

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

In the Matter of the Application    )  
of    )  
  )  
CABLE PARTNERS, INC.                    )  
  )  
Application for Cable                    )  
Communications Franchise                )  
(Haiku and Kula, Maui)                 )  
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DOCKET NO. 96-04

ORDER NO. 207  
(TEMPORARY AUTHORIZATION)

**I.    Introduction**

On July 29, 1996, the State accepted Cable Partners, Inc.'s application for a cable franchise. Cable Partners, Inc. (sometimes hereinafter referred to as "Applicant"), a Ohio corporation, seeks to obtain a non-exclusive five year cable franchise for the Peahi area of Haiku, Maui (census tract 302) and the Keokea area of Kula, Maui (census tracts 303.01 and 303.02). Applicant proposes to construct two small cable systems, one each for the Peahi and Keokea areas.

Pursuant to section 440G-7, Hawaii Revised Statutes, a public hearing on Applicant's application was held on August 26, 1996 at 5 p.m., at the Civil Defense Agency's Conference Room, ground floor, County Building, 200 S. High Street, Wailuku, Maui. Notices of the public hearing were published in the Maui News on August 4 and 11, 1996.

**II.   STATUTORY REQUIREMENTS**

The regulatory powers of the Director regarding the issuance of a cable communications franchise are set forth in chapter 440G, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").

Section 440G-4, Hawaii Revised Statutes, provides that the Director is empowered to issue cable franchises and otherwise administer and enforce the Hawaii Cable Law. Section 440G-5, Hawaii Revised Statutes, provides that no person shall construct, operate, or acquire a cable system without first obtaining a cable franchise. Section 440G-8(b), Hawaii Revised Statutes,

establishes the criteria to be considered by the Director, 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.

Paragraph (d) of section 440G-8, Hawaii Revised Statutes, states in pertinent part:

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 cable franchise terms, limitations, and conditions which the director deems the public interest may require... .  
(Emphasis added).

In addition, section 624 of the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), as amended, allows franchising authorities to impose requirements for cable-related facilities and equipment which include, but are not limited to, channel capacity, 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 of the Cable Act allows the assessment of a franchise fee up to five percent (5%) of annual gross revenues, any portion of which may be used for public, educational and governmental access and other purposes.

### III. TEMPORARY AUTHORIZATION

In its application, Applicant requests the grant of a non-exclusive cable franchise for a term of five years. However, as discussed below, a temporary authorization subject to certain limitations and terms and conditions will be issued to Applicant.

Based upon a thorough review of the application and information submitted by Applicant, the Director continues to be concerned, among other things, of Applicant's ability to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, its financial capability and responsibility, and its technical and operational ability to perform efficiently the service for which authority is requested. The record clearly shows the State's efforts in having Applicant address those concerns during the course of its review.<sup>1</sup>

Applicant, a newly formed Ohio corporation, proposes to construct, maintain and operate a small cable system for each of the proposed service areas. Each of the proposed cable systems will have a total bandwidth of 450 Mhz (54 analog channels), with coaxial infrastructure for trunk and distribution lines. A key component of Applicant's application is its financial plan. The financial plan submitted by Applicant indicates optimistic projections for, among other things, subscriber penetration, monthly and year end revenues, and capital and operating expenditures.

For example, Applicant proposes, among other things, the following:

- (a) to provide cable service to approximately 1,260 homes in the service areas over five years;
- (b) to hook-up approximately 652 subscribers out of approximately 900 homes during the first year, resulting in a 72.44% penetration level;
- (c) to have one full-time equivalent office personnel, and one-half full-time equivalent field personnel, for the first year;
- (d) to allocate \$200 per month for advertising expenses to attract and retain subscribers;

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<sup>1</sup>Some of the activities include the June 10, 1996 meeting of representatives of Cable Partners and Division staff regarding the incompleteness of Cable Partners' application, which led to the submittal of the revised and amended application filed on July 16, 1996; and four (4) requests for supplemental information regarding Cable Partners' application and responses to requests for information.

