

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

In the Matter of the Application)
of)
)
G FORCE, LLC dba Garden Isle)
Telecommunications for)
Garden Isle Cablevision and)
Kauai Cablevision)
)
For Renewal of Cable Franchises)
)
_____)

DECISION AND ORDER NO. 255

I. Introduction.

The State has accepted G Force, LLC's application for renewal of cable franchises known as Garden Isle Cablevision and Kauai Cablevision.¹

Garden Isle Cablevision services the following areas on the island of Kauai: census tracts 402.01, 402.02, 403, 404, 405, 406, 407, and 408. The franchise expires on December 31, 2000. Kauai Cablevision services the following areas on the island of Kauai: census tracts 401, 407, 408, 409, and parts of 402.01, 402.02 and 406. The franchise expires on August 4, 2001. Several of the service areas of the two systems overlap.

¹ See G Force, LLC dba Garden Isle Telecommunications' Application for Cable Franchise Renewal filed September 28, 1999. See also Letter dated March 13, 1998 from G Force stating its intent to seek renewal of its cable franchises for Garden Isle Cablevision and Kauai Cablevision and to request commencement of renewal proceedings as provided under section 47 U.S.C. 546, as amended; and letter dated June 2, 1998 from G Force to the State.

In connection with this renewal, the two cable systems will be consolidated into a single system with one principal headend. G Force will upgrade the cable system to two-way fiber to node architecture with a minimum bandwidth of 750 Mhz, of which 550 Mhz will be utilized for analog programming with the remaining 200 Mhz reserved for digital technologies.

As part of G Force's renewal application, G Force made certain representations or commitments. Although all representations made by G Force in connection with its renewal application are considered material by the State, some of the major representations or commitments of G Force are as follows:²

1. G Force will support public, educational and government ("PEG") access by (a) contributing an amount equal to three percent (3%) of its annual gross revenues from the cable system for PEG operating funds; (b) contributing capital funds for PEG facilities and equipment; and (c) continue to provide the current PEG access channels and to provide at least two additional channels in connection with the 750 Mhz upgrade, at no charge or cost to subscribers and the State;

2. G Force will contribute an amount equivalent to one percent (1%) of its annual gross revenues from the cable system to the Hawaii Public Television Foundation (successor to Hawaii Public Broadcasting Authority);

3. G Force will consolidate the Garden Isle and Kauai Cablevision systems into a single system with one principal headend, and will upgrade such system to a minimum bandwidth of 750 Mhz with two-way fiber to node architecture, utilizing 550 Mhz for analog programming and the remaining 200 Mhz for digital technologies; and

4. G Force will provide two-way fiber optic interconnections or connections for ten (10) INET sites within the franchise area designated by the Director and maintain and repair such interconnections or connections, all at no charge or cost to the State;

² See G Force's Application For Cable Franchise Renewal; G Force's Written Response to State's Request for Supplemental Information filed on November 17, 1999; and letter dated December 2, 1999 to William Harkins, Garden Isle Telecommunications, confirming certain representations.

5. G Force will provide high speed Internet access to all public schools, public libraries, the University of Hawaii and community colleges, and to the Kauai Civil Defense Emergency Operating Center, all at no cost or charge to subscribers and the State;³ and

6. G Force will not pass on to subscribers the costs to upgrade the cable system in its service rates, but may increase such rates for other items in accordance with applicable federal and State laws, rules, and regulations.

Pursuant to section 440G-7, Hawaii Revised Statutes, a public hearing on the renewal application was held on Tuesday, November 2, 1999, at 5:30 pm, at Wilcox Elementary School, Lihue, Kauai. Notices of the public hearing were published on October 11 and 18, 1999 in Midweek, and on October 14 and 21, 1999 in The Garden Isle. Copies of the transfer application were available for review during normal business hours at public libraries in communities within the service areas, the offices of G Force, and at the Cable Television Division, Department of Commerce and Consumer Affairs.

Prior to the submittal of G Force's renewal application, the State held two public hearings on the island of Kauai to obtain community input on ascertaining future cable-related community needs and interest as well as assessing G Force's performance under its current franchise.⁴ During October and November 1998, the State also initiated a written ascertainment survey for purposes of renewal. Interested individuals could obtain the written survey from the offices of G Force (Garden Isle Telecommunications) and Ho'ike: Kauai Community Television, Inc., and submit the completed survey to the State.⁵

³ At any time after completion of the proposed system upgrade, the Director may require G Force to provide high speed internet access to the main fire station, main police station, and the State hospital in Waimea, at no cost or charge to subscribers and the State.

⁴ The hearings were held on April 16, 1998, at 5:30 pm, at Waimea High School, and on April 17, 1998, at 5:30 pm, at Kapaa High School. Notices of the public hearings were published on March 20 and 27, 1998 in The Garden Isle.

⁵ In July 1998, the State also conducted a telephone survey of a sampling of Kauai residents (contacted 300 individuals, of which 34 participated in the survey) regarding current services provided by G Force.

II. THE LAW.

A. Federal law

The renewal of a cable franchise is made under the authority of State law and is consistent with the Cable Communications Policy Act of 1984 as amended (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 access 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.

B. State law

The regulatory powers of the Director regarding the renewal of a cable franchise are set forth in sections 440G-10, 440G-7, 440G-8, and 440G-12, Hawaii Revised Statutes, as amended ("Hawaii Cable Law").⁶

Section 440G-10, Hawaii Revised Statutes, requires the Director's approval of the cable operator's application or proposal for renewal. The application for renewal contains substantially the same information as an original application for grant of a cable franchise. Section 440G-8(b), Hawaii Revised Statutes, establishes the criteria to be considered by the Director prior to issuing a cable communications franchise, and states in pertinent part:

(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

⁶ See also section 16-133-26 et seq., Hawaii Administrative Rules (Special Procedure for Renewal Applications).

hearing, . . . or elsewhere, and any other matters as the director deems appropriate in the circumstances.

C. The Privilege of a Franchise

The grant (in this case a renewal) of a cable franchise gives the recipient a right to use and occupy public places, highways and easements that 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 issued a franchise. These include operating a system that is reliable, 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

The Director understands that G Force (and its predecessors) has extended cable service to most areas within the island of Kauai except for a few isolated and remote areas such as Mana and Kokee State Park.

G Force has agreed to extend cable service to areas with at least 25 homes per mile, at no cost of construction to subscribers. Given G Force's commitment to extend service to areas that meet the 25 homes per mile criteria, the Director at this time will not require extension of service to such areas as Mana and Kokee State Park. However, it should be noted that the Director may require the extension of service to any unserved area in accordance with section 440G-8.1(c), Hawaii Revised Statutes ("The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area.").

