

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 94-07
For Consent to the Transfer of 100%)
of its Stock to JONES INTERCABLE, INC.)
)

DECISION AND ORDER NO. 161

I. INTRODUCTION.

On July 12, 1994, Jones Spacelink of Hawaii, Inc. ("Spacelink") filed an application with the Director of Commerce and Consumer Affairs ("Director") for consent to the transfer of 100% of the stock of Spacelink from Jones Spacelink, Ltd. ("Limited") to Jones Intercable, Inc. ("Intercable").

Spacelink which holds a cable franchise to provide cable communications services to the Honokaa, South Hilo, Puna, and parts of the Ka'u districts of the island of Hawaii is a wholly owned subsidiary of Limited. Pursuant to that certain Exchange Agreement and Plan of Reorganization and Liquidation dated as of May 31, 1994, as amended by that certain Amendment to Exchange Agreement and Plan of Reorganization and Liquidation dated as of October 20, 1994 ("Intercable Agreement"), Limited has agreed to sell to Intercable substantially all of its assets including 100% of its shares in Spacelink. Upon consummation of the Intercable Agreement, Intercable will become the parent company of Spacelink.

Limited and Spacelink are presently affiliates of Intercable and like Intercable are controlled by Glenn R. Jones, who serves as chairman and chief executive officer of Intercable, Limited, and Spacelink. While the control of Spacelink will change, the franchise for the Hawaii island communities will continue to be held by Spacelink. Consequently, Spacelink's obligations and responsibilities under its franchise will remain unchanged under the new organizational structure.

In connection with the Intercable Agreement, there are several related transactions entered into by entities controlled by Glenn R. Jones including, Intercable, Jones International, Ltd., and Mr. Jones, personally. The significant transactions are briefly described herein.

Intercable and Bell Canada International, Inc. ("BCI") have entered into a Stock Purchase Agreement dated May 31, 1994, as amended by that certain Amendment No. 1 to Stock Purchase Agreement dated as of October 20, 1994 ("BCI Agreement"), which provides for the issuance and sale of 7,414,300 shares of Intercable's Class A Common Stock at \$27.50 per share to BCI or one of its controlled affiliates for a total amount of \$206.25 million. This is in addition to BCI's previous purchase of 2,500,000 shares of Class A Intercable Stock on March 25, 1994, pursuant to an investment agreement at the price of \$22.00 per share for a total of \$55 million.

Further, in connection with the BCI Agreement and the Intercable Agreement, upon the closing of the BCI Agreement, Jones International, Ltd., Glenn R. Jones, personally, and BCI will enter into certain Option Agreements, which will grant to BCI an option to purchase all of the shares of Intercable Common Stock, held directly or indirectly, by Glenn R. Jones and Jones International, Ltd. (the "Control Option"). Under the Option Agreements, BCI may exercise the Control Option during the "Exercise Period" as defined therein, upon the occurrence of any one of several events including the resignation of Mr. Jones as Chairman and Chief Executive Officer of Intercable, or between the seventh and eighth anniversaries of the closing of the BCI Agreement.

In the event the Intercable Agreement does not close, an alternative transaction may take place pursuant to that certain Transaction Agreement, by and among Jones International, Ltd., Glenn R. Jones, and BCI. In general, the Transaction Agreement prescribes the conditions upon which BCI will be granted the Control Option.

Intercable's existing financing involves a \$300 million Credit Agreement dated December 8, 1992, by and among, Intercable, as Borrower, Nationsbank of Texas, N.A., as Managing Agent, Barclays Bank PLC, Corestates Bank, N.A., and The Bank of Nova Scotia, as Co-Agents, and the Lenders named therein, dated December 8, 1992, as amended by that certain First Amendment and Waiver to Credit Agreement dated as of January 22, 1993, and as further amended by that certain Second Amendment to Credit Agreement dated as of November 30, 1994 ("Intercable Financing"). The amount of available credit as of August 31, 1994 is \$43.440 million, and the anticipated liquidity of Intercable as of May 31, 1995 is \$326.330 million (which include \$164 million from the BCI investment).

