

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

In the Matter of the Application)	
of)	DOCKET NO. 96-05
)	
G FORCE, L.L.C., a North Carolina)	
limited liability company)	
)	
For Transfer of the Cable)	
Franchise Held by Garden Isle)	
Cablevision, L.P.)	
_____)	

DECISION AND ORDER NO. 208

I. Introduction

The State has accepted G Force, L.L.C.'s Applications for Transfer of the cable franchises held by Garden Isle Cablevision and Kauai Cablevision. Because G Force, L.L.C. ("Applicant") has not proposed to extend the franchise terms and to consolidate the franchises held by Garden Isle Cablevision and Kauai Cablevision, each proposed transfer shall be treated separately.¹

Garden Isle Cablevision, L.P. ("Garden Isle") holds the cable franchise for the following areas on the Island of Kauai: census tracts 402.01, 402.02, 403, 404, 405, 406, 407, and 408. Garden Isle's franchise expires on December 31, 2000.

Pursuant to that certain Amended and Restated Asset Purchase and Sale Agreement dated as of October 15, 1996, as amended and restated by that certain

¹In addition, Applicant stated that it intends to consolidate the Garden Isle and Kauai Cablevision systems into a single system, but it is not proposing such consolidation at the present time in light of upcoming franchise renewals. Applicant also stated that it will initiate renewal proceedings for Kauai Cablevision concurrently with that of Garden Isle. The three year renewal window will thus open as of January 1, 1998.

Amended and Restated Asset Purchase and Sale Agreement dated June 18, 1997 ("Amended and Restated Asset Purchase Agreement"), by and between Garden Isle Cablevision, as Seller, and G Force, L.L.C., as Buyer, Applicant will acquire all of the assets, rights, privileges, interests, business and properties owned, leased, held or utilized by Garden Isle to operate and maintain the subject cable system. Under the Amended and Restated Asset Purchase Agreement, Applicant will assume and pay when due all Current Liabilities as defined therein, and on or after the date of closing all obligations arising under all franchises and assumed contracts as well as the ownership and operation of the cable system.

Pursuant to section 440G-7, Hawaii Revised Statutes, a public hearing on Applicant's transfer applications was held at the Wilcox School cafeteria, 4319 Hardy Street, Lihue, Kauai, on December 13, 1996, at 5:00 p.m. Notices of the public hearing were published in The Garden Island on November 21 and 28, 1996. Copies of the transfer applications were available for review during normal business hours at, among other locations, the office of Garden Isle and public libraries throughout the Island of Kauai.

II. THE LAW

A. Federal law

The 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 (collectively referred to as 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 (5%) of annual gross revenues, any portion of which may be used for public, educational and governmental access and other purposes.

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, 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. (Emphasis added).

C. The Privilege of a Franchise

The grant of a cable franchise, and in this case by way of transfer, 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 recipient 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 granted 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 communications capabilities for its communities by supporting interconnection of public facilities, public television, and public, educational and governmental access.

III. STATUTORY CRITERIA

A. Public Need for Proposed Service

In response to the State's inquiry, Applicant identified two areas that are unserved but are currently being developed - Puako Subdivision (single-family residences) in Lihue, and Kalepa Development (multiple dwelling units) in Hanamaulu. The distance between each of the new developments and Garden Isle's cable distribution line is relatively close e.g., approximately .5 mile and 100 feet for Puako and

Kalepa, respectively. Applicant stated that it plans to extend and offer cable services to each of those areas sometime in 1997.

Applicant stated also that Garden Isle provides a cable drop and basic cable service at no cost to all but one new school - Island School, located near Kauai Community College, within the franchise area.² Applicant stated that it is currently reviewing how to best provide a cable drop and basic cable service to Island School including an underground plant extension of approximately one mile.

Garden Isle's anticipated timing for providing service to the Puako Subdivision and Kalepa Development Garden and its efforts to provide a cable drop and basic service to Island School are acceptable. Accordingly, Applicant shall submit a report to the Director regarding the provision of service to the Puako Subdivision and Kalepa Development on or before December 1, 1997, and Applicant shall provide a cable drop and basic service at no cost to Island School and subscribers no later than October 1, 1997.