B. Suitability of the Applicant

G Force, a North Carolina limited liability company, acquired the cable systems formerly operated by Intermedia Partners and Rifkin & Associates in July 1997. G Force does not conduct any business other than the operation of the cable systems on Kauai. The equity members of G Force are Gordon Gray, Jr., who holds a 10% equity interest,

and The Gordon Gray 1956 Living Trust ("Gray Trust") holds the remaining 90% equity interest. G Force states that although Wachovia Bank of North Carolina, N.A. is the corporate trustee of the Gray Trust, Gordon Gray, Jr. is solely responsible for the investment decisions concerning the assets of the Gray Trust. According to G Force, Gordon Gray, Jr. in his individual capacity as president and chief executive officer, is the sole manager of G Force, and as such he has full authority to conduct the operations of G Force.

Since acquiring the cable systems from Intermedia and Rifkin & Associates, G Force has been operating under its trade name -- Garden Isle Telecommunications. Both cable systems are managed from a central location -- the former Kauai Cablevision offices in Lihue. Mr. William Harkins, former general manager of Garden Isle Cablevision, is the president of Garden Isle Telecommunications. Most of the personnel of Kauai Cablevision and Garden Isle Cablevision were retained by G Force.

C. Operational Ability of the Applicant

With the retention of former Garden Isle and Kauai Cablevision personnel, G Force has executed a smooth transition of ownership with little or no interruptions in service. As a part of the ascertainment process, input obtained from subscribers indicate that they are for the most part satisfied with G Force's customer service.

D. Technical Ability of the Applicant

G Force's proposed system upgrade includes consolidating Garden Isle and Kauai Cablevision cable infrastructure into a single system. Currently, Garden Isle has coaxial cable infrastructure with a maximum bandwidth of 330 Mhz (capable of providing 40 analog channels), and Kauai Cablevision has fiber optic infrastructure with a maximum bandwidth of 450 Mhz (capable of providing 60 analog channels).⁷ G Force's proposed system upgrade of fiber to node architecture includes providing a minimum bandwidth of 750 Mhz, of which 550 Mhz (capable of providing 75 analog channels) will be utilized for traditional video transmission with the remaining 200 Mhz for digital technologies.

In general, subscribers expressed some displeasure with the programming and quality of cable service of Garden Isle, while Kauai Cablevision subscribers were generally pleased with their cable service. Given the disparity in system capacity together with coaxial versus fiber optic infrastructure, it is not difficult to understand Garden Isle subscribers' displeasure. However, G Force's proposed system upgrade

⁷ Recent technical testing of the cable systems showed that the systems' signal quality met applicable State and federal minimum technical standards.

will eliminate such disparity. Upon completion of the upgrade, all subscribers (Garden Isle and Kauai Cablevision) will have access to the same programming, and the fiber to node architecture should enhance the signal quality for all subscribers.

G Force also proposes to introduce digital programming and other services after completion of the upgrade. Depending on the digital compression technologies used, G Force states that it could provide 8 or 16 digital channels on the spectrum used by one analog channel (6 Mhz). However, G Force stated that it will monitor technological advances and developments, and will be prepared to move quickly when such new advances and developments can be implemented to the benefit of subscribers. Given the nascent nature of digital transmission of video programming and related services, the Director will also monitor closely such technological advances and developments.

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

With respect to service rates, G Force is considered a small cable operator and system for purposes of rate regulation. As such, G Force may and has filed rate filings pursuant to Federal Communications Commission (FCC) small system relief order.⁸ This rate filing is an abbreviated form designed by the FCC to assist small cable operators and systems in establishing their maximum permitted rates.

Rising costs of cable service is a concern for all, particularly in a noncompetitive environment. As a result of the 1996 Telecommunications Act, the FCC no longer regulates the rates for the cable programming services tier or upper tier effective as of March 31, 1999. The basic service tier and associated equipment and installation charges remain regulated by local franchising authorities.

According to its financial pro forma in the Application, G Force is confident in maintaining a positive cash flow after expenses and member equity withdrawals. Moreover, G Force stated that it will not secure financing for the system upgrade, and will finance the total cost from member equity withdrawals.⁹ As such, G Force has committed that it will not pass on to subscribers the costs to upgrade the cable system. G Force estimates that the total cost to upgrade the system is approximately \$3,142,000.

⁸ See Federal Communications Commission's Sixth Report and Order and Eleventh Order on Reconsideration, MM Docket Nos. 92-266 and 93-215, FCC 95-196, and Order on Reconsideration and Rate Order, DA 98-2524 (Cable Services Bureau, rel. December 11, 1998).

⁹ E.g., according to G Force's Statement of Income and Member's Equity for the year ended December 31, 1998, \$2,650,000 was withdrawn as member equity. In response to the State's inquiry, G Force stated that said amount was set aside for the system upgrade.

When G Force applied for the transfer of the cable systems in 1997, the Gray Trust secured a loan to finance the acquisition of the systems. G Force stated the Gray Trust will make an equity investment in the cable systems equal to the cost of acquisition plus working capital, the systems will not be encumbered or burdened for any portion of the acquisition debt, and the debt liability will not be a basis for future rate increases.¹⁰ In response to the State's inquiry, G Force stated that no changes have been made to that certain Loan and Pledge Agreement between Morgan Stanley & Co. International Limited, with Morgan Stanley Co. Incorporated as agent, and the Gray Trust as borrower. Accordingly, any debt such as long-term or senior debt that encumbers or pledges the assets of the cable system shall require the Director's prior written consent.

IV. FRANCHISE AND 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 which 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, the Director's prior written consent shall be required for any change in control of G Force as provided in the attached terms and conditions, and as provided by applicable law.

B. Upgrade A key consideration in the State's review of cable franchises in Hawaii is to assure that they are technically capable of meeting the existing and future needs and desires of the communities they serve.

As noted above, G Force proposes to consolidate the two cable systems into a single system with one principal headend, implement two-way fiber to node architecture with a minimum bandwidth of 750 Mhz (minimum of 75 analog channels), with headroom for digital technologies. According to G Force, it is already in the planning and design stage, and construction of the trunkline will be primarily replacing the coaxial trunkline of Garden Isle Cablevision with fiber and overlashing of additional fiber to Kauai Cablevision's existing fiber trunkline, all of which will cover approximately 51.67 miles.

There are certain areas such as Lihue and Kapaa where both Garden Isle and Kauai Cablevision have cable infrastructure in place due to overlapping service areas. Although G Force estimated that it would take approximately 2 years to complete the

¹⁰ See Decision and Order Nos. 208 and 209. The State will hold G Force to its commitment that any debt liability will not be a basis for future rate increases.

upgrade for both systems (one year for Garden Isle and one year for Kauai Cablevision), a 22 month time line for completion is reasonable given the overlapping service areas and scope of the work described.

