

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

In the Matter of the Application of

KAUAI CABLEVISION

For Approval of Transfer of Cable Franchise and
System Held By United Video Cablevision, Inc. aka
Princeville Cablevision

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) Docket No. 91-01
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DECISION AND ORDER NO. 152

I. Introduction.

On October 7, 1991, Kauai CableVision filed an application with the Director of Commerce and Consumer Affairs ("Director") for the purchase of the assets and transfer to it of the cable franchise of United Video Cablevision of Hawaii, Inc. ("United Video" or "Princeville Cablevision") to provide cable communications services to the community of Princeville on the island of Kauai.

Princeville Cablevision has held a franchise to provide cable communications services to the Princeville community since November 1990. Kauai CableVision's present franchise allows it to provide services to the Princeville area. Kauai CableVision is acquiring as part of Princeville's assets the cable franchise held by United Video Cablevision. The sale and transfer of a cable franchise requires prior approval by the Director. Consequently, although this application was presented as a purchase of the assets of the Princeville system, this application has been reviewed as a proposed transfer of the cable franchise currently held by United Video.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held at 6:30 p.m. on November 7, 1991 at the Hanalei Courthouse, 5-5358 Kuhio Highway, Hanalei, Kauai. Notice of the hearing was published in The Honolulu Advertiser and The Garden Island on October 15 and 22, 1991.

II. The Law.

A. State Law

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in Sections 440G-4, 440G-5, 440G-6, 440G-7, and 440G-8 of the Hawaii Cable Law, Chapter 440G, Hawaii Revised Statutes.

These sections require the Director's approval before the issuance of a cable franchise. The application for the issuance of a cable franchise, Section 440G-6(b), Hawaii Revised Statutes, requires the Director to obtain information regarding:

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

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

- "(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the

application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances."

B. Franchise Requirements

Term and Condition 8 of Decision and Order No. 144 requires the Director's prior approval of certain expenditures over \$50,000:

"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 pursuant to the Paradise Loan Agreement;
- b) Payments to the partners of Paradise in connection with advances, equity contributions or subordinated borrowings as permitted in Term and Condition 3.4 of Decision and Order No. 139, provided that the Paradise Loan Agreement has been fully satisfied."

C. The Privilege of a Franchise

The grant of a cable franchise 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 Princeville community is located in an area where television reception is poor without the aid of a cable communications system. If cable communications services ceased to be provided, television reception would be extremely marginal. This fact clearly indicates that there is a public need for continuing the existing cable communications service.

B. Suitability of the Applicant

In evaluating the suitability of Kauai CableVision, the State looked at its past performance as a cable operator on Kauai to determine its suitability to acquire the operations of Princeville Cablevision.

Kauai CableVision has operated the former Seven Twenty Limited Partnership cable system on Kauai since July, 1990. From its review of various operational and technical reports and the testing done by its engineer, the State has concluded that Kauai CableVision has maintained the level of cable operations required by its franchise.

C. Operational Ability of the Applicant

Kauai CableVision's manager and staff have been intimately involved in operating the Kauai cable communications system for the last eight years under its present and former owners ("The Seven Twenty Limited Partnership"). They have demonstrated a capacity to operate a cable operation generally attuned to the needs and requirements of Kauai subscribers. As Princeville's cable system is adjacent to that of Kauai

CableVision's operations in the Hanalei district and has been the recipient of Kauai CableVision's technical and operational assistance on a continuing basis, the present acquisition should enhance service to all residents of the Hanalei district including Princeville.

D. Technical Ability of the Applicant

Despite being among the smaller cable systems in Hawaii, the Kauai CableVision cable operation boasts a highly competent and well-trained technical staff capable of meeting the daily technical requirements of its cable communications facilities. This staff also continues to demonstrate its competence in planning and executing upgrades of its cable facilities.

In recent years, this technical staff led by engineer Mr. Ronald Crown has provided technical expertise and assistance to the Princeville system, both in the areas of maintaining and upgrading Princeville's cable facilities. Thus, it appears that Kauai CableVision's technical staff is knowledgeable about the Princeville cable facilities.