On March 15, 1991, the Director issued Decision and Order No. 149 approving the renewal of the cable franchise permits for Spacelink. By Decision and Order No. 155, the Director approved Spacelink's request to refinance its then existing credit facilities.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on the transfer application was held at 6:30 p.m. on October 24, 1994, in Conference room C, State Office Building, 75 Aupuni Street, Hilo, Hawaii. Notice of the hearing was published in the Hawaii Tribune Herald and West Hawaii Today on October 2 and 9, 1994.

II. THE LAW.

A. Federal law

This transfer of a cable franchise is made under the authority of state law and is consistent with the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").

Section 624 of the Cable Act allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, system configuration, and institutional and subscriber networks. Section 611 permits franchising authorities to require that channel capacity be designated for public, educational or governmental use. Section 622 allows the assessment of a franchise fee up to five percent of annual gross revenues, any portion of which may be used for public, educational and governmental access.

B. State law

The regulatory powers of the Director regarding the transfer of a cable communications franchise are set forth in Sections 440G-7, 440G-8, 440G-10.1, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-10.1, Hawaii Revised Statutes, requires the Director's approval before the transfer of a cable franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director prior to issuing a cable franchise, which states as follows:

(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.

C. The Privilege of a Franchise

The grant of a cable franchise gives Spacelink 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 Spacelink 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 interconnection of public facilities, public television, and public, educational and governmental access.

III. STATUTORY CRITERIA.

A. Public Need for Proposed Service

Intercable has requested that Spacelink continue to provide the same cable services it presently offers. Spacelink now serves approximately 17,000 subscribers in east and north Hawaii. This area includes many communities where television reception is poor due to the topography of the island. Without the aid of a cable communications system, television reception would be marginal for many of the residents of the island. Roughly 72 percent of the residents whose homes are passed by a cable line subscribe to cable. Therefore, there is a public need for continuing and expanding the existing cable communications service.

B. Suitability of the Applicant

No significant change in applicant and its control. Spacelink and Intercable have represented that the principals in both corporations will remain the same. Consequently, both corporations will retain the same financial, technical, and management strengths and weaknesses.

C. Operational Ability of the Applicant

No significant change in the management and control of the Spacelink cable communications operations.

As a means of protecting the public interest, the Hawaii Cable Law provides that no change of control of a cable system may occur without the prior approval of the Director. Therefore, in the event there are any material changes to the Intercable Agreement and/or the BCI Agreement, or the Intercable Agreement and/or the BCI Agreement fails to close as contemplated therein, for any reason whatsoever, the Director reserves the right to reopen this docket to reexamine Spacelink's financial and operational capabilities in order to ensure that cable services provided by Spacelink will continue to be in the best interest of the public.

D. Technical Ability of the Applicant

No change anticipated.

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

It is anticipated with the probable investment of BCI, that many of the potential financial weaknesses that are inherent in financial entities controlled by a single individual may be mitigated. The high debt load which has characterized the different Jones enterprises may be reduced by the major financial capital investment by one of North America's major corporations. It is also anticipated that future financing may be more readily available at significantly lower cost as a result of BCI's participation and possible control of Intercable. Spacelink and Intercable have represented that BCI's infusion of capital will ensure that Intercable and all of its subsidiaries will meet all franchise obligations. Based on these factors, Spacelink should be in a better position to provide quality cable communication services at reasonable cost to cable consumers on the island of Hawaii.

F. Public Hearing

All testimonies presented at the public hearing were in favor of the proposed transfer of shares from Limited to Intercable. Present management generated support from many elements of the local community.

G. Other Matters

The Director will take the present opportunity of extending regulatory safeguards begun previously but omitted from the renewal franchise with the addition of certain terms and conditions to this consent to the transfer. Accordingly, the Director determines that it is in the public interest to (a) increase Spacelink's annual franchise fees by one percent (1%) of its annual gross revenues and the use thereof shall be designated by the Director for such purposes that serve the public interest as

provided by chapter 314, Hawaii Revised Statutes, as amended, the Hawaii Cable Law, and/or the federal Cable Act, and (b) extend the initial franchise term for an additional calendar year.

