

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

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

**DECISION AND ORDER NO. 214**

**I. Introduction**

The State accepted Cable Partners, Inc.'s application for a cable franchise. Cable Partners, Inc., an Ohio corporation, seeks to obtain a non-exclusive five year cable franchise for Haiku, Maui (census tract 302) and Kula, Maui (census tracts 303.01 and 303.02).<sup>1</sup> Cable Partners proposes to construct two separate cable systems, one each in the Peahi area of Haiku and in the Keokea area of Kula .

By Decision and Order No. 207 issued on March 24, 1997, the Director granted Cable Partners, Inc.<sup>2</sup> temporary authorization for a cable franchise subject to certain limitations, terms and conditions set forth therein. Cable Partners requested, and there being good cause therefor, the State approved the requests for extension of time to

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<sup>1</sup> The requested franchise areas are also part of the franchise issued to the incumbent cable operator, TCI of Hawaii, Inc.

<sup>2</sup> After the issuance of the temporary authorization, Cable Partners amended its application for cable franchise to change only the name of the applicant from Cable Partners, Inc. to Cable Partners II, Inc. According to records on file with the State of Hawaii, on July 11, 1997 Cable Partners II, Inc., an Ohio corporation, was registered as a foreign corporation with the State. Both corporations were incorporated in Ohio, and the principals of both corporations are the same. Cable Partners II, Inc. is hereinafter referred to as "Applicant".

submit the information and documentation required by Decision and Order No. 207.<sup>3</sup> The last extension of time approved by the State expired on August 8, 1997. Applicant filed its submittal on August 7, 1997.

On August 26, 1997, the State forwarded draft Decision and Order No. 214 regarding a five year franchise and franchise obligations to Applicant for review and comment. Applicant thereafter submitted its comments regarding the draft order, together with a proposal to modify its initial franchise application by, among other things, eliminating a portion of the requested franchise area in Haiku, Maui, from the provision of cable service.<sup>4</sup> After discussing the proposed modification with Applicant at length, it became clear that Applicant would not provide cable service to areas within its requested franchise areas, if the incumbent cable operator extended service to those areas before Applicant. In fact, Applicant stated that it may "return" the franchise if the incumbent cable operator was to build extensively within the requested franchise area. Because such exclusionary practice is not in the best interest of the public, Applicant's proposed modification is not acceptable.<sup>5</sup> The franchise granted herein is based on Applicant's initial franchise application as amended, and not on its recent proposed modification described in the above-referenced submittal.

## II. THE LAW

### A. Federal law

The issuance 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, as amended (the "Cable Act").

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<sup>3</sup> Decision and Order No. 207 required Applicant to submit certain documents and information by a specified date.

<sup>4</sup> Applicant initially submitted its comments and proposal to modify its initial franchise application by an undated and unsigned letter. By letter dated September 22, 1997, the State notified Applicant that the submittal was not acceptable, and requested that Applicant take remedial action. After several reminders, Applicant filed its dated and signed letter on October 23, 1997.

<sup>5</sup> See letter to Applicant dated October 22, 1997.

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, 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 issuance of a cable 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. (Emphasis added).

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. ...

### **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 recipient as a consequence of this privilege.

The privilege of a cable 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 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**

Applicant states that there is a need for cable service within the proposed service areas. Applicant submitted a 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 on Applicant's application indicated support for Applicant.<sup>6</sup>

### **B. Suitability of the Applicant**

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 minimum bandwidth of 450 Mhz (54 analog channels), with coaxial infrastructure for trunk and distribution lines.

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<sup>6</sup> A public hearing on Applicant's application for a cable franchise was held on August 26, 1996 at 5 p.m., at the Civil Defense Agency's conference room, County Building, Wailuku, Maui. Notices of the public hearing were published in the Maui News on August 4 and 11, 1996.

As noted in Decision and Order No. 207, Applicant's financial plan indicates optimistic projections for, among other things, subscriber penetration, monthly and year end revenues, and capital and operating expenditures. Any shortfalls in planned revenues or any increase in planned expenditures may result in delays in constructing the systems or require the infusion of additional capital.