In connection with G Force's 750 Mhz upgrade, G Force will be required to provide capacity and access for cable subscribers to the State's INET, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available in the future. Although the manner in which subscriber access will be provided is presently uncertain, the State's objective of receiving capacity and access to an advanced telecommunications infrastructure through G Force's upgraded cable system is advanced by allowing subscriber access to the State's INET.

The Director, in general, accepts G Force's proposal to increase channel capacity of its cable system, and will require G Force to complete the proposed upgrade by June 30, 2002, and submit its construction plan for review and approval by October 31, 2000. It is noted that the Director, after completion of the 750 Mhz upgrade, may address the need for and may require G Force to complete additional upgrades of the cable system. It is contemplated that any future upgrade that may be required by the Director will be first discussed with G Force. At that time, the Director may also review public, educational, and government access, INET interconnect requirements, new technologies and services, and any other matter related to the cable system and franchise areas.

C. Public, Educational, and Governmental Access PEG access has been and continues to be an important issue for the State. In establishing PEG access in Hawaii, the State viewed it as a means for cable subscribers to receive informational and educational programming that in general reflect the communities in which they reside. The Director notes, however, that funding for PEG access via cable companies' contributions should not be viewed as entitlement. Rather, PEG access entities and organizations should be developing short and long term alternative funding strategies.

The Director has, through the requirements of this Order, balanced the need for access resources expressed by the community and the current economic and financial crises confronting the State and private sectors.

The Director accepts G Force's proposal to contribute an amount equal to 3% of annual gross revenues from its cable system for PEG access operating funds. Contributions of capital funds for PEG facilities and equipment, as accepted by G Force, are set forth in the attached terms and conditions. It is noted that capital fund contributions provided by this Order should be more than sufficient for Ho'ike: Kauai Community Television, Inc., the PEG access entity in Kauai, to transition the playback functions for channels 12 and 13 from Kauai Community College to Ho'ike, upgrade government production equipment, obtain additional captioning equipment, and replace

old equipment over the next three to four years.¹¹ There is a reopening period during which Hoi'ke and G Force will be able to review and agree upon subsequent capital fund contributions taking into account any technological advances or developments relative to communities' needs and interest.¹²

The Director will establish a planning process for Kauai County in bringing together interested parties to create and implement a coordinated plan for access activities which make the most effective use of available and limited resources. Specific concerns with respect to equipment and facilities, channel time, and other matters will be addressed in the development of such plan. Notwithstanding the generality of the foregoing sentence, two-way capability for live cablecasting of government meetings such as government access, e.g., county council and county agency meetings or hearings and State government and legislative hearings or meetings shall be addressed in the plan. According to G Force, it has installed fiber optic cabling connecting government buildings, and live cable casting of county government hearings or meetings can be implemented via Ho'ike.¹³ The cost to implement and maintain live cablecasting of government hearings and meetings (e.g., necessary user electronic equipment) shall be borne by Kauai County and the PEG access entity or entities. G Force shall provide technical assistance and other non-monetary assistance when requested by the PEG access entity or the Director.

The Director notes that location of current PEG access channels on G Force's Garden Isle and Kauai Cablevision systems are: Education access on channel 10; Public access on channel 12; and Government access on channel 13. As such, subscribers are not confused with differing channel locations for the two systems.

With the completion of the system upgrade, the current location of the PEG channels should be maintained. The Director notes that cable operators are required to

¹¹ According to Ho'ike, playback and programming functions – institutional programming -- for channel 10 (educational channel) will remain primarily with Kauai Community College. The signal for channel 10 will be sent from Kauai Community College to Ho'ike, and Ho'ike will then be responsible for sending all three PEG access channels to G Force's cable system headend. Ho'ike states that this arrangement will allow it to insert local educational programming on channel 10 in available time slots.

¹² See Section 4.5(b) of attached terms and conditions.

¹³ G Force stated previously that live broadcast capability over designated channel(s) originating from Kauai Civil Defense Emergency Operating Center (KCD EOC) can be accommodated through the recently installed INET, which is able to connect KCD EOC directly to the PEG access channels. KCD EOC will need video camera(s) and other equipment as an override switch to allow live broadcast on any PEG access channels. See Decision and Order Nos. 208 and 209.

place, among other programming, PEG access channels within the cable operators' lowest tier of service or basic service tier for purposes of rate regulation.¹⁴ The Director understands that actual placement of such channels within the basic service tier lies with the cable operator. However, to avoid subscriber confusion it would not be unreasonable for G Force to place all PEG channels contiguously by maintaining the same location for PEG channels and adding the two channels described below. This would provide consistency and eliminate subscriber confusion as to PEG access programming within Kauai County.

As mentioned above, G Force shall provide at no cost to subscribers at least two additional educational access channels on its upgraded cable system. This should be sufficient to accommodate expanded educational programming for the next several years. G Force, at the request of the Director, shall provide the additional channels as the system upgrades progress. In other words, as additional channels become available on a node-by-node basis in connection with the system upgrades, G Force shall reserve two of the newly available channels for educational access purposes for activation at the request of the Director.

The Director has designated Ho'ike: Kauai Community Television, Inc., a Hawaii nonprofit corporation, as the access entity for the management of PEG access resources for Kauai County. Its board members are appointed by the Director and the cable company(s) providing service within Kauai. Prior to the acquisition of the cable systems by G Force, Garden Isle Cablevision and Kauai Cablevision were under separate ownership, and each appointed two board members. However, because G Force is currently the only franchised cable operator serving Kauai, it should have two representatives, and not four, on the board of Ho'ike. The Director understands that G Force currently has four board appointments, but G Force has agreed to not fill two seats each of which will expire on December 31, 2000 and December 31, 2001, respectively. Thus, after December 31, 2001, the board composition should include a total of nine members -- seven members appointed by the Director and two members appointed by G Force.

D. Public Broadcasting The continued viability of public broadcasting is in the public interest. The Hawaii Public Television Foundation, successor to Hawaii Broadcasting Authority, provides educational, informative, and entertaining programming that is a valuable public resource for the people of the State of Hawaii. The Director accepts G Force's commitment to contribute an amount equal to one percent (1%) of its system's annual gross revenues to Hawaii Public Television Foundation.

¹⁴ 47 U.S.C. section 543 (b)(7)(A).

E. Institutional Network G Force is committed to continuing to support the State's INET. G Force has reaffirmed its commitment to provide two-way fiber optic institutional network interconnections or connections as may be required by the Director. G Force shall maintain and repair the fiber optic lines at no charge or cost to the State, and replace the same at G Force's actual cost of labor and materials.

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. Thus, except as provided in this Decision and Order, payment or reimbursement to G Force for its actual cost of labor and materials for INET interconnections or connections will be the sole responsibility of the requesting agency, department, or other governmental entity.