(e) to charge \$26 per month for a 32 channel basic service tier which would include programming such as local broadcast stations, mainland broadcast stations via satellite, three PEG access channels, ESPN, Disney, WTBS and other programming;<sup>2</sup>

(f) to charge \$60 per installation<sup>3</sup>, \$13 per premium selection such as HBO, Showtime, and Playboy;

(g) to have a total of \$250,000 in equity to construct and operate the cable systems, of which only \$87,500 is cash and the remaining \$162,500 in the form of materials, equipment and services from the its shareholders; and

(h) to have an additional \$100,000 of unencumbered cash placed in escrow for use by the company until sufficient resources are obtained by alternative sources e.g., bank line of credit.

It is evident that the individual items taken as a whole reveal a package that is held together by limited resources and overly optimistic projections, which may unravel in the event of negative variances between the actual and planned results. Of particular concern is Applicant's statement that it will have a cash balance of approximately \$15,000 at the end of the first year. Any shortfalls in planned revenues or any increase in planned expenditures may require Applicant to delay construction of the systems or require the infusion of additional capital.

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<sup>2</sup>It is noted that pursuant to 47 U.S.C. section 543(m), as amended, small cable operators such as Cable Partners would not be subject to rate regulation i.e., a basic service tier was the only service tier subject to regulation as of December 31, 1994, in any franchise area in which that operator services 50,000 or fewer subscribers. The term "small cable operator" is defined as a "cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." 47 U.S.C. section 543(m)(2).

<sup>3</sup>It is noted that the proposed charge of \$60 per installation is higher than the amounts reported by other cable operators in the State. In addition, Cable Partners stated that it does not intend to offer discounts or offer free installation to attract subscribers.

This is directly related to Applicant's ability to fulfill its obligation to provide safe, adequate, and reliable service.<sup>4</sup>

With respect to technical and operational abilities of Applicant, the information submitted indicates that Applicant may have again underestimated its expenses and time frame to complete construction and activation of the systems.<sup>5</sup> The proposed cable plant build out is targeted to commence immediately upon obtaining the requested franchise and is separated into two (2) phases.

Phase 1 will cover 13 miles in Haiku, and Phase 2 will cover another 12 miles in Haiku and 5 miles in Kokea, Kula. Phase 1 is proposed to be completed within the first three months: the first month is targeted for securing all necessary permits and agreements; the second month is targeted for constructing the headend and laying cable distribution lines, leasing of office space, etc.; and the third month is targeted for activating the system and to provide cable service to those within the Phase 1 build out. Phase 2 is proposed to be constructed during the 9th through 10th months, with completion and activation of the system targeted for the 12th month. Again, any delay in the proposed construction schedule will ultimately affect Applicant's financial plan regarding anticipated revenues from subscribers from and after the third month.

Although there are numerous concerns regarding Applicant's ability to construct, maintain, and operate the systems as proposed, the residents within the Haiku and Kula areas would benefit from receiving cable service as an alternative to off-air local broadcasts and direct satellite service, provided that cable service is reliable and prices are reasonable and competitive. Subscribers would also receive local government, education, and public access programming.

Applicant states that there is a need for cable service in the proposed service areas.<sup>6</sup> In support, Applicant submitted a

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<sup>4</sup>See section 440G-8.1(a), Hawaii Revised Statutes, as amended.

<sup>5</sup>Information submitted by Applicant indicates that one of its shareholders - Gary Cross, the designated construction manager, has experience in constructing small cable distribution systems in Oregon and Washington, and that another shareholder - Mike Carroll, the designated on-site manager, has operated satellite master antenna television systems on Maui.

<sup>6</sup>Although another cable operator's franchise includes the Peahi area of Haiku and Keokea area of Kula, it has previously identified those areas as unserved because such areas do not meet

survey taken of 60 residents within the proposed service areas, regarding the desirability of the proposed cable service. According to Applicant, 54 of the 60 or 90% of the respondents desired cable service. In addition, some of the testimonies received at the public hearing indicated support for Applicant's application.

Applicant also states that a temporary authorization would pave the way for Applicant to obtain the financing, permits and agreements, etc. to construct, maintain, and operate the proposed cable systems.