IV. CONCLUSION.


Based on the information presented in the application and the evaluation of such information, subject to the conditions imposed herein, the Director concludes that it is in the public interest to approve this application. Intercable appears to possess the requisite capabilities to have and to hold a cable franchise to serve the areas of north and east Hawaii.

V. ORDER.

NOW, THEREFORE, the application for the transfer of 100% of the shares of Jones Spacelink of Hawaii, Inc. to Jones Intercable, Inc. is hereby APPROVED, subject however, to the closing of the Intercable Agreement and the BCI Agreement, and the attached Amended Terms and Conditions to Terms and Conditions of Order No. 155, which are incorporated by reference herein. Except as amended, the provisions of Decision and Order No. 155 and the Terms and Conditions of Order No. 155 that were incorporated therein are hereby ratified and shall remain in full force and effect.

Notwithstanding any provision herein to the contrary, in the event the Intercable Agreement or the BCI Agreement fails to close as contemplated therein and upon receipt by the Director of written notification thereof, this Decision and Order and the attached Amended Terms and Conditions of Order No. 155 shall be deemed null and void. In such event, Decision and Order No. 155 and the Terms and Conditions attached thereto shall be in full force and effect, and the Director shall have the right to take any and all actions and to issue such rules, orders, or other directives, as the Director deems necessary or appropriate to serve and protect the public's interest with respect to cable services provided by Jones Spacelink of Hawaii.

DATED: Honolulu, Hawaii, December 2, 1994.



CLIFFORD K. HIGA
Director of Commerce and
Consumer Affairs

AMENDED TERMS AND CONDITIONS OF DECISION AND ORDER NO. 155

The Terms and Conditions of Decision and Order No. 155 are hereby amended as set forth below. All provisions of Decision and Order 155 and the Terms and Conditions attached thereto that are not amended herein shall remain in full force and effect.

1. Section One, Definitions, is hereby amended by adding new definitions to be designated appropriately therein, which shall read as follows:

"Annual Fee" means the Annual Fee paid by Jones Spacelink of Hawaii pursuant to section 440G-15, Hawaii Revised Statutes, as amended.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the federal Cable Communications Policy Act of 1984, Pub.L.No. 98-549, 98 Stat. 2779 (1984), as amended.

"Public Highways" shall have the meaning set forth in section 264-1, Hawaii Revised Statutes, as amended.

"Public Place" includes any property, building, structure, or water to which the public has a right of access and use.

2. Paragraphs (a) and (b) of subsection 2.1, Franchise Term, are hereby amended in their entirety and shall read as follows:

(a) The term of the franchise shall be the balance of the initial franchise term granted to Jones Spacelink of Hawaii under Decision and Order No. 149, as amended by Decision and Order No. 155, effective March 15, 1991, plus one calendar year. The initial term shall expire on December 31, 1997 unless sooner terminated as provided herein or by applicable law.

(b) If all of the following items are accomplished on or before the dates stated below, then Jones Spacelink of Hawaii shall receive an additional five (5) years for its franchise, which additional term shall expire on December 31, 2002 unless sooner terminated as provided herein or by applicable law:

(i) December 31, 1992: Emergency override system (subsection 5.3); and

(ii) December 31, 1995: Forty-channel upgrade (subsection 5.2) and Study re: sixty-channel upgrade or eighty-channel upgrade (subsection 5.11).

3. Subsection 2.2 is hereby amended in its entirety and shall read as follows:

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 system, Jones Spacelink of Hawaii shall pay all fees required by chapter 440G, Hawaii Revised Statutes, as amended, pay all monies specified herein, and provide all channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of the franchise fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Fee, and the Franchise Fee set forth in subsection 2.3 hereof, shall not exceed the maximum amount permitted by the applicable provisions of federal or state law, as the same may be amended throughout the term of this franchise.