B. Suitability of the Applicant

Applicant is a newly formed North Carolina limited liability company. Upon closing of the Amended and Restated Asset Purchase Agreement, Applicant's holdings would consist only of the acquired cable systems. According to Applicant, equity ownership interests in Applicant are as follows: Gordon Gray, Jr. holds approximately one percent (1%) interest, and The Gordon Gray 1956 Living Trust ("Gray Trust") holds approximately ninety-nine percent (99%) interest. Applicant stated that although Wachovia Bank of North Carolina, N.A. is the corporate trustee, Gordon Gray, Jr., as the successor individual trustee, has the sole responsibility for investment decisions respecting the assets of the Gray Trust.

Gordon Gray, Jr. in his individual capacity as president and chief executive officer, is the sole manager of Applicant. Mr. Gray's experience with cable systems or the cable industry is limited to his role as a member of the board of directors of Summit Communications, Inc., a company previously owned by his family. It is noted that Mr. Gray has not directly managed the day to day operations of cable or other enterprises. Applicant proposes to restructure the operations of Garden Isle and Kauai Cablevision for purposes of day to day management as described below.

²Section 440G-8.2(e), Hawaii Revised Statutes, requires that a cable operator provide a cable drop and basic service at no cost to any school or institution of higher learning within its service area; provided that service is actually being delivered within a reasonable distance from the school or institution of higher education.

C. Operational Ability of the Applicant

Applicant stated that except for the elimination of the general manager position for Kauai Cablevision, it does not currently contemplate any major changes with respect to current personnel and their responsibilities. Applicant stated that it will maintain most if not all of the other positions and personnel of Garden Isle and Kauai Cablevision. According to Applicant, it will manage both systems utilizing one general manager, two field offices - one in Lihue and the other in Kapaa, 19 technical support personnel and seven (7) customer service representatives, and other line management and support staff. Applicant also intends to procure services such as accounting, payroll, cable regulatory compliance, and other operational needs from in-state, and preferably Kauai, third party vendors.

Although Applicant will be utilizing existing management and line personnel, Applicant is still a new entity and provider of cable services in Hawaii.³ Accordingly, the Director will monitor Applicant's operation of the cable system, and may impose any and all conditions deemed necessary or appropriate as provided in section 8.9 of Decision and Order No. 143, as amended.

D. Technical Ability of the Applicant

As noted above, Applicant intends to maintain most of the current staff of Garden Isle and Kauai Cablevision. In general, the technical staff are competent and capable of meeting the daily technical requirements of the cable communications facilities. It is noted that Garden Isle and Kauai Cablevision staff have completed the upgrades and other technical requirements under their respective franchise obligations. Presently, Garden Isle has a maximum bandwidth of 330 Mhz (40 analog channels), and Kauai Cablevision has a maximum bandwidth of 450 Mhz (60 analog channels).

Although not related to Applicant's technical ability, Garden Isle's cable system was initially found to not meet the minimum levels of applicable technical standards. After Garden Isle had replaced several modulators and demodulators at the system's headend, a retesting of the system was conducted at which time the system was found

³Applicant stated that its equity members do not intend to charge management fees nor does Applicant intend to create an internal management organization for the operation of the cable systems. Thus, Applicant shall not charge management fees, create an internal management organization, or hire a management organization without the prior written consent of the Director. In connection therewith, the Director reserves the right to impose any terms and conditions deemed necessary or appropriate as provided in section 8.9 of Decision and Order No. 143, as amended.

to meet the minimum standards. Any failure to meet applicable technical standards is a serious matter, and it will not be treated lightly under any circumstances. However, because the system testing was done in connection with this transfer application and Garden Isle had taken corrective measures to ensure that the system did meet the applicable technical standards, no further action will be necessary at this time.

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

Applicant stated that it will infuse approximately \$2,000,000 of working capital immediately upon acquiring the cable systems.

With respect to acquisition cost, Applicant initially stated that it would obtain a loan to finance at least fifty percent (50%) of the cost to acquire the system. Subsequently and in response to the State's inquiry regarding debt financing, Applicant stated that it will not take out a long term or senior debt to repay the acquisition cost incurred by the Gray Trust. Applicant stated that the Gray Trust, and not Applicant, is taking out a \$42,000,000 loan, of which \$40,000,000 will be used to finance the acquisition of both Garden Isle and Kauai Cablevision. Applicant also stated that the remaining \$2,000,000 will be contributed as working capital as noted above.

Applicant stated that the Gray Trust will make an equity investment in the system in an amount equal to the acquisition cost plus working capital, and that the system will not be encumbered or burdened for any portion of the acquisition debt, i.e., the system will not be responsible for the payment of any interest and principal of the debt. The Director considers such representation material to the Director's decision regarding Applicant's transfer application. It is noted that subscribers should benefit to the extent that acquisition debt liability would not be a basis for future rate increases.