Because of these concerns, Decision and Order No. 207 required Applicant to obtain and infuse, in addition to Applicant's proposed initial investment of \$250,000; (a) \$100,000 unencumbered cash from Applicant's shareholders which amount shall be a part of the Applicant's permanent capital base, and (b) \$100,000 unencumbered line of credit. According to documentation submitted by Applicant, Applicant has obtained and infused the additional \$200,000.

**C. Operational and Technical Ability of the Applicant**

Applicant's initial cable plant build out is targeted to commence immediately upon obtaining the requested franchise and is separated into two (2) phases. Applicant plans to provide cable service to approximately 1,260 homes in the service areas over five years covering a projected total of 40 plant miles; to hook-up approximately 652 subscribers out of approximately 900 homes during the first year, resulting in a 72.44% penetration rate; and to have one full-time equivalent office personnel, and one-half full-time equivalent field personnel, for the first year of operation.

According to Applicant's initial proposal, Phase 1 will cover 13 miles in Haiku, and Phase 2 will cover another 12 miles in Haiku and 5 miles in Keokea, Kula. Phase 1 is proposed to be completed and activated within the first four 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 and fourth months are targeted for activating the system and to provide cable service to those within the Phase 1 build out. Phase 2 is proposed to be completed and activated by the 12th month of the first year. Applicant also proposes to complete and activate an additional 10 miles of cable plant during the second through fifth year of the franchise.

With the construction and activation of the cable systems proposed by Applicant, 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, as well as a choice of cable providers should the incumbent operator extend service, provided that Applicant's cable service is reliable and prices are reasonable and competitive. Subscribers would also receive local government, education, and public access programming. It is noted, however, that because Applicant will be constructing its cable systems and services would not be available until completion and activation of the

systems, Applicant shall not impose or collect any fees from subscribers until service is actually provided to the subscriber.

**D. Ability to Provide Service at Reasonable Cost and Financial Capability**

Applicant proposes to charge \$26 per month for a 32 channel basic service tier (exclusive of franchise fees and taxes) that would include programming such as local broadcast stations, mainland broadcast stations via satellite, three PEG access channels, ESPN, Disney, WTBS and other programming and to charge \$60 per installation, and \$13 per premium selection such as HBO, Showtime, and Playboy.

With the exception of the installation charge, Applicant's proposed charges for the 32 basic service tier and premium programming are relatively close or comparable to TCI of Hawaii, Inc.'s charges applicable to its service areas within the island of Maui.<sup>7</sup>

It is evident that Applicant's success depends on its ability to provide safe, reliable and adequate cable services at reasonable and competitive prices. Because it is a small cable operator, it may not be subject to rate regulation. See 47 U.S.C. section 543(m), as amended.<sup>8</sup> Notwithstanding the foregoing, Applicant shall be subject to customer service<sup>9</sup> and technical standards, filing of tariffs and other reporting and filing requirements under applicable state and federal laws, rules and regulations.

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<sup>7</sup>The proposed charge of \$60 per installation is higher than the amounts reported by other cable operators in the State.

According to TCI of Hawaii, Inc.'s tariff in effect as of August 1, 1997, its monthly charge, exclusive of franchise and taxes, for 32 channels (standard cable package) is \$24.64, and premium channels such as HBO, Showtime, and Playboy are each listed at \$12.95 per month.

<sup>8</sup> Pursuant to 47 U.S.C. section 543(m), a cable operator serving fewer than 1% of all cable subscribers in the United States and not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250 million, qualifies for rate deregulation in any franchise area in which it serves no more than 50,000 subscribers. If the cable operator has only a single tier which was the only tier offered and subject to rate regulation as of December 31, 1994, then that single tier is deregulated.

<sup>9</sup> In accordance with 47 C.F.R. section 76.309, notice is hereby given that the State intends to enforce customer service standards set forth in said section 76.309.

In light of all of the foregoing, Applicant's performance of its obligations under this franchise will be monitored closely. The Director reserves the right to review Applicant's financial, operational and technical ability as well as its ability to provide service at reasonable cost, and to impose any and all conditions deemed necessary or appropriate as provided by law, rule or order.

#### **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. Therefore, any change in control of Applicant shall require the prior approval of the Director.