4. Section 2, Franchise Term is hereby amended by adding three new subsections 2.3, 2.4 and 2.5, respectively, to be designated consecutively after subsection 2.2, and which shall read as follows:

2.3 Franchise Fee

Commencing with the June 1, 1995 payment and continuing for the duration of the franchise term, Jones Spacelink of Hawaii shall pay one percent (1%) of its annual Gross Revenues to the State. These payments shall be used for such purposes as designated by the Director that serve the public interest as provided by chapter 314, Hawaii Revised Statutes, as amended, chapter 440G, Hawaii Revised Statutes, as amended, and/or the Cable Communications Policy Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as the same may be amended from time to time. The one percent (1%) franchise fee shall be paid to the State in equal amounts on June 1 and December 1 of each year, and shall be based on Jones Spacelink of Hawaii's Gross Revenues for the preceding calendar year. Payment for the Franchise Fee shall be separate from the payment of the Annual Fee.

2.4 Change In Circumstances

(a) Any material changes to the Exchange Agreement and Plan of Reorganization and Liquidation dated as of May 31, 1994, by and between Jones Spacelink, Ltd. and Jones Intercable, Inc. including the related agreements described therein, as amended by that certain Amendment to Exchange Agreement and Plan of Reorganization and Liquidation dated as of October 20, 1994, ("Intercable Agreement"), and/or the Stock Purchase Agreement dated as of May 31, 1994, by and between Intercable and Bell Canada International, Inc., as amended by that certain Amendment No. 1 to Stock Purchase Agreement dated as of October 20, 1994 ("BCI Agreement"), shall require the prior written approval of the Director, if such changes occur prior to the closing of the Intercable Agreement and/or the BCI Agreement.

(b) Upon the closing of the Intercable Agreement and the BCI Agreement and Jones Spacelink of Hawaii thereby becomes a wholly owned subsidiary of Jones Intercable, Inc., (i) any reference herein to Jones Spacelink, Ltd. shall be deemed deleted and Jones Intercable, Inc. shall be deemed substituted therefor, and (ii) any reference herein to Facility A and/or Facility B as defined in subsection 4.1(a) hereof shall be deemed deleted and the term "Intercable Financing" as defined in subsection 4.1(b) hereof shall be deemed substituted therefor.

2.5 Service Area

This franchise shall cover all areas of the island of Hawaii, State of Hawaii, which Jones Spacelink of Hawaii is currently authorized to serve and does not extend or alter the boundaries of such areas.

5. Subsection 4.1 is hereby amended in its entirety and shall read as follows:

4.1 Changes in Credit Facility

(a) Any material change in the terms and conditions of the credit facilities termed Facility A, the Revolving Credit Agreement by and among Jones Spacelink, Ltd., the Banks named therein, Royal Bank of Canada and Banque Paribas, as Co-Agents, and Mellon Bank, N.A. as Agent ("Facility A"), and Facility B, the Term Loan Agreement by and between Jones Spacelink, Ltd., and Mellon Bank, N.A., for the financing of the expansion or operation of the Hawaii system as reviewed and approved in Docket 93-02, shall require the prior written approval of the Director. If after the closing of the Intercable

Agreement and the BCI Agreement, Jones Intercable, Inc. shall have satisfied all of the outstanding indebtedness under Facility A and Facility B, then approval by the Director of the termination of Facility A and Facility B shall not be necessary, provided that Jones Intercable first notifies the Director of such termination, and that no later than 10 business days after such termination Jones Intercable, Inc. shall submit to the Director written evidence, in form satisfactory to the Director, of such termination.

(b) Upon the closing of the Intercable Agreement and/or the BCI Agreement, any material change in the terms and conditions of the credit facility termed Intercable Financing, the \$300 million Credit Agreement dated December 8, 1992, by and among, Jones Intercable, Inc., as Borrower, Nationsbank of Texas, N.A., as Managing Agent, Barclays Bank PLC, Corestates Bank, N.A., and The Bank of Nova Scotia, as Co-Agents, as amended by that certain First Amendment and Waiver to Credit Agreement dated as of January 22, 1993, and as further amended by that certain Second Amendment to Credit Agreement dated as of November 30, 1994 ("Intercable Financing"), shall require the prior written approval of the Director.