Applicant also represented that it intends to make certain distributions from Applicant's earnings to its equity members in the normal course of business. It is noted, however, that any such distributions were not quantified and included in Applicant's revised financial plan.

Thus, because Applicant is a new presence in the State with respect to controlling the operations of a cable system, it is again premature at this time to assess Applicant's financial capability and ability to provide service at reasonable cost. Accordingly, the Director reserves the right to review Applicant's financial capability and its ability to provide service at reasonable cost, and to impose any and all conditions deemed necessary or appropriate as provided in section 8.9 of Decision and Order No. 143, as amended. Notwithstanding the generality of the foregoing sentence, any debt such as long-term debt or senior debt that encumbers or pledges the assets of the system shall require the Director's prior written consent.

IV. OTHER MATTERS

A. Control. The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual that actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the threshold requirements for holding a cable franchise, and is responsible and accountable to the State.

As stated by Applicant, although Wachovia Bank of North Carolina, N.A. is the corporate trustee of the Gray Trust, Gordon Gray, Jr., as the individual trustee, is responsible for investment decisions respecting the assets of the Gray Trust. In addition, Gordon Gray, Jr. is the sole manager of Applicant. Because Mr. Gray is the "key person" for the Gray Trust as well as for Applicant, any change in the control of the Gray Trust will affect the Applicant. With respect to the Gray Trust, Applicant represented that there are no individuals that could qualify to become successor individual trustees under the Gray Trust in the event of death or disability of Gordon Gray, Jr., and that in such event Wachovia Bank, as the corporate trustee, will be the sole trustee of the Gray Trust, with all powers of the corporate trustee and the individual trustee. Accordingly, the Director's prior written consent shall be required for any change in control of Applicant as provided in the attached terms and conditions.

B. Public, Educational, and Governmental Access.

Most of the written comments submitted regarding Applicant's transfer application indicated support for the transfer, if Applicant continues to support PEG access at its current or improved levels.

Applicant stated that it will satisfy all existing PEG access requirements. Presently, Ho'ike: Kauai Community Television, Inc. ("Hoike") is the designated PEG access entity on the Island of Kauai. Hoike manages three (3) PEG access channels on Garden Isle's cable system, receives an amount equal to three percent (3%) of the annual gross revenues of Garden Isle for operations ("PEG access fees"), and received \$128,000 in 1990 from Garden Isle for facilities and equipment as provided in subsection 7.3 of Decision and Order No. 143, as amended.

Although funds for facilities and equipment were provided in a lump sum payment in 1990 by Garden Isle, additional funds may be needed, particularly with the

expected change of location of Hoike's facilities and necessary replacement and maintenance of video and playback equipment.⁴ Accordingly, Applicant shall contribute capital funds for facilities and equipment for the years ending 1997 and continuing through the remaining franchise term as provided in the attached amended terms and conditions. Applicant shall not make any contributions of capital funds without the prior written authorization of the Director. The Director, in the Director's sole discretion, may direct Applicant to make capital fund contributions for all, a portion, or none of the amounts for each year as set forth in the attached terms and conditions.

In addition, the Director understands that Hoike is not currently interconnected directly with either Garden Isle or Kauai Cablevision's facilities. PEG access programming from Hoike is provided via playback equipment at Kauai Community College, which is interconnected via fiber optic lines to Garden Isle and Kauai Cablevision. Subsection 5.7 of Decision and Order No. 143 provides that Garden Isle shall effect an interconnection with other cable systems on Kauai for the purpose of carrying access programming. The Director also understands that Hoike is in the process of relocating its facilities to a location close in proximity to Garden Isle and Kauai Cablevision's facilities. Accordingly, in connection with Hoike's move to its new facility and at the direction of the Director, Applicant, at no cost to Hoike and subscribers, shall within three (3) months after receipt of the Director's directive effect an interconnection using fiber optic cabling between Hoike and headends of Garden Isle and Kauai Cablevision for the purpose of carrying access programming.

The issue of open and closed captioning was also raised by a few individuals at the public hearing. Based on testimony presented, it appears that the provision of open or closed captioning would require substantial funds.⁵ It is noted that the Federal Communications Commission ("FCC") is presently considering rules that would, subject to certain proposed exceptions and exemptions, require entities who provide video programming to a customer's home, e.g., over-the-air broadcast television service, cable television, direct-to-home satellite services, direct broadcast satellite, wireless

⁴Pursuant to subsection 7.3(c) of Decision and Order No. 143, as amended, the Director may reconsider the amount of PEG capital funds in connection with the transfer of the franchise.