**B. Public, Educational, and Governmental Access.** Consistent with the requirements for other franchised cable operators within Maui County, Applicant shall provide three (3) channels for the cablecasting of public, educational, and government ("PEG") access on its cable systems, and contribute an amount equal to three percent (3%) of Applicant's gross revenues for PEG access operations ("Access Operating Fee"), and capital funds for PEG access equipment and facilities in annual amounts to be determined by the Director in connection with the plan described below.

Applicant with the cooperation the designated PEG access entity for Maui County and others as may be designated by the Director, shall submit a plan for review and approval, regarding the carriage of PEG access programming on its cable system including, but not limited to, an assessment of resources including capital contributions for PEG access facilities and equipment, the best use thereof including technical and financial requirements to satisfy established needs, and timetable for launching of PEG access programming. The plan shall be submitted at such date as the Director may designate. Implementation of the plan shall be at the direction of the Director.

**C. FRANCHISE FEES.** Consistent with franchises issued to other cable operators serving Maui County, Applicant shall contribute the following franchise fees: (a) annual Access Operating Fee in an amount equal to three percent (3%) of Applicant's annual gross revenues; (b) annual HPBA fee in an amount equal to one percent (1%) of Applicant's annual gross revenues; (c) capital contributions for PEG access facilities and equipment as determined by the Director; and (d) the State's Annual Fee as set forth in section 440G-15, HRS, as amended.

The Director recognizes that Applicant as a start-up entity it will not be operating to its full potential until construction of Applicant's cable systems is completed and the cable systems have been fully activated. Applicant stated that it will complete construction and activation of the cable systems within 12 months after being granted a cable franchise. Accordingly, except for the State's Annual Fee, imposition and payment of the Access Operating Fee, HPBA Fee, and capital funds for PEG access equipment and facilities shall commence as of December 10, 1998, which is approximately one year after the granting of the franchise.

**D. INSTITUTIONAL NETWORKS.** 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 a cable operator's actual cost of labor and materials, as it may had done in the past. Accordingly, payment or reimbursement to Applicant for its actual cost of labor and materials for INET interconnections or connections as provided in the terms and conditions attached hereto, shall be the sole responsibility of the requesting agency, department, or other governmental entity.

## **V. CONCLUSION**

Based upon a review of Applicant's application, information submitted in support of the application, and Applicant's recent proposal to exclude a portion of its requested franchise areas from the provision of cable service, the State remains concerned about Applicant's financial, technical and operational capabilities to provide safe, adequate, uninterrupted, and reliable service at a reasonable cost to subscribers, notwithstanding the presence of any competition. As noted previously, a cable franchise is a valuable privilege bestowed upon a cable operator, and with it comes concomitant obligations and responsibilities. The issuance of a cable franchise is therefore not granted freely.


The State is cognizant of benefits to potential subscribers within the franchise areas should Applicant be granted a cable franchise and successfully completes construction and activation of its cable systems. The State is also cognizant that potential subscribers should have a choice of providers, and that economic development is spurred by new start up businesses.

On balance, and with certain safeguards to protect the interest of subscribers as provided in this Order, the Director concludes, under these limited circumstances, that it is in the public interest to approve Applicant's application for a cable franchise.

**VI. ORDER**

NOW, THEREFORE, the application for a non-exclusive cable franchise of Cable Partners II, Inc. is hereby APPROVED, subject, however, to the terms and conditions set forth in this Decision and Order and those attached hereto. The term of the franchise shall be for a period of five (5) years commencing as of the date hereof and shall expire on December 9, 2002, unless terminated sooner as provided in the attached terms and conditions. Cable Partners II, Inc. shall at all times observe and comply with all applicable laws, rules and regulations.

DATED: Honolulu, Hawaii December 10, 1997.

  
KATHRYN S. MATAYOSHI  
Director of Commerce and Consumer  
Affairs

## **TERMS AND CONDITIONS**

### **Section One Definitions**

For purposes of these terms and conditions of Order No. 214, the following words, terms, phrases, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. "Shall" and "will" are mandatory, not merely directive or permissive. "May" is permissive.

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

"Access Facilities and Equipment" means channel capacity designated for public, educational, and governmental use; and facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by Cable Partners to the Director or Director's designee for public, educational, and governmental uses pursuant to section 7.2 hereof.

"Activated Channel" means a Channel engineered at the headend of the Cable System for the provision of services to subscribers of the Cable System, regardless of whether such services actually are provided, including any Channel designated for public, educational, or governmental use.