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

The Princeville system incurs one of the higher per subscriber costs of providing cable programming in Hawaii. The remoteness of the area, the equipment used to provide cable communications services, and the programming offered produce a situation where the cost of providing cable communication service to Princeville subscribers is high. This cost is born by approximately 1,500 subscribers.

Without cable communications, television reception in Princeville would be marginal. The programming services are equivalent to those typically offered by much larger systems. However, because of the system's small size, the cost of cable service is spread among fewer subscribers, resulting in higher costs per subscriber than other systems with comparable services. Kauai CableVision already operates a system on Kauai with a larger subscriber base and has shown the ability to provide service at a reasonable cost.

The financial plan presented by Kauai CableVision appears reasonable. They have stated they intend to maintain current rates for the Princeville area until January 1, 1994. InterMedia Partners, Kauai CableVision's general partner, is a major multi-system operator with significant resources upon which to draw.

Based on these factors, it appears that Kauai CableVision has the financial capability to operate the Princeville system.

F. Public Hearing

Testimony presented on the transfer in person at the public hearing and by correspondence to the Cable Television Division centered on: (1) maintaining the current rate charged for cable communications services at Princeville; (2) carriage of studio-quality Honolulu signals on the Princeville cable system; (3) retention of Denver satellite feeds on the Princeville cable system; and (4) accelerating the cable facilities construction schedule for Wainiha and Haena.

G. Other Matters

Since Kauai CableVision already holds a cable franchise for the Princeville area, in considering the transfer of the United Video franchise to Kauai CableVision, the Director sought to consolidate the two cable franchises affecting the Princeville area. Thus, by this Decision and Order the United Video cable franchise will be transferred to Kauai CableVision and then consolidated with the cable franchise currently held by Kauai CableVision. The cable franchise shall expire on August 4, 2001.

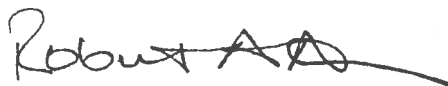
V. Conclusion.

Based on the information presented in the application and the evaluation of this information, the Director concludes that it is in the public interest to approve this application. The applicant appears to possess the requisite capabilities for the issuance of the franchise. This acquisition will provide for an economy and efficiency of cable communications operations for the Princeville community which has not been previously possible.

VI. Order.

NOW, THEREFORE, the transfer application of Kauai CableVision to purchase the assets of United Video is hereby APPROVED and the franchise authority of United Video is transferred to Kauai CableVision, subject to the attached terms and conditions which are incorporated by reference herein. All terms and conditions pertaining to the operation of the Kauai CableVision franchise are contained in this Order. All prior orders pertaining to Kauai CableVision are superseded by this Order.

DATED: Honolulu, Hawaii, January 7, 1992.

A handwritten signature in dark ink, appearing to read "Robert A. Alm", written over a horizontal line.

ROBERT A. ALM
Director of Commerce and
Consumer Affairs

TERMS AND CONDITIONS OF DECISION AND ORDER NO. 152

Section One

Definitions

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

"Access fee" means the annual fee to be paid by Kauai CableVision to the Director or the Director's designee for public, educational or governmental uses pursuant to paragraph 6.1.

"Basic service" means the lowest cost tier of cable service offered by Kauai 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" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

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

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

Department of Education, Kauai Community College, and other accredited educational institutions for non-commercial educational purposes.

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

"Gross revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Kauai CableVision, its affiliates, subsidiaries, and any other person or entity in which Kauai CableVision has a financial interest or which has a financial interest in Kauai 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 cable channel;
- (d) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable system and the provision of subscriber and other service; and
- (e) revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross revenues shall include, valued at agreed upon or contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Kauai CableVision or others described above in consideration of performance by Kauai 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 Kauai CableVision as management fees, fees in the nature of general and administrative allocations, and partnership distributions.

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

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

"Kauai CableVision" means Kauai CableVision, a Hawaii limited partnership, and its successors. Kauai CableVision was formerly known as Paradise Cable Partners.

