

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

In the Matter of G FORCE, LLC)
dba Garden Isle Telecommunications dba)
Kauai Cablevision)
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Updating of Basic Service Rate)
(FCC Form 1230))
)

DECISION AND ORDER NO. 240
(Rate Order)

WHEREAS, the Cable Television Division, Department of Commerce and Consumer Affairs of the State of Hawaii (the "State") became certified to regulate basic cable service rates and associated charges as of May 12, 1994, and has followed regulations prescribed by the Federal Communications Commission (the "FCC"), 47 C.F.R. Part 76, Subpart N ("FCC Rules"), and by the State's Department of Commerce and Consumer Affairs, sections 16-133-40 to 53 of the Hawaii Administrative Rules (the "Department Rules"), for the regulation of the basic service tier and associated equipment, installations, services and charges; and

WHEREAS, by letter dated May 12, 1994, the State notified Kauai Cablevision (the "Company")¹ that the Company's rates for the basic service tier and associated charges for equipment and installation for its cable system were subject to regulation by the State; and

WHEREAS, pursuant to FCC's Order on Reconsideration and Rate Order, DA 98-2524, issued on December 11, 1998, the FCC established the Company's maximum permitted rates for its basic service tier at \$8.71 per month for Princeville-Hanalei, and at \$10.67 for all other areas within the franchise, effective as of May 15, 1994; and

¹By Decision and Order No. 209 issued on July 15, 1997 the State approved the transfer of the cable communications franchise held by Kauai Cablevision, L.P. to G Force, LLC. The term "Company" shall hereafter refer to G Force, LLC.

WHEREAS, the FCC also determined that the Company with fewer than 400,000 subscribers and with Kauai Cablevision's cable system serving fewer than 15,000 subscribers, is eligible for small system relief under the FCC Rules²; and

WHEREAS, under FCC Rules cable operators attempting to justify their rates through small system relief must file FCC Form 1230, which requires that the Operator Selected Per Subscriber Monthly Programming Rate Per Channel (Line A11) not exceed the Per Subscriber, Per Channel Monthly Programming Costs (Line A6); and

WHEREAS, if the maximum rate established on the FCC Form 1230 does not exceed \$1.24 per channel, the rate is presumed to be reasonable³; and

WHEREAS, once the cable operator has established rates at a level permitted by FCC Form 1230, the cable operator may increase its rates thereafter at its discretion until it reaches the maximum level permitted by the Form 1230, subject to 30 days' advance written notice to subscribers⁴; and

WHEREAS, the cable operator may, at anytime, adjust its maximum permitted rate simply by filing a new FCC Form 1230⁵; and

WHEREAS, in connection with justifying the Company's rate for the basic service tier effective as of November 4, 1998, the Company submitted its FCC Form 1230 on August 3, 1998 ("Rate Filing")⁶; and

WHEREAS, the State retained a financial consultant to assist it in the review of the Company's Rate Filing; and

² Id. at page 6.

³ Id. at page 5, and 47 C.F.R. section 76.934(h).

⁴ 47 C.F.R. section 934(h)(7).

⁵ Id.

⁶ The Rate Filing submitted for the Company's system covers Community Unit Identification HI0042 for Princeville-Hanalei, and HI0044, HI0045, HI0046, HI0047, HI0048, HI0049, HI0050, HI0051, HI0053, HI0054, HI0076, HI0077, HI0094, HI0095, and HI0098 for all other communities.

WHEREAS, on August 10, 1998, pursuant to 47 C.F.R. section 76.933(b)(2) and section 16-133-44(b) of the Department's Rules, the State issued a written order to extend the rate review period to complete its review of the Company's Rate Filing for an additional 150 days⁷, and issued an accounting order pursuant to 47 C.F.R. section 76.933(c) and section 16-233-44(c) of the Department's Rules; and

WHEREAS, section 76.934(h)(5)(i) of the FCC Rules provides that "if the maximum permitted rate established on Form 1230 does not exceed \$1.24 per channel, the rate shall be rebuttably presumed reasonable. To disallow such a rate, the franchising authority shall bear the burden of showing that the operator did not reasonably interpret and allocate its costs and expense data in deriving its annual operating expenses, its net rate base, and a reasonable rate of return"; and

WHEREAS, the Company seeks to establish a maximum combined permitted per subscriber, per channel rate for the basic service tier and cable programming service tier of \$0.89 as shown on Line A 6 of the Company's Rate Filing, and a selected per subscriber, per channel rate of \$0.56 (\$8.58 for basic service tier and \$15.37 for cable programming service tier) as shown on Line A11 of the Company's Rate Filing; and

WHEREAS, the amount shown on Line A11 is less than the amount shown on Line A6, in accordance with FCC Rules; and

WHEREAS, the Company's proposed maximum permitted rate of \$.95 per channel as shown on Line A10 is less than \$1.24, and is thus presumed reasonable under FCC Rules; and

WHEREAS, the State prepared a proposed rate order, a copy of which was provided to the Company prior to the issuance of this Rate Order;

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Company's proposed maximum combined permitted per subscriber, per channel rate of \$0.89 as shown on Line A6 of the Company's Rate Filing and its selected per subscriber, per channel rate \$0.56 (exclusive of franchise and regulatory fees and applicable taxes) as shown on Line A11 of the Company's Rate Filing, are each below \$1.24 per channel and are thus presumed reasonable under FCC Rules.
2. The Company's maximum permitted rates for installation and equipment shall be the rates set forth in Decision and Order No. 162.

⁷ By letter agreement dated December 9, 1998, the Company agreed to extend the period for the State to complete its review of the Company's Rate Filing to February 26, 1999.

3. The Company may not increase its basic service tier rate, institute charges for any other types of service, or increase its equipment or installation associated with the basic service tier, without first complying with all applicable laws or regulations including FCC Rules, regulations, and orders.

4. The Company may charge rates less than the maximum permitted rate indicated herein, as long as such rates are applied in a uniform and nondiscriminatory way, pursuant to applicable federal, state, and local laws and regulations.

5. This Rate Order is not be construed as a finding that the State has accepted as correct any specific entry, explanation or argument made by the Company not specifically addressed herein.

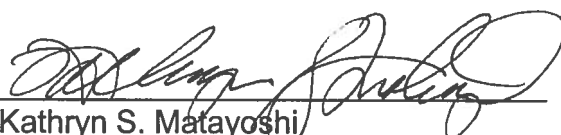
6. The State reserves all rights it has under applicable law including the right to review and to establish reasonable rates for the basic service tier and associated equipment and installation charges, in the event the State determines that the proposed rates or charges are unreasonable under applicable law, FCC rules, regulations and orders including any modifications or amendments to any such law or rules.

7. The State reserves the right to modify this Rate Order if, at any time, it determines that information the Company provided to the State is incorrect or misleading in any material manner, or that the Company is not in compliance with this Rate Order.

8. This Rate Order is issued and is effective as of the date hereof.

DATED: Honolulu, Hawaii

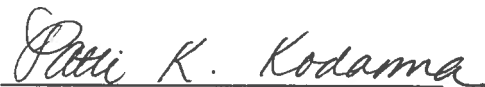
February 26, 1999.


Kathryn S. Matayoshi
Director
Commerce and Consumer Affairs
State of Hawaii

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 240 was served upon the following parties at the address shown below by mailing the same, postage prepaid, on February 26, 1999.

MR. WILLIAM B. HARKINS
G Force, LLC dba Garden Isle Telecommunications dba
Kauai Cablevision
3022 Peleke Street
Lihue, HI 96766



Patti K. Kodama
Patti K. Kodama
Secretary