According to G Force, it has installed fiber optic cabling connecting the following government sites: State Building, Judiciary Building, Kauai County Building, Kauai Community College, Civic Center, and Ho'ike: Kauai Community Television, Inc. Coordination among the various agencies is necessary to activate the INET connections. Accordingly, the above described access plan shall include steps to implement and activate these and all other INET interconnections or connections set forth in this Decision and Order.

G Force has agreed to provide, at the request of the Director, two-way fiber INET interconnections or connections to West Kauai Visitor & Technology Center, and to the main fire station, main police station, the State hospital in Waimea, public schools and libraries, all at no additional cost to subscribers and the State. G Force shall maintain and repair the fiber optic lines at no charge or cost, and will replace the same at G Force's actual cost of labor and materials, which cost will be the responsibility of the affected government agency or agencies.

In addition, G Force, at the request of the Director, shall provide over the term of the franchise two-way fiber optic interconnections or connections to ten (10) additional sites to be determined by the Director all at no cost or charge to the State or subscribers. G Force shall maintain and repair the fiber optic lines at no charge or cost, and will replace the same at G Force's actual cost of labor and materials, which cost will be the responsibility of the affected government agency or agencies.

G Force has also agreed to provide, at the request of the Director, high-speed cable Internet service to all public schools, public libraries, the University of Hawaii and community colleges, and to the Kauai Civil Defense Emergency Operating Center, all at no cost or charge to subscribers and the State. At any time after completion of the proposed system upgrade, the Director may require G Force to provide high speed internet access to the main fire station, main police station, and the State hospital in Waimea, at no cost or charge to subscribers and the State.

F. Interconnection with Hawaii Interactive Television G Force shall provide and maintain a fiber or an agreed upon interface with the Hawaii Interactive Television System (HITS) at no charge or cost to the State.

G. Consolidation of Garden Isle and Kauai Cablevision Franchises With the completion of the proposed system upgrade, all subscribers will have services available from one cable system with a single principal headend. The Director understands that for all intents and purposes Garden Isle Cablevision and Kauai Cablevision will no longer exist. Accordingly, upon completion of the 750 Mhz upgrade, G Force, LLC dba Garden Isle Telecommunications shall be the holder of the cable franchise for the service areas of the former Garden Isle Cablevision and Kauai Cablevision.

H. Extension of Franchise Term In connection with its renewal application, G Force has requested that the franchise term be renewed for an additional 15 years. Although G Force has made significant commitments, the Director believes that a 10 year renewal term is in the public interest. Accordingly, the franchise term for the cable system will be initially renewed for seven (7) years to December 31, 2008, and will be extended to December 31, 2011 upon satisfactory completion of the 750 Mhz upgrade by June 30, 2002. However, if G Force does not satisfactorily complete the 750 Mhz upgrade by June 30, 2002, the franchise shall expire on December 31, 2008, and the Director, in addition to other rights and remedies available to the Director under applicable law or as provided in this Order, shall have the right to impose any term or condition deemed necessary or appropriate to serve or protect the public interest.

I. Developing Technologies Notwithstanding anything to the contrary, the Director, at any time after completion of the 750 Mhz system upgrade, may address the communities' need for additional upgrades relative to advanced services such as digital programming and related matters. In connection therewith, the Director may also review public, educational, and government access, INET interconnect or connect requirements, new technologies and services, and any other matter related to the cable system and franchise areas. The Director may impose additional or new terms and conditions, and may extend the term of the franchise for any number of years as the Director deems just and reasonable, taking into consideration including, but not limited to the cost of meeting such new terms and conditions.

J. Financial Information Financial information regarding the condition of the cable company, financial reports, and franchise fee payments are required to be submitted to the Director pursuant to administrative rules and franchise orders. In order to provide for a streamlined and consolidated approach to such financial reporting, the Director reserves the right to require financial information in form and schedule to be submitted by G Force. G Force shall work cooperatively with the Director and the Director's staff on this matter. Until such time as directed by the Director, G Force shall

continue to submit the financial information as required by administrative rule and franchise orders.

K. Late Fee The Department is concerned about notice and imposition of a late fee for subscribers' delinquent payment for cable services, particularly when services are billed in advance. We understand that advanced billing for monthly cable services is an industry practice not prohibited by the Federal Communications Commission. However, sufficient notice and adequate time before a late fee is assessed are both fair and reasonable to subscribers and the cable operator.

G Force has agreed to implement a new procedure, described below, that will provide subscribers with prior notice of the imposition of a late fee for delinquent payment.

Billing Period 1. Subscriber's bill for Billing Period 1 is generated.

Billing Period 2. If the subscriber has not paid his/her bill for Billing Period 1 by the date that G Force prints the bill for Billing Period 2, the Billing Period 2 bill shall include a notice to the subscriber stating that a late fee will be charged if the Billing Period 1 bill is not paid in full by the date that the Billing Period 3 bill is generated. This notice shall also specify the amount of the late fee.

Billing Period 3. If G Force has not received the subscriber's payment for Billing Period 1 by the date that G Force prints the subscriber's bill for Billing Period 3, G Force may include the Billing Period 1 late fee assessment on the subscriber's bill for Billing Period 3.

The above-procedure is an excellent start in resolving this concern, and commend G Force on its efforts to that end. Accordingly, G Force shall implement the above late fee procedure for all of its cable system no later than December 31, 2000. The Director reserves the right to revisit this matter in the event subscriber complaints regarding this new procedure are received by the Director or the Cable Television Division.

L. Franchise Fee Calculation G Force has implemented a procedure that reflects franchise fee assessment as a percentage of a subscriber's monthly subscription for cable and other services.¹⁵ For example, if a subscriber's monthly bill

¹⁵ Franchise fees include the State's annual fee pursuant to the Department rules, and PEG access operating and Hawaii Public Television Foundation fees pursuant to franchise orders. Presently, the total annual franchise fee assessed to G Force is an amount equal to approximately 4.6% of G Force's annual gross revenues as such term is currently defined.

for services (excluding taxes and fees) is \$9.00, the franchise fee will be based on that amount – total franchise fee assessment (4.6%) x monthly bill for service (\$9.00) = franchise fee collected from subscriber (\$0.41). This procedure is or will be consistent with other franchised cable operators' procedures in the State.

M. Discount for Senior Citizens Under 47 U.S.C. § 543(e)(1), cable operators may offer reasonable discounts for cable service to senior citizens. G Force has agreed, and by December 31, 2000, shall implement reasonable discounts for bulk customers serving senior citizens, such as retirement communities and long term care facilities.

In the interim, by December 31, 2000, G Force shall submit a report to the Director regarding the feasibility of implementing senior citizen cable service discounts for individual (non-bulk) cable subscribers and the amount of any such discount.