"Annual Fee" means the Annual Fee to be paid by Cable Partners pursuant to Hawaii Revised Statutes section 440G-15, as said statute may from time to time be amended.

"Basic Service" means the lowest cost tier of cable service offered by Cable Partners to all of its Subscribers which includes the delivery of local television broadcast signals, access channels, and local origination programming.

"Cable Act" means the federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (codified at 47 U.S.C. § 521 et seq.), and as may be further amended from time to time.

"Cable Partners" means Cable Partners II, Inc., an Ohio corporation.

"Cable Service" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may be amended from time to time.

"Cable system" and "System" shall have the meaning set forth in Hawaii Revised Statutes section 440G-3, as said statute may be amended from time to time.

"Channel" means a minimum of six megahertz (6 Mhz) in the electromagnetic spectrum which is capable of carrying any type of transmission which Cable Partners is authorized to provide to Subscribers.

"Department" means the Department of Commerce and Consumer Affairs of the State of Hawaii.

"Director" means the Director of Commerce and Consumer Affairs of the State of Hawaii or the director's representative.

"Educational Access Channel" means any channel on the System which is made available by Cable Partners for use by educational authorities such as the University of Hawaii, Department of Education of the State of Hawaii, and accredited educational institutions for noncommercial educational purposes.

"Emergency Authority" means the Director of Civil Defense, County of Maui, and any other Person designated by the Director.

"Emergency Override System" means the emergency alert system specified in section 5.2 hereof.

"Franchise Fee" shall have the meaning set forth in section 622(g) of the Cable Act.

"Government Access Channel" means any Channel on the System made available for use by city, county and state government, or agencies thereof.

"Gross Revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Cable Partners, its affiliates,

subsidiaries, parents, and any other person or entity in which Cable Partners has a financial interest or which has a financial interest in Cable Partners arising from or attributable to the operation of the cable systems 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 systems;
- (c) Revenue from all charges for the leased use of studios or Channels;
- (d) Revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable systems 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 contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Cable Partners or others described above in consideration of performance by Cable Partners or others described above of any advertising or other service in connection with the cable systems.

Gross revenues shall exclude any amounts received by others described above from Cable Partners as management fees and fees in the nature of general and administrative expenses.

"Law" means any law, including common law, constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any court or administrative body.

"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.

"Order" or "Order No. 214" means Decision and Order No. 214 issued by the Director of Commerce and Consumer Affairs in Docket No. 96-04, including all terms and conditions.

"Person" means any individual, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not for-profit, but shall not mean the Director or the Department.

"Public Access Channel" means any Channel on the Cable System made available for use by individuals and organizations for noncommercial purposes.

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

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

"State" means the State of Hawaii including its political subdivisions.

"Subscriber" means any Person lawfully receiving any Cable Service.

## **Section Two Franchise Term**

### **2.1 Franchise Term**

The franchise term shall be from December 10, 1997 to December 9, 2002, subject to (a) the completion of construction and activation of the cable systems in the entirety to serve the Service Area by December 10, 1998, and (b) the cable systems meet applicable federal and state technical standards. The cable systems shall have a minimum bandwidth of 450 Mhz (54 analog channels), with coaxial infrastructure for trunk and distribution lines.

In the event construction and activation are not completed by said date, Cable Partners shall be deemed to be in default of its franchise obligations and the franchise granted herein shall be automatically terminated effective December 10, 1998.

In the event the construction and activation of the cable systems are completed by December 10, 1998, but the system or systems fail to meet applicable federal and state technical standards, the Director will provide notice to Cable Partners regarding any and all deficiencies. Cable Partners shall have 30 days after receipt of notice to correct all such deficiencies, and shall notify the Director in writing of the actions taken. If the cable systems do not meet all applicable federal and state technical standards within said 30 day period, the Director may terminate the franchise or take any other action deemed necessary or appropriate as provided by law, rule or order.

If subscribers have paid installation and service charges prior to the date of termination of the franchise pursuant to this section 2.1, Cable Partners shall return to subscribers the total amount paid for installation, and the amount paid for services not received in the month in which the franchise is terminated.