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

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

"Paradise Cable Partners" means Paradise Cable Partners, a Hawaii limited partnership, which is the predecessor entity of Kauai CableVision.

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

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

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

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

"State" means State of Hawaii.

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

Section Two

Management

2.1 Citizens Advisory Committee

Kauai 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 Kauai CableVision on community needs, concerns, and interests, including local origination and public, educational, and governmental access programming.

2.2 Limited and General Partners

(a) For the duration of the franchise term:

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

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

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

2.3 Books and Records

Except as hereinafter provided in this paragraph 2.3, Kauai 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 records cannot be made available locally within five (5) working days, Kauai CableVision shall make appropriate office space available and pay for air fare, hotel, and other related travel expenses necessary to allow the Director's representative to review the requested records wherever they are located.

2.4 Other Business Activity

Kauai 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.

2.5 Tariff

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

2.6 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, Kauai 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 Kauai CableVision proposes to take regarding the probable violation.

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

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

Section Three

Financial

3.1 Changes in Loan Agreement

Any subsequent material amendment or modification to the Paradise Loan Agreement shall require the written consent of the Director.

3.2 Reporting of Violations - InterMedia Partners

Upon acquiring knowledge of the existence of a violation of any condition of the Paradise Loan Agreement, InterMedia Partners shall promptly inform the Director in writing of the following:

- a) The nature of the violation,
- b) The period in which the violation has been in existence, and
- c) The actions that InterMedia Partners proposes to take with respect to the violation.

3.3 Reporting of Violations - Kauai CableVision

Upon acquiring knowledge of the existence of a violation of any condition of the Paradise Loan Agreement, Kauai CableVision shall promptly inform the Director in writing of the following:

- a) The nature of the violation,
- b) The period in which the violation has been in existence, and
- c) The actions that Kauai CableVision proposes to take with respect to the violation.

3.4 Loan Agreement Compliance - InterMedia Partners

As soon as available, but in no event more than one hundred twenty (120) days after the close of InterMedia Partners' fiscal year, InterMedia Partners through Kauai CableVision shall submit to the Director a statement from its General Partner stating:

- a) Whether any event has occurred which constitutes a violation of any condition of the Paradise Loan Agreement and, if so, stating the facts with respect thereto; and
- b) Its compliance with paragraph 3.9 of this Order relating to Paradise Cable Partners.

3.5 Loan Agreement Compliance - Kauai CableVision

As soon as available, but in no event more than one hundred twenty (120) days after the close of Kauai CableVision's fiscal year, Kauai CableVision shall submit to the Director a statement from its General Partner stating:

- a) Whether any event has occurred which constitutes a violation of any condition of the Paradise Loan Agreement and, if so, stating the facts with respect thereto; and

- b) Its compliance with paragraph 3.9 of this Order relating to Paradise Cable Partners.

3.6 Reporting of Communications - InterMedia Partners

InterMedia Partners through Kauai CableVision shall within thirty (30) days of receipt submit to the Director a copy of any letter or opinion of the accountants delivered to the Agent pursuant to Section 8.01(a)(iii) of the Paradise Loan Agreement.

3.7 Reporting of Communications - Kauai CableVision

Kauai CableVision shall within thirty (30) days of receipt submit to the Director a copy of any letter or opinion of the accountants delivered to InterMedia Partners pursuant to Section 5.7(iii) of the Paradise Loan Agreement.

3.8 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 pursuant to the Paradise Loan Agreement;
- b) Payments to the partners of Paradise in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 3.10 of this Order, provided that the Paradise Loan Agreement has been fully satisfied.

3.9 Collateralization of System Assets

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

3.10 Additional Borrowing

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

3.11 Paradise Loan Agreement

As used in this Order, "Paradise Loan Agreement" means the Revolving Credit and Term Loan Agreement, dated as of June 1, 1990, among InterMedia Partners (the "Borrower"), each of the Banks identified on the signature pages thereto (the "Banks") and The Bank of New York, as Agent for the Banks (the "Agent"), as amended by the Consent and First Amendment, dated as of July 16, 1990, the Second Amendment, dated as of August 31, 1990, the Third Amendment, and other documents related to this transaction.