V. CONCLUSION.

Based on the information presented in the application and materials submitted in connection therewith, and the evaluation of this information, the Director concludes that it is in the public interest to approve G Force's application for renewal of cable franchise.

The Director has considered comments from interested persons regarding future cable-related community needs and interests, and G Force's performance under its current franchise. In general, G Force has performed satisfactorily its franchise obligations, and its commitments described hereinabove address most of the identified cable-related community needs and interests to the extent currently foreseeable. However, given the nascent nature of digital technology relative to cable it would be in the public interest to review communities' need for such technology and related services including, but not limited to PEG access, at any time after completion of G Force's proposed 750 Mhz system upgrade. Any changes or modification to terms and conditions of the franchise may be addressed by the Director at such time.

VI. ORDER.

NOW, THEREFORE, the application for renewal of cable franchise held by G Force, LLC dba Garden Isle Telecommunications is hereby APPROVED, subject however, to terms and conditions set forth in this Order, and to the terms and conditions attached hereto and made a part hereof. For purposes of this renewal, the franchises and service areas of Garden Isle Cablevision and Kauai Cablevision are hereby consolidated into a single franchise for the service areas set forth in this Order.

All terms and conditions pertaining to G Force's cable franchise and cable system are contained in this Order. Unless otherwise provided in this Order, all prior decision and orders relating to said cable franchises and cable systems are hereby superseded by this Order.

DATED: Honolulu, Hawaii, August 30, 2000.


KATHRYN S. MATAYOSHI
Director of Commerce and Consumer Affairs

TERMS AND CONDITIONS OF ORDER NO. 255

Section One Definitions

For purposes of these terms and conditions of this Order, 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 Cablecast Day" means a day or part thereof during which an Access Channel is available for PEG use.

"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 (a) channel capacity designated for public, educational, or governmental use; and (b) facilities and equipment for the use of such channel capacity.

"Access Operating Fee" means the yearly fee to be paid by G Force to the Director or Director's designee for public, educational, or governmental uses pursuant to section 4.2 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 required to be paid by G Force 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 G Force to all of its Subscribers which includes, at a minimum, 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 Drop" means the cable from the feeder line to the Subscriber's premises.

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

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

"Channel" means a minimum of six megahertz (6 Mhz) in the electromagnetic spectrum which is capable of carrying any type of transmission which G Force 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.

"Director of Civil Defense" means the Director of Civil Defense of the State of Hawaii.

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

"Emergency Authority" means the Director of Civil Defense, County of Kauai, Deputy Director of Civil Defense, 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, as said statute may from time to time be amended.

"G Force" means G Force, LLC, a North Carolina limited liability company, dba Garden Isle Telecommunications.

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

"Gross Revenue" subject to applicable federal and State law, as the same may be amended from time to time, includes for the purpose of calculating the Access Operating Fee and HPBA Fee, revenue from charges billed for and collected from Subscribers. Such charges shall include customer billings and collections for entertainment and nonentertainment services, installation, connection, reconnection and reinstatement of equipment necessary for the utilization of the Cable System. "Gross Revenue" shall exclude revenue from charges and collections for nonsubscription or nonsubscriber related sources such as advertising sales, home shopping commissions, franchise fees passed through to Subscribers, and uncollected debt except that once such debt is subsequently collected it shall be included as part of Gross Revenue.

"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.

"Order" means Decision and Order No. 255 issued by the Director of Commerce and Consumer Affairs on August 30, 2000, including all terms and conditions and exhibits.

"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 said statute may from time to time be amended.

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

"Service Area" means those areas described in section 2.2 hereof.

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

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

"System" sometimes collectively referred to as the former Garden Isle Cablevision and Kauai Cablevision cable systems, and shall the same meaning as the term "Cable System" is defined hereinabove.

Section Two Grant of Franchise

2.1 Franchise Term

(a) The term of the franchise for the System shall be initially renewed for a period of seven (7) years from December 31, 2001 to December 31, 2008, unless extended as provided in paragraph (b) below, or unless terminated as provided in section 3(d) or 10 hereof or by applicable law.

(b) The term of the franchise shall be extended for an additional three (3) years only upon satisfactory completion of the 750 Mhz Upgrade described in section 3.1 hereof, in which case the term of the franchise shall expire on December 31, 2011 unless terminated sooner as provided in section 3(d) or 10 hereof or by applicable law.

2.2 Service Area

The franchise shall cover the island of Kauai including census tracts 401, 402.01, 402.02, 403, 404, 405, 406, 407, 408, and 409.

2.3 Consideration

(a) In consideration of the award of the franchise granted herein which permits G Force to use and occupy Public Places and Public Highways to operate a Cable System, G Force shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as the same may be amended from time to time, pay all monies and fees specified herein, and provide all Channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other provision to the contrary, the total amount of Franchise Fees paid in a calendar year, including the Annual Fee for any calendar year, the annual Access Operating Fee, and the HPBA Fee, shall not exceed five percent (5%) of the System annual Gross Revenues or the maximum amount permitted by applicable provisions of federal or State law, as said law or laws may be amended throughout the term of the franchise.

2.4 Audit

The Director may require G Force to submit to an audit by the Director's accountant or auditor for purposes of reviewing G Force's annual Gross Revenues and payment of Franchise Fees, cross-subsidization between cable and non-cable service, and other matters. G Force shall be responsible for any and all underpayment of Franchise Fees during G Force's operation of the 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.

2.5 Ownership of Facilities and Plant

(a) G Force shall maintain legal and equitable title to the present System and all future additions to the System; provided, however, that G Force may lease or permit the use of a portion of the System to a third party or lease a portion of the same from a third party, upon the prior written approval of the Director. Such approval shall not be required with respect to any Channels required to be leased pursuant to the Cable Act.

(b) The Director shall grant such approval if (1) the proposed lease or permitted use will result in savings to Subscribers; (2) the arrangement does not result in a loss of G Force's control of its distribution facilities; and (3) the Director is convinced that it is in the public interest to approve the proposed lease or permitted use. The Director shall make such determination in the Director's sole discretion.

2.6 Antitrust

(a) This Order shall not be construed as exempting G Force and any affiliated or controlling entities from any antitrust law.

(b) This Order does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

2.7 HPBA Fee

(a) For each and every year of the franchise, G Force shall pay to the Hawaii Public Broadcasting Authority or its designee as approved by the Director an amount equal to one percent (1%) of the System annual Gross Revenues ("HPBA Fee"). The HPBA Fee may be used for operation and management, and for repair, maintenance, purchase or other acquisition of facilities and equipment.

(b) The HPBA Fee shall be paid annually on January 31, and G Force's annual Gross Revenues for the preceding calendar year shall be used to calculate the HPBA Fee.

(c) Effective January 1, 2001, G Force shall submit the HPBA Fee directly to the Hawaii Public Television Foundation, the successor to the Hawaii Public Broadcasting Authority.