## 2.2 Service Area

This franchise shall cover Haiku, Maui (census tract 302) and Kula, Maui (census tracts 303.01 and 303.02),

## 2.3 Consideration

(a) In consideration of the franchise granted herein which permits Cable Partners to use and occupy Public Places and Public Highways to operate its cable systems, Cable Partners shall pay all fees required by Chapter 440G, HRS, as amended, pay all moneys specified hereunder, and provide all channels, facilities, equipment, technical assistance, and services specified hereunder.

(b) 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 specified in chapter 440G, HRS, the annual Access Fee, and the HPBA Fee, shall not exceed the maximum amount permitted by the applicable provisions of federal and state law, as the same may be amended from time to time throughout the term of this franchise.

(c) Commencing December 10, 1998 and continuing for the duration of the franchise term, Cable Partners shall pay an amount equivalent to one percent (1%) of its annual Gross Revenues from its cable systems to the Hawaii Public Broadcasting Authority Revolving Fund ("HPBA Fee"). For year ending December 31, 1999, the one percent HPBA Fee shall be calculated from Gross Revenues for the period December 10, 1998 to December 31, 1999, and shall be paid on February 15, 2000. For each and every year of the remaining franchise term the HPBA Fee shall be paid annually on

February 15. The fee shall be based on Cable Partners' Gross Revenues for the preceding calendar year.

(d) In connection with the payments required under this section, Cable Partners shall submit to the Director verified copies of payments made to the Hawaii Public Broadcasting Authority Revolving Fund, and payments for Access Fee and capital contributions for PEG access facilities and equipment.

(e) The Director may require Cable Partners to submit to an audit by the Director's accountant for purposes of verifying Cable Partners' Gross Revenues. If an audit of Cable Partners results in disclosure of unpaid fees or payments required by this Order, statute or rules, the Director may require Cable Partners to pay the total cost of the audit.

### **Section Three Management**

#### **3.1 Books and Records**

Except as hereinafter provided in this section, Cable Partners shall maintain at its principal place of business in the State a complete set of books and records including, but not limited to, subscriber records, monthly profit and loss statements, and other documentation relating to the transaction of its business in the State. All books and records not maintained and available for review at the local office shall, upon request, be made available locally within five (5) working days.

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

(a) Cable Partners agrees to pay an administrative fine of \$1,000 per day for each day that these books and records have not been produced; or

(b) Cable Partners shall make appropriate office space available and pay for air transportation, hotel, other related travel expenses, and the salary and fringe benefits necessary to allow the Director's representative(s) to review the requested records wherever they are located.

### 3.2 Tariff

Cable Partners shall file its schedule of rates of service and other information as required by and in accordance with rules promulgated pursuant to chapter 440G, HRS. Any changes to its schedule of rates shall be filed at least thirty (30) days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

### 3.3 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any term or condition of this Order, Cable Partners shall immediately notify the Director in writing specifying: (i) the nature of such violation, (ii) an opinion as to when the violation is likely to occur, and (iii) the action that Cable Partners proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any term or condition of this Order, Cable Partners shall promptly inform the Director in writing of (i) the nature of the violation, (ii) the period in which the violation has been in existence, and (iii) the actions that Cable Partners proposes to take with respect to the violation.

(c) By April 30 of each year, Cable Partners shall submit to the Director a statement to the effect that no violation of this Order has occurred and is continuing and that Cable Partners has observed or performed every term and condition contained in this Order. In the event a violation has occurred and is continuing or if Cable Partners has not observed or performed all of the conditions contained in this Order, it shall specify the nature and period of the violation and what action Cable Partners has taken or proposes to take with respect to the violation.

### 3.4 Filing of Reports

In addition to reports required under this Order, Cable Partners shall submit the reports and filings in accordance with applicable state rules including, but not limited to, section 16-131-1 et seq., Hawaii Administrative Rules (for example, sections 16-131-43, 16-131-45, 16-131-46, 16-131-47, 16-131-48, 16-13148, 16-131-49, and 16-131-50, Hawaii Administrative Rules), and applicable federal rules and regulations.

## **Section Four Financial**

### **4.1 Changes in Credit Line**

Any change or modification to the line of credit in the total amount of \$100,000 issued by First Hawaiian Creditcorp to Cable Partners, as Borrower, dated July 17, 1997, shall require the prior written approval of the Director.