⁵According to Ho'ike: Kauai Community Television, Inc., it has the capability to provide captioning but it lacks the additional funding to operate the process.

cable systems, satellite master antenna television and open video systems, to comply with its closed captioning requirements.⁶ In light of the FCC's pending rulemaking process on this issue and upcoming franchise renewal, no action will taken at this time.

C. Franchise Fees. In connection with the requested approval for transfer, Applicant does not object to contributing, in addition to other franchise fees, an amount equal to one percent (1%) of Garden Isle's annual gross revenues to the Hawaii Public Broadcasting Authority ("HPBA"). Recent reductions in the level of funding for HPBA threaten the continued viability of public broadcasting in Hawaii. Accordingly, the additional one percent (1%) franchise fee to be paid by Applicant shall be allocated to HPBA, which provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii.

D. Kauai Civil Defense. In response to the Mayor of Kauai's inquiry regarding the installation of equipment for a multi-media center at the Kauai Civil Defense Emergency Operating Center ("KCD EOC"), Applicant stated the following:

(1) Applicant will have in place an emergency alert system (EAS) by July 1, 1997 pursuant to federal law.⁷ The EAS will be capable of audio/video override on all channels, it can be set up to monitor any AM, FM, NOAA, police, fiber, 911, or any other source that may be used to send EAS transmissions, e.g., transmissions of KCD EOC. The video character generator messages can be remotely changed by KCD EOC.

(2) Live broadcast capability over designated channel(s) originating from KCD EOC can be accommodated through the recently installed INET, which is able to connect the KCD EOC directly to the three PEG access channels on Garden Isle's system. KCD EOC will need video camera(s) and other equipment such as an override switch to allow live broadcasts on any of the PEG access channels.

⁶See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Notice of Proposed Rulemaking, MM Docket No. 95-176, FCC 97-4 (rel. January 17, 1997).

⁷By Order released June 6, 1997, the FCC extended the July 1, 1997 deadline until a new effective date is established. In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, FCC 97-196, FO Docket 91-301, FO Docket 91-171.

(3) Cable service is presently provided at no charge to the KCD EOC and to all government facilities having emergency response responsibilities.

Applicant's responses, although addressing each of the points raised by the Mayor of Kauai, are preliminary in nature. Further discussions and planning among Applicant, KCD EOC, and Hoike would appear necessary. Accordingly, Applicant shall work cooperatively with KCD EOC, Hoike, and others designated by the Director, in developing a plan for implementing the items described in subparagraphs 1 and 2 above including, but not limited to, scope of effort required by Applicant and others, timeline for activities, identification of necessary equipment, and costs. The plan shall be submitted to the Director for review and approval by October 1, 1997. Applicant shall pay for all costs identified in the plan (except for labor costs of those not employed or engaged by Applicant), and Applicant shall not pass through such costs to subscribers.

E. Institutional Network. Garden Isle has provided interconnection to various governmental sites pursuant to Decision and Order No. 143. The Director recognizes that the continuing expansion of the State's INET is a significant component of the State's telecommunications infrastructure. However, continued expansion requires funding for reimbursements to cable operators. Due to budgetary and other restraints, the Department of Commerce and Consumer Affairs is no longer able to provide reimbursement for the cable operator's actual cost of labor and materials, as it may had done in the past. Accordingly, effective as the date hereof, payment or reimbursement to Applicant for its actual cost of labor and materials for INET interconnections or connections as provided in section 5.6 of Decision and Order No. 143, will be the sole responsibility of the requesting agency, department, or other governmental entity.

V. CONCLUSION

Based on the information presented in the application and representations made by or on behalf of Applicant, and supplemental information and materials submitted by Applicant and Garden Isle Cablevision, all of which were considered material to the Director in considering Applicant's application, the Director concludes that it is in the public interest to approve the transfer of the cable communications franchise held by Garden Isle Cablevision to Applicant, subject to certain terms and conditions set forth herein.