(d) In connection with the HPBA Fee required to be paid by G Force under this section 2.7, G Force shall submit to the Director verified copies of all such payments and other supporting documentation as may be requested by the Director.

Section Three System Upgrades

3.1 750 Mhz System Upgrade

(a) By June 30, 2002, G Force shall construct, reconstruct, rebuild, reconfigure, and/or upgrade the System to a minimum bandwidth of 750 Mhz plus digital capability, and provide a minimum of 75 activated Channels. For purposes of this Order, this upgrade shall be referred to as the "750 Mhz Upgrade."

(b) G Force shall provide capacity for and access through its Cable System for Subscribers to the State's institutional network described in section 5 hereof, to the extent that two-way broadband multimedia, video, voice, and data capabilities are available pursuant to the 750 Mhz Upgrade described herein.

(c) No later than October 31, 2000, G Force shall submit to the Director for approval a financial plan with detailed cost estimates, a detailed engineering plan, a proposed schedule for construction of the 750 Mhz Upgrade including the incremental deployment of fiber to node architecture in a manner that will allow network sites to be connected easily and economically to the State's INET and activation of the completed portions of the upgraded system to specific communities or areas, the interconnection of cable systems within Kauai County, and such other information as the Director deems necessary.

(d) In the event the 750 Mhz Upgrade is not satisfactorily completed by June 30, 2002, the franchise shall expire on December 31, 2008 unless terminated sooner as provided in section 10 hereof or by applicable law. The Director, in addition to all other rights and remedies the Director may have as provided by law or as provided by this Order, shall have the right to impose any term and condition deemed necessary or appropriate to serve or protect the public interest.

3.2 Further System Upgrades

At any time after completion of the 750 Mhz upgrade as described in section 3.1 hereof, to the extent commercially and technologically reasonable, the Director may address the need for additional upgrades and may require G Force to complete additional system upgrades as determined by the Director. In connection therewith, the Director may review other matters relating to the System including, but not limited to, public, educational, and governmental access requirements under section 4 hereof, institutional network and interconnect requirements under section 5 hereof, and provision of new technologies and services.

Section Four

Public, Educational and Governmental Access

4.1 Access Plan and Implementation

G Force shall work cooperatively with the access entity or entities, which shall be designated by the Director for the management, operation and use of public, educational, and governmental access facilities and equipment for the County of Kauai. G Force shall also work cooperatively with the designated access entity or entities, the Director's staff, and others designated by the Director to develop a coordinated plan for the use of public, educational, and governmental access resources and facilities and equipment for the County of Kauai ("Access Plan"). The Access Plan shall at a minimum address the following:

- (a) Resources available in the County of Kauai for access use;
- (b) User needs and interest including two-way live cablecasting of government access programming to provide access to and participation in government hearings and meetings;
- (c) Models for providing public, educational and governmental access;
- (d) Management of access facilities and equipment, including the need for additional access channels, and the provision of facilities and equipment for the production of programming, including local origination programming;
- (d) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (Hawaii Wide Area Integrated Information Access Network) and any other interconnects;
- (e) Coordination of access with the Institutional Network as described in section 5 hereof; and
- (f) Funding requirements for public, education and government access including long and short term alternative financial strategies.

G Force, in coordination with the designated access entity or entities, shall prepare and submit the Access Plan to the Director for review and approval by January 31, 2001 or at such other date as the Director may designate. Any and all costs associated with the preparation of the Access Plan including the cost of consultant services shall be the sole responsibility of the designated access entity or entities. Implementation of the Access Plan shall be at the direction of the Director.

4.2 Access Operating Fee

- (a) During each and every year of the term of the franchise, G Force shall pay to an account designated by the Director or the Director's designee an amount equivalent to three percent (3%) of G Force's annual Gross Revenues from the System.

These payments shall be used for public, educational, and governmental access ("PEG 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) Commencing January 1, 2001, the Access Operating Fee shall be due on January 31, 2001, and for each subsequent year during the term of the franchise the Access Operating Fee shall be payable on the 31st day of January. Beginning with G Force's payment due on January 31, 2001, G Force's annual Gross Revenues for the preceding calendar year shall be used to calculate the annual Access Operating Fee.

(c) In connection with Access Operating Fees required to be paid by G Force under this section 4.2, G Force 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 Director may reconsider the amount of the Access Operating Fee at any time.

4.3 Access Channels

(a) G Force shall designate and make available to the Director or the Director's designee a total of three (3) full-time activated Access Channels for public, educational, and governmental access over the System.

(b) At the direction of the Director, G Force shall designate and reserve for activation to the Director or the Director's designee, at least two (2) additional full-time Educational Access Channels or as otherwise designated by the Director, as the system 750 Mhz upgrade progresses. In other words, as additional channels become available on a node-by-node basis in connection with the system upgrade, G Force shall reserve two of the newly available channels for Educational Access purposes for activation at the request of the Director.

(c) All Access Channels shall be made available by G Force at no cost to the State.

(d) All Access Channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all Subscribers on G Force's basic service tier or the most widely available service tier.

(e) G Force may use the two (2) additional Access Channels required to be made available under paragraph (b) above until such time as the Director or the Director's designee gives sixty (60) days prior written notice to G Force that an Access Channel or portion thereof shall be made available. G Force's use of any Access Channel after it has received such notice from the Director or the Director's designee shall be subject to the fallow time provisions in section 4.4 hereof.

(f) The Director or Director's designee shall allocate Access Channels or portions thereof among Public Access Channels, Educational Access Channels and Government Access Channels; provided that allocations made with respect to public access shall comply with applicable law.

(g) KHET or any successor broadcast television channel operated by the Hawaii Public Broadcasting Authority or its successor shall not be deemed an Access Channel and shall not be counted or included among the Channels required by paragraphs (a) and (b) hereof.

4.4 Fallow Time on Access Channels

(a) G Force shall be permitted to use time on one or more Access Channels whenever there are no Channels otherwise available on its system whether or not activated and whenever such Access Channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by G Force; provided that any use of such Access Channel(s) by G Force shall at all times be subordinate to designated access use and shall terminate or be preempted by access programming scheduled at least 72 hours in advance.

(b) 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.

(c) Notwithstanding paragraphs (a) and (b) above, at such time as any Access Channel has been programmed for a daily average of eight (8) hours or fifty percent (50%) of the hours of Access Cablecast Days, whichever is less, during any 90 day period, use of such Channel by G Force shall be suspended for such time as such minimum access use of the Channel is maintained. The provision of this paragraph (c) may be waived by the Director for good cause.

