	May 31, 1992	\$12,000.00
May 31, 1993	May 31, 1993	\$53,000.00

- (2) For the year ending May 31, 1991, the Access Fee shall be calculated on the Gross Revenues for the period from March 15, 1991 to May 31, 1991.
- (3) The aggregate amount of the PEG Access Fee for the fiscal year ending May 31, 1992 shall be the greater of one percent (1%) of Gross Revenues or \$48,000.

(d) For the fiscal years ending May 31, 1994 through May 31, 1996, Jones Spacelink of Hawaii shall pay on the due dates shown, an annual Access Fee equal to the greater of the amount shown below or two percent (2%) of Gross Revenues:

<u>Fiscal Year Ending</u>	<u>Due Date</u>	<u>PEG Access Fee</u>
May 31, 1994	May 31, 1994	\$112,000
May 31, 1995	May 31, 1995	\$119,000
May 31, 1996	May 31, 1996	\$131,000

(e) For the fiscal years ending May 31, 1997 through May 31, 2001 and for the period June 1, 2001 through December 31, 2001, the Access Fee shall be three percent (3%) of Gross Revenues.

(f) The Access Fee required pursuant to paragraphs 7.2(b), 7.2(c), 7.2(d), and 7.2(e) may be reconsidered by the Director at the following times:

(1) By May 31, 1996 to determine the Access Fee for the fiscal years ending May 31, 1997 through May 31, 2001 and for the period June 1, 2001 through December 31, 2001.

(2) Upon transfer of the franchise.

(g) The amount of the Access Fee required pursuant to paragraphs 7.2(b), 7.2(c), 7.2(d), and 7.2(e) may be reconsidered by the Director based on consideration of the financial condition of Jones Spacelink of Hawaii, the community needs, and other factors the Director deems appropriate.

(h) The Access Fee shall be calculated on the estimated annual Gross Revenues for the fiscal 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 Jones Spacelink of Hawaii's annual financial statements to the Director. If Jones Spacelink of Hawaii 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 made. The Director may require Jones Spacelink of Hawaii to submit to an audit by the Director's accountant.

7.3. Facilities and Equipment

(a) For the years ending May 31, 1992 through December 31, 2001, Jones Spacelink of Hawaii 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>
May 31, 1992	\$ 78,530.00
May 31, 1993	-0-
May 31, 1994	\$188,370.00
May 31, 1995	-0-
May 31, 1996	\$ 20,000.00
May 31, 1997	\$ 26,645.00
May 31, 1998	-0-
May 31, 1999	\$ 95,867.00
May 31, 2000	-0-
May 31, 2001	\$ 48,981.00

(b) The amount of the PEG capital funds required pursuant to paragraph 7.3(a) may be reconsidered by the Director in accordance with paragraph 7.1 and based on community needs and interests.

(c) Any PEG capital funds paid pursuant to paragraph 7.3 shall not be credited to the Access Fee.

(d) Any transfer of the cable system shall require the payment to the Director or his designee of the outstanding PEG 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.

(e) 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) Jones Spacelink of Hawaii shall designate access channels at the following times:

(1) By April 30, 1991, Jones Spacelink of Hawaii shall designate and activate to the Director one full-time channel for public, educational, and governmental access.

(2) Two (2) additional channels shall be designated by December 31, 1995 or upon completion of the forty-channel upgrade required by paragraph 5.2, whichever occurs earlier.

(b) Jones Spacelink of Hawaii may use the two (2) additional designated access channels as provided in paragraph 7.4(a)(2) until such time as those channels are activated in accordance with the policies and procedures for activation determined under paragraph 7.1 above.

(c) All access channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on Jones Spacelink of Hawaii's basic service tier.

(d) Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii 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 the 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) Jones Spacelink of Hawaii 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 access 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 fiscal year by Jones Spacelink of Hawaii 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 or PEG Capital Funds.

7.7. Reporting Requirements

(a) Within one hundred twenty (120) days of its fiscal year end, Jones Spacelink of Hawaii shall submit to the Director a report of local origination expenses and a report for access programming expenses for the preceding fiscal year.

(b) For the purposes of accounting for amounts expended for local origination and access programming, Jones Spacelink of Hawaii shall only include an appropriate portion of Jones Spacelink of Hawaii'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 Jones Spacelink of Hawaii's annual financial report. Jones Spacelink of Hawaii 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, Jones Spacelink of Hawaii 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 (6) months of the State's actual receipt of Jones Spacelink of Hawaii's local origination and access programming expenditure reports, then Jones Spacelink of Hawaii'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 June 30, 1991, Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii 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. Jones Spacelink of Hawaii, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the Jones Spacelink of Hawaii cable system. If Jones Spacelink of Hawaii discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, Jones Spacelink of Hawaii shall promptly report it to the Director in writing. Jones Spacelink of Hawaii, 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.

8.5. The failure of the State at any time to require performance by Jones Spacelink of Hawaii 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. Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii 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 Jones Spacelink of Hawaii as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or State law, as said law may be amended or modified throughout the term of this Order. Jones Spacelink of Hawaii shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

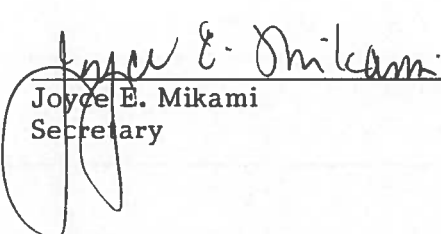
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 149 in Docket No. 90-09 was served upon the following parties to the addresses shown below by the mailing the same, postage prepaid, on this 15th day of March, 1991:

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