### **4.2 Covenant Violations**

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

### **4.3 Collateralization of System Assets**

The assets of the cable systems shall not be pledged as collateral or encumbered for any borrowings, without the prior written consent of the Director.

### **4.4 Annual Financial Statements**

(a) Financial statements shall be prepared and submitted in accordance with and pursuant to section 16-131-44, Hawaii Administrative Rules. To the extent not otherwise provided by said section 16-131-44, Cable Partners, by April 30 of each year, 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 financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be represented in sufficient detail to allow the analysis of its cable systems on a stand-alone basis.

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

#### 4.5 Change In Control

Any change in the control of Cable Partners shall require the prior written approval of the Director.

### **Section Five Construction**

#### 5.1 Construction of Systems

(a) Cable Partners shall construct and build its cable systems including headends and related facilities in accordance with plans submitted in connection with its franchise application, and shall complete and activate the systems in the entirety no later than December 10, 1998. Each system shall have a minimum bandwidth of 450 Mhz (minimum 54 analog channel) capacity. It is understood that the cable systems will be interconnected at completion of construction.

(b) Upon commencement of construction and until completion, Cable Partners shall submit to the Director monthly reports describing its progress in constructing the cable systems.

(c) Completion of construction of the systems under paragraph (a) above shall be understood as cable systems each having the capacity to deliver the number of channels of video programming specified above with the addition of appropriate equipment and facilities at system headend and/or receive sites, but shall not be understood to require that such number of channels be programmed except as otherwise provided for in this Order.

(d) The Director may require inspections and periodic testing of the cable systems during and after completion of construction. Cable Partners shall cooperate fully with any such inspection and testing.

#### 5.2 Emergency Override System

Cable Partners shall install Emergency Alert System ("EAS") equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel at such date as may be specified by the Federal Communications Commission. Cable Partners shall configure and maintain the cable systems to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels as may

be provided by applicable law, rules, regulations, or orders. Emergency authorities shall include the County of Maui Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system for each headend.

### 5.3 Institutional Network

(a) Cable Partners shall cooperate with the other cable systems on the island of Maui regarding connectivity between institutional networks and sites within Cable Partners' franchise areas to be determined by the Director. Cable Partners shall provide and maintain the interconnections required in this section 5.3 at no charge or cost to the State except for Cable Partners' actual cost of labor and materials. The interconnections shall be capable of carrying T-1 circuits for data, voice, video and analog in both directions.

(b) Cable Partners may construct the institutional networks required in this section 5.3 in a manner it deems appropriate, consistent with the provisions herein. Cable Partners may utilize contractors to construct and maintain all or any portion of such institutional networks, including without limitation other cable operators.

### 5.4 Interconnection with HITS

Within three (3) months of a request by the Director, Cable Partners shall cooperate with the University of Hawaii and shall provide for reception of at least one channel of programming generated by the Hawaii Interactive Television System (HITS) on its cable systems (including necessary equipment and installation) at no cost or charge to the State and subscribers. Cable Partners with the cooperation of the University of Hawaii shall submit to the Director a written estimate of the total cost of the project. In the event the total actual cost to complete HITS reception and insertion into the cable systems exceed \$20,000, the excess cost shall be borne by the University of Hawaii. The programming provided by HITS may be carried on a shared-use basis over an access channel in each system provided in accordance with section 7.4 of this Order.

### 5.5 Access Interconnection

On a schedule and in a manner to be determined in the plan described in section 7.1 hereof, Cable Partners shall effect interconnections with other cable systems within the island of Maui or an interconnection with the PEG access entity or entities designated by the Director for the purpose of carrying access programming.

## 5.6 Completion of Franchise Requirements

Any proposed transfer of the franchise shall require the completion of sections 5.1, 5.2, 5.3, 5.4, and 5.4 before such transfer application shall be considered for approval by the Director.

## **Section Six Programming Services**

### 6.1 Quality Mix, and Level of Service

Except to the extent otherwise permitted by federal law, Cable Partners shall not alter its mix, quality, and level of programming services for its basic service tier, except as allowed in section 6.2(c) hereof, without the prior written approval of the Director.