4.5 Facilities and Equipment

(a) For the years ending December 31, 1999 through December 31, 2002, G Force shall contribute to an account designated by the Director or the Director's designee capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1999	\$55,102.00
December 31, 2000	\$39,807.00
December 31, 2001	\$27,000.00
December 31, 2002	\$27,000.00

For capital contributions in the total amount of \$55,102.00 for year ending December 31, 1999, G Force shall make the contributions as follows:

\$24,102.00 on December 31, 1999;
\$15,500.00 on September 30, 2000; and
\$15,500.00 on October 31, 2000.

(b) By April 30, 2002, G Force, in consultation with the designated access entity or entities, shall submit to the Director a schedule for the payment of capital for public, educational, and governmental access facilities and equipment for year ending 2003 and each year thereafter for the remaining term of the franchise. The Director, in the Director's sole discretion, may approve, deny, or modify the payment schedule.

(c) Unless authorized by the Director in writing, no PEG capital provided pursuant to this section 4.5 shall be credited to or commingled with the Access Operating Fee, and no Access Operating Fee shall be credited to or commingled with PEG capital.

(d) Any transfer of the System shall require the payment to the Director or the Director's designee of the outstanding PEG capital funds for public, educational, and governmental access required to be provided in this section 4.5 before the effective date of the transfer.

(e) The capital funds for the provision of facilities and equipment required to be provided by G Force under this section 4.5 shall be deemed to be capital contributions to the extent permitted under section 622(g)(2)(c) of the Cable Act.

4.6 Access Organization

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

4.7 Termination of Access Payments

(a) G Force may suspend making payments under sections 4.2 and 4.5 hereof if any of the following events occur, provided that the Director is convinced of the occurrence of any such event:

- (1) A minimum of seventy-five percent (75%) of the current number of original hours of access programming is not produced; or
- (2) Such payments are used for non-access purposes.

(b) G Force's obligation to make such payments shall be reinstated at such time as the event causing the suspension is cured or rectified.

4.8 Interconnection for Access Purposes

(a) G Force shall effect interconnections with other cable systems within Kauai County in accordance with a schedule and in a manner determined by the Director. Within six (6) months after the request of the Director, G Force shall submit to the Director for approval the construction plan and schedule. G Force shall work cooperatively with the Director's staff and others designated by the Director in developing a construction plan and schedule for the required interconnections.

(b) The cost of the interconnections to be constructed shall be allocated among each cable franchise within Kauai County. For costs of construction allocated to the areas served by the System, G Force shall receive a credit for its actual cost of labor and materials to be applied against its requirement to pay the Access Operating Fee described in section 4.2 hereof or PEG capital funds described in section 4.5 hereof. The taking of any credit by G Force shall require the Director's prior approval. G Force shall provide documentation sufficient to verify the construction cost as requested by the Director.

4.9 Reopening of Access Requirements.

The Director, at any time during the term of the franchise, may commence informal or formal proceedings for the purpose of addressing future public, educational, and governmental access, and cable-related community needs and interests, and the Director may take any action the Director deems necessary or appropriate.

4.10 Reporting Requirements

To the extent local origination and access programming are provided by G Force, by April 30 of each year G Force shall submit to the Director a report of the System local origination expenses and a report for access programming expenses for the previous calendar year.

Section Five Networks

5.1 Institutional Networks

(a) Within six (6) months of a request by the Director, G Force shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the System and the following government sites all at no cost or charge to the State or Subscribers, provided that the sites at which G Force shall install the fiber optic lines have the necessary infrastructure and rights of way to receive the fibers and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof:

Kauai Main Police Station
Kauai Main Fire Station
Public Libraries
State Hospital in Waimea
Kauai County Building
State Building
Judiciary Building
Kauai Community College
Ho'ike: Kauai Community Television
West Kauai Visitor and Technology Center

In addition to the above identified sites, G Force, at the request of the Director, shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities, interconnecting network sites between the System and ten (10) additional sites to be determined by the Director all at no cost or charge to the State or Subscribers over the term of the franchise.

G Force shall maintain and repair the fiber optic lines up to the termination points of each network site at no charge or cost to the State or Subscribers, and shall replace any such fiber optic lines at G Force's actual cost of labor and materials which costs shall be borne solely by the connected government agency or agencies.

In the event G Force's access to conduits is not obtainable for interconnecting any of the sites, G Force shall immediately apprise the Director in writing of the situation or circumstances. At the request of the Director, G Force shall work cooperatively with the government agency or agencies affected and others designated by the Director, and shall develop and submit a plan for any such interconnection including, but not limited to, construction timetable and costs within 60 days after receipt of Director's request. In order to defray the cost of such construction for the requesting government agency or agencies, G Force agrees, at no cost to subscribers, to contribute an amount to be determined by G Force and the Director.

(b) At the direction of the Director, G Force shall provide high-speed cable Internet service to all public schools, public libraries, the University of Hawaii and community colleges, and to the Kauai Civil Defense Emergency Operating Center, all at no cost or charge to subscribers and the State. At any time after completion of the proposed system upgrade, the Director may require G Force to provide high speed internet access to the main fire station, main police station, and State hospital in Waimea, at no cost or charge to subscribers and the State.

(c) At the direction of the Director, G Force shall interconnect all schools and libraries within the Service Area to its System and provide a cable drop and basic service all at no cost or charge to the State or Subscribers. G Force shall maintain and repair the fiber optic lines up to the termination points of each site at no charge or cost to schools or libraries, and shall replace any such fiber optic lines at G Force's actual cost of labor and materials which costs shall be borne solely by the connected school or library.

(d) Within six months of a request by the Director, G Force shall install fiber optic lines, materials, and electronics for two-way broadband video, voice, and data capabilities interconnecting network sites as determined by the Director at G Force's actual cost of labor and materials; provided that the sites at which G Force shall install fiber optic cables have the necessary infrastructure and rights of way to receive the fibers.

(1) When requesting such interconnections, the State will be cognizant of G Force's scheduling, manpower, and resource limitations.

(2) G Force shall repair and maintain, but not replace, the fiber optic lines installed under this paragraph (d) up to the termination points of each network site at no charge or cost to the State or Subscribers. G Force shall replace any such fiber optic lines at G Force's actual cost of labor and materials.

The requesting agency, department or other governmental entity shall be solely responsible for reimbursing G Force its actual cost of labor and materials for interconnections installed and replaced under this paragraph (d). Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as may be required, and approval by the Director, the requesting agency, department or governmental entity shall promptly reimburse G Force for the costs of such interconnections, which shall include the cost of materials utilized including applicable taxes and shipping charges, cost of labor including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; rental value of equipment and machinery; and a diagram showing the fiber optic route and terminating points.

(e) All interconnections shall be two-way via fiber optic lines and capable of carrying broadband multimedia, data, voice, and video, and shall be implemented in accordance with the use of capacity as provided in section 3.1 hereof.