#### IV. CONCLUSION

Under the statutory criteria, a cable franchise shall not be granted freely. The Director must be convinced that it is in the public interest to do so.

In the normal case, the State would have denied Applicant's application. However, based on the information submitted regarding residents' desire to obtain wireline cable service from Applicant, the grant of a temporary authorization as described below is reasonable and appropriate.

The temporary authorization will be effective from the date Applicant obtains and infuses, in addition to Applicant's proposed \$250,000 investment, (a) \$100,000 unencumbered line of credit secured from a bank or financial institution authorized to do business in the State of Hawaii, and (b) an additional \$100,000 unencumbered cash from Applicant's shareholders which amount shall serve as part of Applicant's permanent capital base and not as a temporary bridge facility until otherwise directed by the Director.<sup>7</sup> Failure to comply with one or more of the terms and conditions described herein will constitute cause for the Director to void this temporary authorization. Nothing herein will be deemed or construed to ensure Applicant of permanent or final authorization in the final decision and order. The Director will review the record and information submitted by Applicant, and the Director, in the Director's sole discretion, may impose terms and conditions deemed necessary and appropriate in connection with the issuance of the final decision and order.

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the operator's line extension policy of 40 homes per mile.

<sup>7</sup>The requirement to infuse the additional amount of \$200,000 shall not be deemed or construed as a determination by the State that such amount is necessary for Applicant to successfully operate its proposed cable systems. This amount is merely a reasonable estimation in light of Applicant's optimistic revenue projections and underestimation of expenses.

V. ORDER

NOW, THEREFORE, pursuant to section 440G-8(d), Hawaii Revised Statutes, as amended, the Director hereby grants to Applicant a temporary authorization subject to limitations, terms and conditions set forth below:

(1) The temporary authorization shall be effective from the date Applicant obtains and infuses, in addition to Applicant's proposed \$250,000 investment, (a) \$100,000 unencumbered line of credit secured from a bank or financial institution authorized to do business in the State of Hawaii, and (b) \$100,000 unencumbered cash from Applicant's shareholders which amount shall serve as part of Applicant's permanent capital base and not as a temporary bridge facility until otherwise directed by the Director, and this temporary authorization shall continue until the Director issues a final decision and order in this docket;

(2) Within 30 days after Applicant infuses the funds required in paragraph 1 hereof, Applicant shall submit current balance sheet, loan documents, company's bank statements, and other evidence or documentation as requested by the Director;

(3) Within 30 days from the date Applicant infuses the funds described in paragraph 1 hereof, Applicant shall obtain all permits and agreements necessary for the provision of the proposed cable service including, but not limited to, all state and local permits, pole attachment agreement(s), and programming agreements;


(4) Applicant shall not construct and activate any portion of the cable systems until the Director issues a final decision and order in this docket authorizing such construction and activation;

(5) Applicant shall not solicit, receive, or demand any payment from persons interested in subscribing to cable service including installation fees until a final decision and order is issued in this docket authorizing the same; and

(6) No later than 60 days after the date hereof Applicant shall have complied with all of the terms and conditions herein, and Applicant shall submit to the Director evidence, in form satisfactory to the Director, documenting the same. If a reasonable extension of time beyond the 60 days is requested by Applicant, the Director will not unreasonably withhold Director's consent.

Applicant's failure to comply with one or more of the terms and conditions described herein shall constitute cause for the Director to void this temporary authorization. Nothing herein shall be deemed or construed to ensure Applicant of permanent or final authorization in the final decision and order. The Director will review the record and information submitted by Applicant, and the Director, in the Director's sole discretion, may impose limitations and terms and conditions deemed necessary and appropriate in connection with the issuance of the final decision and order.

DATED: Honolulu, Hawaii, March 24, 1997.

  
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KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer  
Affairs



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ORDER NO. 207 in Docket No. 96-04 was served upon the following party at the address shown below by mailing the same, postage prepaid, on this 24th day of March, 1997.

MIKE CARROLL  
Cable Partners, Inc.  
P.O. Box 351  
Puunene, Hawaii 96784

*Patti K. Kodama*  
Patti K. Kodama  
Secretary