Any changes to the Intercable Financing that are necessary to consummate the transactions specifically contemplated by the Intercable Agreement and/or the BCI Agreement, shall not require the prior approval of the Director, provided that Jones Intercable, Inc. shall submit to the Director true and accurate copies of the executed amendments or modifications to the Intercable Financing no later than 10 business days after the date of execution of any such amendment or modification. If the Director, within 20 business days after receipt, determines that any such amendment or modification is not necessary to consummate the transactions specifically contemplated by the Intercable Agreement and/or the BCI Agreement, Jones Intercable, Inc. shall be deemed in violation of the terms and conditions of its franchise and shall be subject to the penalties set forth in chapter 440G, Hawaii Revised Statutes, as amended.

6. Section Four, Financial is hereby amended by adding a new subsection 4.7 to be designated immediately after subsection 4.6, and which shall read as follows:

4.7 Pledging of Assets

Except to the extent required under the Intercable Financing, the assets of Jones Spacelink of Hawaii shall not be pledged as collateral for any indebtedness which

are not solely for the benefit of the Jones Spacelink of Hawaii cable system. Any further or additional pledging of the assets of Jones Spacelink of Hawaii shall require the prior written approval of the Director.

7. Subsection 5.2, Forty Channel Upgrade is hereby amended in its entirety, and shall read as follows:

5.2 Forty Channel Upgrade

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

(b) No later than six (6) months prior to commencing construction, Jones Spacelink of Hawaii shall submit to the Director for approval a full financial plan and a complete construction schedule including, but not limited to, a detailed engineering plan, 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, and such other information as the Director deems necessary. If, within 30 business days after receipt of the financial plan and construction schedule, the Director does not require any supplemental information or changes thereto, then the financial plan and construction schedule as submitted shall be deemed approved.

(c) Notwithstanding any provision to the contrary, upon the occurrence of any material changes to the Intercable Agreement and/or the BCI Agreement, which changes occur prior to the closing of the Intercable Agreement and/or the BCI Agreement, the Director, at the Director's sole discretion, may require Jones Spacelink of Hawaii to set aside an amount equal to the total cost of construction of the proposed upgrade of its cable system. Jones Spacelink of Hawaii shall, within 30 calendar days after receipt of written notification by the Director, set aside an amount equal to the total cost of construction of its proposed upgrade and shall deposit the same in an interest bearing account at any bank or financial institution authorized to do business in the State of Hawaii("Development Fund").

All amounts in the Development Fund including all interest accrued thereon shall not be commingled with other funds of Jones Spacelink of Hawaii or any other entity. Jones Spacelink of Hawaii shall have the

authority to draw on the Development Fund for the sole purpose of financing the upgrade. Jones Spacelink of Hawaii shall not make any withdrawals from the Development Fund without the prior written approval of the Director. The Development Fund shall not be pledged, dedicated, or used as collateral for any purpose other than financing the upgrade, except upon written application to and prior written approval by the Director.

8. Subsection 5.11, Sixty-Channel Upgrade is hereby amended in its entirety, and shall read as follows:

5.11 Other Upgrades

On or before December 31, 1995, Jones Spacelink of Hawaii shall provide a study to the Director relating to the feasibility of upgrading its cable system to a minimum bandwidth of 450 Mhz (or sixty (60) channels) or to a minimum bandwidth of 750 Mhz (or eighty (80) channels), which studies may utilize fiber optic cable for all trunk and distribution lines.

9. Subsection 7.4, Access Channels is hereby amended by adding a new paragraph (f) to be designated immediately after paragraph (e), and which shall read as follows:

(f) KHET or any successor broadcast television channel operated by the Hawaii Public Broadcasting Authority shall not be deemed an Access channel and shall not be counted or included among the Channels required by paragraph (a) of subsection 7.4 hereof.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 161 and AMENDED TERMS AND CONDITIONS TO DECISION AND ORDER NO. 155 in Docket No. 94-7 were duly served upon the following parties at the address shown below by mailing the same, postage prepaid, on this second day of December, 1994.

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