VI. ORDER

NOW, THEREFORE, the application for the transfer of the cable communications franchise held by Garden Isle Cablevision to G Force, L.L.C. is hereby APPROVED, subject, however, to the following:

(a) Closing of the Amended and Restated Asset Purchase Agreement as contemplated therein, and Applicant shall immediately notify the Director in writing of the same and shall submit a fully executed copy of said Agreement within 10 days of closing;

(b) Closing of that certain Loan and Pledge Agreement between Morgan Stanley & Co. International Limited, with Morgan Stanley & Co. Incorporated as agent, and Gordon Gray 1956 Living Trust, as Borrower, as contemplated therein, and Applicant shall immediately notify the Director in writing of the same and shall submit a fully executed copy of said agreement within 10 days of closing; and


(c) Obtaining a certificate of authority as provided under Act 92, 1996 Session Laws of Hawaii, and submitting a copy of such certificate to the Director within 10 days from the date hereof.

Upon closing of the Amended and Restated Asset Purchase Agreement and continuing for the duration of the franchise term, G Force shall be subject to and shall comply with the provisions of Decision and Order No. 143, as amended by Decision and Order No. 145, together with the terms and conditions described in this Decision and Order No. 208 and the terms and conditions attached hereto.

Notwithstanding anything to the contrary, in the event the Amended and Restated Asset Purchase Agreement or the Loan and Pledge Agreement fails to close as contemplated therein, and upon receipt by the Director of written notification thereof, or G Force fails to comply with the provisions of paragraphs (a), (b) or (c) above, the transfer application shall be deemed denied and this Decision and Order and attached terms and conditions shall be null and void. In any such event, Decision and Order Nos. 143 and 145 in their entirety shall be in full force and effect, and the Director shall

have the right to take any and all actions and to issue such orders as the Director deems necessary or appropriate to protect the public interest with respect to cable services for the franchise areas.

DATED: Honolulu, Hawaii, July 15, 1997.



KATHRYN S. MATAYOSHI
Director of Commerce and Consumer
Affairs

AMENDED TERMS AND CONDITIONS OF
DECISION AND ORDER NOS. 143 AND 145

All provisions of Decision and Order No. 143 as amended by Decision and Order No. 145 and terms and conditions attached thereto that are not amended as provided herein shall remain in full force and effect. Any and all references to Garden Isle Cablevision, L.P. or Garden Isle Cablevision shall be replaced with the term "G Force" as defined herein.

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

"G Force" means G Force, L.L.C., a North Carolina limited liability company.

2. Section Two, Franchise Term, is hereby amended by adding a new subsection 2.2 including paragraphs (a)-(d), and which shall read as follows:

Section 2.2 Franchise Fees.

(a) Notwithstanding any provision herein to the contrary, the total amount of fees paid in a calendar year, including the total amount of the Annual Fee as specified in Chapter 440G, Hawaii Revised Statutes, the annual Access Fee, and the HPBA Fee defined below, 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.

(b) Commencing July 1, 1997 and continuing for the duration of the franchise term, G Force shall pay an amount equivalent to one percent (1%) of its annual Gross Revenues from its cable system (formerly known as Garden Isle Cablevision) to the Hawaii Public Broadcasting Authority Revolving Fund ("HPBA Fee"). For year ending December 31, 1997 (covering July 1, 1997 through December 31, 1997), the HPBA fee shall be paid on April 1, 1998, and for each and every year (January 1 through December 31) thereafter of the remaining franchise term the HPBA fee shall be paid annually on the first day of April. The fee shall be based on G Force's Gross Revenues for the preceding calendar year.

(c) In connection with the payments for annual Access Fee and HPBA Fee required under paragraphs (a) and (b) hereof, respectively, G Force shall submit to the Director verified copies of all payments made to the designated PEG access entity and the Hawaii Public Broadcasting Authority Revolving Fund.

(d) The Director may require G Force to submit to an audit by the Director's accountant or auditor for purposes of verifying G Force's annual gross revenues and payment of franchise fees. G Force shall be responsible for any and all underpayment of franchise fees during G Force's operation of the cable system. The total cost of the audit shall be paid by G Force, and G Force shall cooperate fully with the conduct of the audit.

3. Subsection 3.2, Limited and General Partners, is hereby amended, and which shall read as follows:

3.2 Equity Members/Working Capital Requirements

(a) Any addition of equity members to G Force and any change to the equity interest of The Gordon Gray 1956 Living Trust in G Force shall be filed with the Director within 10 days prior to the effectuation of such addition or change.