3.12 Annual Financial Statements

(a) By April 30, 1992 and by April 30, 1993, Kauai CableVision shall submit to the Director its audited financial statements for the preceding calendar year. Thereafter, by April 30 of each year, Kauai 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, and a statement of cash flows. Each such financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be presented in sufficient detail to allow the analysis of the cable system on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 3.12(a) shall be accompanied by a statement showing the basis for computing and the amounts paid by Kauai 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.

Section Four

Construction

4.1 Thirty-Five Channel Upgrade

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

(b) Six (6) months prior to commencing construction, Kauai 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 of the upgrade to provide thirty-five (35) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1993 timetable.

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

4.2 Forty-Channel Upgrade

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

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

(c) Six (6) months prior to commencing construction, Kauai 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 for forty (40) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1995 timetable.

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

4.3 Additional Funding

Where additional funds are required to cover capital expenditures in excess of those originally proposed in paragraph 4.1 or 4.2 above, Kauai 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 3.10 above.

4.4 Construction Reports

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

4.5 Sixty-Channel Upgrade

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

4.6 Kauai Community College Interconnection

(a) On or before December 31, 1991, Kauai 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.

4.7 Institutional Network

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

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

4.8 Interconnection for Access Purposes

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

4.9 Interconnection with Hawaii Interactive Television System

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

4.10 Emergency Override System

(a) On or before December 31, 1991, Kauai 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 Director of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

(b) Upon completion of the emergency override system referred to in paragraph 4.10(a), Kauai 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 \$25,000, then the difference shall be paid to an account designated by the Director to be used for public, educational, and governmental access. Kauai CableVision acknowledges that this amount, if any, will have no effect on the public, educational, and governmental access payments required elsewhere under this Order.

4.11 Interconnection with Princeville System (Headend)

On or before December 31, 1995, Kauai CableVision shall effect an interconnection with its Princeville headend.

4.12 Completion of Franchise Requirements

Any proposed transfer of the franchise shall require completion of paragraphs 4.1, 4.2, 4.5, 4.6, 4.9, 4.10, and 4.11 above before such transfer application will be considered for approval by the Director.

Section Five Programming Services

5.1 Mix, Quality, and Level of Service

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

5.2 Broad Categories of Programming

(a) Subject to availability, Kauai CableVision shall carry programming in each of the following broad categories of service on its basic service tier:

(i) For all of Kauai except Princeville:

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

(ii) For Princeville:

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

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

Section Six
Public, Educational, and Governmental Access

6.1 Access Fee

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

(b) For the years ending December 31, 1991 through December 31, 1995, Kauai CableVision shall pay on the due dates shown an annual Access Fee equal to the greater of the amounts shown below for its cable systems on Kauai or the following percentages:

<u>Areas</u>	<u>PEG Access Percentage of Gross Revenues</u>
All of Kauai except Princeville	2%
Princeville	1/2%

<u>Due Date</u>	<u>PEG Access Fee</u>
December 31, 1991	\$ 74,000.00
December 31, 1992	\$ 81,700.00
December 31, 1993	\$ 94,800.00
December 31, 1994	\$100,900.00
December 31, 1995	\$116,000.00

The one-half percent (1/2%) of gross revenues Access Fee for Kauai CableVision's Princeville system shall terminate on the earlier of December 31, 1995 or the date on which they offer identical programming services on Kauai CableVision's main system and its Princeville system. Thenceforth, the

annual Access Fee shall be two percent (2%) of gross revenues for all of Kauai CableVision's system.

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

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

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

6.2 Access Plan and Implementation

Kauai 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; and

(e) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) or any other interconnects.

6.3 Access Channels

(a) Kauai 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 December 31, 1990; however, Kauai 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 6.2 above.

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

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

(d) Kauai 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 Kauai 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 the Director's designee or as established pursuant to paragraph 6.2.