### 6.2 Basic Service Tier Broad Categories of Programming

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

- (1) Public, education, and government access programming;
- (2) Local origination programming;
- (3) Public non-profit station with national programming (which may be a PBS station); and
- (4) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) Except as provided below, no broad category of video programming may be deleted with the prior approval of the Director. Prior approval shall not be required for the following:

- (1) Programming discontinued without notice to Cable Partners; and
- (2) Programming changes beyond the control of Cable Partners.

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

(d) Cable Partners shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel line-up.

## **Section Seven**

### **Public, Education, and Government Access**

#### **7.1 Access Plan and Implementation**

(a) Cable Partners 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 plan for the use of public, education, and government access resources, facilities and equipment for the benefit of subscribers within the franchise areas. The plan shall at a minimum consider the following:

- (1) Resources available for access use, particularly with respect to need for capital fund contributions for PEG access equipment and facilities from Cable Partners for each year of the franchise term;
- (2) User needs and interest;
- (3) Management of access facilities and equipment including interconnection of cable systems within the island of Maui, need for additional access channels, scheduling of channel capacity, and guidelines for interim use of Access Channels by cable operator;
- (4) Carriage and launching of PEG access programming on Cable Partners' cable systems;
- (5) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) or any other interconnects; and
- (6) Coordination of access with the Institutional Network as set forth in section 5.3 hereof.

(b) The plan described in paragraph (a) above shall be submitted for review and approval by such date as the Director may designate. Implementation of the plan shall be at the direction of the Director.

## 7.2 Access Fee

(a) Commencing December 10, 1998 and continuing for the duration of the franchise term, Cable Partners shall pay to an account designated by the Director or the Director's designee an amount equal to three percent (3%) of Cable Partners' annual Gross Revenues from the cable systems. These payments shall be used for public, educational and governmental access purposes and for other public purposes as designated by the Director. Such payments shall be hereinafter referred to as the "Access Operating Fee."

(b) The Access Operating Fee shall be calculated on the estimated annual Gross Revenues for the calendar year, and shall be payable each year on the 15th day of February. The first payment of the Access Operating Fee shall be calculated from the Gross Revenues for the period December 10, 1998 to December 31, 1999, and the Access Operating Fee shall be payable on February 15, 2000. For each and every year thereafter the Access Operating Fee shall be calculated from the Gross Revenues for the twelve months beginning January 1 and ending December 31, and shall be paid on February 15 of each year. Adjustments to the Access Operating Fee due to differences between the estimated and actual Gross Revenues will be made within thirty (30) days after the submission of Cable Partners' annual financial statements to the Director. If Cable Partners is entitled to a refund, the Director or designee will grant a credit toward the next payment of the Access Operating Fee or make a refund if the last payment of Access Operating Fee has been made. The Director may require Cable Partners to submit to an audit by the Director's accountant or by the access organization or entities designated pursuant to section 7.5 hereof.

(c) In connection with the Access Operating Fee required to be paid by Cable Partners under this section 7.2, Cable Partners shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

(d) Notwithstanding any provision to the contrary, the Access Operating Fee may be reconsidered at any time by the Director.

### 7.3 Access Facilities and Equipment

(a) Cable Partners shall provide to the Director or Director's designee PEG capital funds for public, educational, and governmental access facilities and equipment, in such amounts and at such times as directed by Director. Cable Partners in cooperation with the PEG access entity or entities designated by the Director shall submit a plan as provided in section 7.1 hereof regarding PEG access resources and use of such resources including contributions of PEG capital funds by such date as the Director may designate. Implementation of such plan shall be at the direction of the Director.

(b) Any PEG capital funds paid pursuant to this section 7.3 shall not be credited to the Access Operating Fee.

(c) Any transfer of the cable systems shall require the payment to the Director or Director's designee of the outstanding PEG capital funds for public, educational, and governmental access pursuant to this section 7.3 before the effective date of the transfer. The Director reserves the right to waive or to reduce the amount due under this paragraph for good cause.

(d) For purposes of this section 7.3, "PEG capital funds" means the sum of money set apart specifically for public, educational, and governmental access facilities and equipment.

(e) The PEG capital funds for the provision of facilities and equipment required to be provided by Cable Partners under this section 7.3 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(C) of the Cable Act.

(f) Notwithstanding any provision to the contrary, the PEG capital funds may be reconsidered at any time by the Director.