Any change in control of G Force, change in control of The Gordon Gray 1956 Living Trust, or any change to the structure or organization of G Force shall require the prior written approval of the Director. However, no such prior approval shall be required for (i) change in control of G Force resulting from the death or disability of Gordon Gray, Jr., but such prior approval shall be required for any successor to Gordon Gray, Jr., as manager of G Force, or (ii) upon the death or disability of Gordon Gray, Jr., the succession of Wachovia Bank of North Carolina, N.A., as corporate trustee under The Gordon Gray 1956 Living Trust, to Gordon Gray, Jr.'s rights and powers as individual trustee thereunder.

(b) G Force shall at all times maintain working capital at levels sufficient for fulfilling its franchise obligations. G Force shall report working capital in its annual financial statements required to be submitted pursuant to subsection 4.7 hereof.

4. Subsection 4.1, Changes in Loan Agreement, is hereby amended, and which shall read as follows:

Any change in the terms and conditions of that certain Loan and Pledge Agreement between Morgan Stanley & Co. International Limited, with Morgan Stanley & Co. Incorporated as Agent, and The Gordon Gray 1956 Living Trust, as Borrower, that would encumber or pledge as collateral any or all assets of the cable system shall require the prior written consent of the Director.

5. Subsection 4.2, Changes in Subordinated Debt, is hereby amended, and which shall read as follows:

4.2 Debt Financing

Any loan or financing obtained for the expansion or operation of the cable system, or for paying or guaranteeing the debt of its members or manager in connection with any advances and equity contributions from its members or manager, shall require the prior written consent of the Director.

6. Subsection 4.4, Collateralization of Systems Assets, is hereby amended, and which shall read as follows:

The assets of the cable system shall not be pledged as collateral for any borrowing without the prior written consent of the Director.

7. Subsection 4.5, Additional Borrowing, is hereby amended, and which shall read as follows:

Excluding trade accounts, secured financing of vehicle and equipment in the aggregate principal amount of \$100,000, any borrowing or financing exceeding \$50,000 by G Force from whatever source and under whatever condition (except for any borrowing that would pledge or encumber the assets of the cable system), G Force shall so notify the Director in writing at least 10 days prior to such borrowing.

8. Subsection 4.8, Loan Agreement Compliance, is hereby amended, and which shall read as follows:

As soon as possible, but in no event more than 120 days after the close of G Force's fiscal year, G Force shall secure from the authorized agent or representative of The Gordon Gray 1956 Living Trust, and shall submit to the Director, a certified statement stating whether any event has occurred which constitutes a violation of any condition of that certain Loan and Pledge Agreement between Morgan Stanley & Co. International Limited, with Morgan

Stanley & Co. Incorporated as agent, and The Gordon Gray 1956 Living Trust, as Borrower, and, if so, stating the facts with respect thereto.

9. Subsection 7.2, Access Fee, is hereby amended by amending paragraph (d)(2), and which shall read as follows:

(2) At any time.

10. Subsection 7.3, Facilities and Equipment, is hereby amended by amending paragraphs (a) and (c), and which shall read as follows:

(a) Garden Isle Cablevision shall pay to the State, no later than the close of business on December 31, 1990, the sum of one hundred and twenty-eight thousand dollars (\$128,000) in full and complete satisfaction of its requirement to provide PEG capital funds on the island of Kauai for the period beginning upon the date of issuance of Decision and Order No. 145 through December 31, 1996.

For the years ending December 31, 1997 through December 31, 2000, G Force shall, in accordance with directive from the Director, 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, 1997	\$30,000
December 31, 1998	\$20,000
December 31, 1999	\$10,000
December 31, 2000	\$10,000

G Force shall not make any contributions of capital funds without the prior written authorization of the Director. The Director, in the Director's sole discretion, may direct G Force to make capital fund contributions for all, a portion, or none of the amounts for each year.

* * *

(c) The amount of PEG capital funds required pursuant to this paragraph may be reconsidered by the Director at any time.

11. 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 paragraphs (a) and (b) hereof.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 208 in Docket No. 96-05 was served upon the following party at the address shown below by mailing the same, postage prepaid, on this 15th day of July, 1997.

STEVEN NAGATA, ESQ.
Carlsmith Ball Wichman Case & Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, Hawaii 96813
Attorney for G Force, L.L.C.

STUART RIFKIN, ESQ.
Baker & Hostetler
303 E. 17th Ave
Suite 1100
Denver, CO 80203
Attorney for Garden Isle Cablevision



Patti K. Kodama
Patti K. Kodama
Secretary