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

6.4 Facilities and Equipment

(a) For the years ending December 31, 1991 through December 31, 2000, Kauai CableVision shall, on the due dates shown, provide to the Director or the Director's designee capital funds for facilities and equipment for public, educational, and governmental access in accordance with the following schedule:

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

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

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

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

6.5 Access Organization

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

6.6 Access Transition

(a) Kauai 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 6.2 above. Access shall be made available for non-commercial use on a first-come, nondiscriminatory basis to all persons or groups requesting use of public, educational, and governmental channels.

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

(c) All expenses relating to access operations paid within a given calendar year by Kauai 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 6.5 and 6.6(b) above shall not be credited toward the payment of any access fee.

6.7 Reporting Requirements

(a) By April 30 of each year, Kauai 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, Kauai CableVision shall only include an appropriate portion of Kauai 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 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 Kauai CableVision's annual financial report. Kauai 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, Kauai CableVision may continue to account for local origination and access programming expenses in the same manner as it had in the past.

If the State has not required changes within six months of the State's actual receipt of Kauai CableVision's local origination and access programming expenditure reports, then Kauai CableVision's accounting for local origination and access programming shall be deemed accepted by the State.

6.8 Payment by United Video Cablevision of Hawaii, Inc.

(a) At closing, United Video Cablevision of Hawaii, Inc. shall pay to the Director or the Director's designee the amount of \$1,600. This shall be in full and complete satisfaction of all past obligations under paragraph 6.2 of Order No. 140. These funds shall be used to support public, educational, and governmental access for the island of Kauai.

(b) Within thirty (30) days from the date of this Order, United Video shall pay to the Director the amount of \$20,000. This shall be in full and complete satisfaction of all past obligations under paragraph 6.3 of Order No. 140. These funds shall be used to support public, educational, and governmental access for the island of Kauai.

(c) Kauai CableVision understands that the Director and United Video have agreed that the amounts paid pursuant to paragraphs 6.8(a) and (b) are not payments in return for renewing, extending, transferring or issuing a cable franchise.

(d) Kauai CableVision acknowledges that the amount paid by United Video pursuant to paragraphs 6.8(a) and (b) will have no effect on the Access Fee paid pursuant to paragraph 6.1 or capital funds paid pursuant to paragraph 6.4.

Section Seven

Miscellaneous

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

7.2 Consistent with Section 612(b) of the Cable Communications Policy Act of 1984, Kauai 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.

7.3 (a) This Order shall not be construed as exempting Kauai 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.

7.4 Kauai 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 Kauai CableVision cable system. If Kauai 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, Kauai CableVision shall promptly report it to the Director in writing. Kauai 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. Except as noted below, Kauai 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. With respect to paragraph 5.1, Kauai CableVision reserves all of its rights and remedies under the Cable Communications Policy Act of 1984.

7.5 The failure of the State at any time to require performance by Kauai 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.

7.6 Kauai 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.

7.7 Kauai CableVision shall provide all schools within its service area with not less than one free drop and shall provide all necessary tools, equipment, and labor to provide for its installation. Any dispute as to this provision shall be resolved by the Director.

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

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

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

7.11 Within thirty (30) days of the effective date of the Order, Kauai CableVision shall submit to the Director executed copies of documents relating to the purchase of the United Video system including, without limitation, the Purchase Agreement.

7.12 The permit areas served by Kauai CableVision are Census Tracts 401, 407, 408, 409, and parts of Census Tracts 402 and 406, and the areas generally known as Lawai and Omao.

7.13 The franchise shall expire August 4, 2001.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 152 in Docket No. 91-01 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 7th day of January, 1992:

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InterMedia Partners
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Mr. Kenneth L. Bernard
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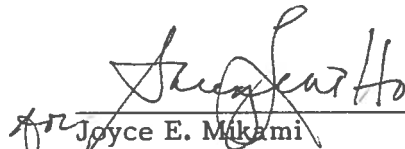
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Joyce E. Mikami
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