### 7.4 Access Channels

(a) By December 10, 1998, Cable Partners shall make available to the Director or Director's designee at least three (3) full-time activated Access Channels for public, educational, and governmental PEG access use on its cable systems. The number of Access Channels required under this paragraph (a) may be reconsidered by the Director at any time.

(b) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on Cable Partners' most widely available service tier.

(c) Cable Partners shall be permitted to use time on any Access Channel whenever any such Access Channel is not scheduled for use; provided that any such use by Cable Partners 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 Director's designee or as established pursuant to section 7.1 hereof.

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

(e) 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) above.

#### **7.5 Access Organization**

The Director or the Director's designee may designate one or more entities to fund, manage, or operate Access Facilities and Equipment.

### **Section Eight Subscriber Service and Technical Standards**

#### **8.1 Office**

Cable Partners shall maintain and operate within its Service Area at least one customer service office to accept payments from Subscribers, returns of equipment, and to receive and resolve all complaints including without limitation, those regarding service, equipment malfunctions, or billing and collection disputes. Cable Partners shall maintain a staff adequate to provide such services in a timely and efficient manner, and shall implement an operating policy for the optimum number of days per week and hours per day of operation (excluding legal holidays) that will be most convenient for its Subscribers.

## 8.2 Installation and Repair

Cable Partners shall at a minimum provide installation service for eight (8) hours each weekday and Saturdays, except for Sundays and legal holidays. The specific hours of service shall be determined by Cable Partners to be most convenient for its Subscribers. Cable Partners shall at a minimum provide repair service eight (8) hours each week day and Saturday. At all other times, Cable Partners shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

## 8.3 Compliance

Notwithstanding any provision to the contrary, Cable Partners shall at all times comply with all applicable customer service and technical standards prescribed by the State and the Federal Communications Commission.

# **Section Nine Miscellaneous Provisions**

## 9.1 Rates

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

## 9.2 Leased Commercial Access

Consistent with the Cable Act, Cable Partners shall, on or before December 10, 1998, file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of Channels for commercial use.

## 9.3 Antitrust

This Order shall not be construed as exempting Cable Partners or any affiliated or controlling entities from any antitrust law, nor does this Order constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

#### 9.4 Headings

The headings or titles of paragraphs and sections contained in these terms and conditions are to facilitate reference only and shall not in any affect the construction or interpretation hereof.

#### 9.5 Laws

Cable Partners, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect its cable systems. If Cable Partners discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, Cable Partners shall promptly report it to the Director in writing. Cable Partners, its employees, and agents, shall comply with all applicable federal, state, and local laws, and rules and regulations issued pursuant thereto and shall indemnify the State against any claim, action, loss, liability or damage to person or property occasioned by reason of a violation of this section by Cable Partners and its officers, employees and agents.

#### 9.6 Performance

The failure of the Director or the State at any time to require performance by Cable Partners of any obligation or condition of this Order shall in no way affect the right of the Director or the State to enforce the same. The waiver by the Director or the State of any breach of any term or condition of this Order shall not be taken or held to be a waiver of any succeeding breach of such term or condition or as a waiver of the term or condition itself.

#### 9.7 Indemnification

Cable Partners shall save and hold the State and its officials, employees, and agents free and harmless from any action, claim, loss, expense, damage or injury 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.

#### 9.8 Waiver

The Director reserves the right to waive or modify any term or condition of this Order as deemed appropriate or necessary by the Director.

## 9.9 Authority

The State, from time to time, may adopt or issue such rules, orders or other directives governing Cable Partners as it shall find necessary or appropriate in the exercise of its police power. The Director, from time to time, may issue such orders governing Cable Partners as the Director shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. The Director's authority shall not be used in a manner inconsistent with the provisions of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or state law, as said law may be amended throughout the term of this Order. Cable Partners shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

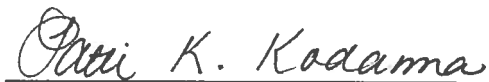
## 9.10 Test Results

As soon as available, but in no event more than 30 days after the date of the test, Cable Partners shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test, and other tests that may be required by the Federal Communications Commission or the State.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 214 in Docket No. 96-04 was served upon the following party at the address shown below by mailing the same, postage prepaid, on this 10th day of December, 1997.

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



Patti K. Kodama  
Patti K. Kodama  
Secretary