(f) G Force shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(g) G Force may construct the institutional networks required under this section 5.1 in a manner it deems appropriate, consistent with the provisions hereof. G Force may utilize contractors to construct or maintain all or any portion of such institutional networks, including without limitation other cable operators.

(h) Upon written request by G Force, the Director may grant an extension for the installation of the interconnections required under this section 5.1 for good cause.

5.2 Emergency Override System

(a) G Force shall configure and maintain the System to permit emergency authorities to override, simultaneously by remote control, all audio and video signals on all Channels. Emergency authorities shall include the County of Kauai Administrator of Civil Defense. The emergency authorities shall have the sole discretion to determine when to activate the emergency override system.

(b) The Emergency Override System shall provide for activation from emergency operation centers for both voice and video messages.

(c) The video display during emergency voice messages may be State, Civil Defense, or other appropriate official emblems as designated by the emergency authorities.

(d) G Force shall purchase an Emergency Broadcast System receiver of the same type or its equivalent that radio broadcast stations are required by the Federal Communications Commission to purchase.

(e) G Force shall provide a Cable Drop and Basic Service at no cost or charge to the emergency operating center within its franchise area.

(f) G Force shall cooperate fully with the emergency authorities in the planning and implementation of the Emergency Override System, and shall at all times comply with all applicable laws and regulations.

5.3 Interconnection with Hawaii Interactive Television System (HITS)

G Force shall support and provide carriage of the Hawaii Interactive Television System (HITS) programming on the System at no cost or charge to the State. G Force shall provide and maintain a direct interconnect with the Hawaii Interactive Television System (HITS) at points to be designated by the Director at no charge or cost to the State or Subscribers.

5.4 Non-Franchise Fee/Capital Contribution

The items and services required to be provided under section 5 hereof at no charge or cost to the State and Subscribers shall not be deemed to be franchise fees under section 622(g) or capital contributions under section 622(g)(2)(C) of the Cable Act.

**Section Six
Programming Services**

6.1 Mix, Quality, and Level of Service

G Force shall not alter its current mix, quality, and level of programming services for its System basic service tier or most widely available service tier without first obtaining the prior approval of the Director, which approval shall not be unreasonably withheld.

6.2 Broad Categories of Programming

(a) Subject to availability, G Force shall carry programming in each of the following broad categories on its basic service or most widely available service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public nonprofit stations with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) No changes may be made by G Force in broad categories of video programming without the prior approval of the Director.

(c) G Force shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

Section Seven Management

7.1 Books and Records

G Force shall maintain at its local office(s) 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(s) shall, upon request, be made available locally within five (5) working days.

7.2 Tariff

G Force will amend its schedule of service rates and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, as amended, at least 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. Notwithstanding the generality of the foregoing sentences, G Force shall submit a fully revised tariff for the operation and management of the System upon completion of the 750 Mhz Upgrade, and when necessary or required to submit updated tariffs for rates and other matters following activation of the upgraded system.

7.3 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, G Force shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that G Force proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, G Force shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that G Force proposes to take with respect to the violation.

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

7.4 Other Reports

In addition to the reports required to be submitted under this Order, G Force shall submit to the Director all other reports at the time required by applicable State and federal law, rules and regulations.

7.5 Change in Ownership

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 (a) 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 (b) 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 or its successor, to Gordon Gray, Jr.'s rights and powers as individual trustee thereunder.

Section Eight Financial

8.1 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.

(b) G Force shall at all times maintain working capital at levels sufficient for fulfilling all franchise obligations. G Force shall report working capital in its annual financial statements required to be submitted pursuant to section 8.5 hereof.

8.2 Changes in Loan Agreement

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 System shall require the prior written consent of the Director.

8.3 Collateralization of System Assets

The assets of the System shall not be pledged or encumbered as collateral for any borrowing or debt without the prior written consent of the Director.

Notwithstanding any provision to the contrary, in the event G Force receives notice indicating that it is in default under any of its loan agreements, G Force shall (a) promptly notify the Director in writing of such event, (b) describe in sufficient detail the nature of default and G Force's actions to cure such default, and (c) promptly notify the Director in writing of the final resolution of such default.

8.4 Loan Agreement Compliance

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.

8.5 Annual Financial Statements

(a) By April 30 of each year, G Force 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 System operation 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 G Force 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.

Section Nine Subscriber Service

9.1 Customer Service Office

(a) For Service Areas within the island of Kauai, G Force shall maintain and operate within its Service Areas 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. G Force shall maintain a staff adequate to provide such services in a timely and efficient manner.

(b) For each customer service office, G Force 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.

9.2 Telephone Service

(a) G Force shall have a publicly listed local customer service telephone number which shall be open for telephone business for at least ten (10) hours each weekday and for at least six (6) hours on Saturdays as determined by G Force to be most convenient for its Subscribers. The customer service telephone number shall also be used for Subscribers' repair service matters. At all other times, G Force shall have at a minimum an answering service to take calls.

(b) Within 30 days of a request by the Director, G Force shall submit to the Director all available information with respect to the adequacy of its telephone response capability including the following matters:

- (1) The average length of time, which it takes a human operator to answer a Subscriber telephone call during peak times;
- (2) The number of abandoned telephone calls to subscriber service telephone numbers during peak times;
- (3) The number of busy signals received by callers during peak times; and
- (4) The effectiveness of any new computer equipment in decreasing response time.

(c) The Director may require G Force to perform further analyses of its telephone service and to make such information available to the Director. Based upon such review, the Director may require G Force to improve its telephone service.

9.3 Installation and Repair Service

(a) G Force shall provide installation service for at least eight hours each weekday and Saturdays, except for legal holidays. The specific hours of service shall be determined by G Force to be most convenient for its Subscribers.

(b) G Force shall provide repair service for at least eight (8) hours each weekday and Saturdays. At all other times, G Force shall have at a minimum an answering service to take calls and a technician on call to respond to after hour emergencies.

9.4 Compliance

Notwithstanding any provision to the contrary, G Force shall comply with all applicable customer service standards prescribed by the State and the Federal Communications Commission.

Section Ten Termination

10.1 Cumulative Termination Rights

The termination provisions set forth in this section 10 shall be in addition to and not in derogation of any other rights or remedies the Director may have with respect to the subject matter of this Order.

10.2 Six Month Termination

(a) If any court, agency, commission, legislative body, or other authority of competent jurisdiction: (1) declares any part of section 3 (System Upgrades), section 4 (Public, Educational and Governmental Access), or section 5 (Networks) of these terms and conditions invalid or (2) requires or allows G Force either to perform any act which is inconsistent with any provision of such sections or cease performing any act required by any provision of such sections, then at the option of the Director the term of the franchise shall terminate six months from the date of such event.

(b) Notwithstanding paragraph (a) above, in no event shall the franchise be terminated under said paragraph prior to December 31, 2001.

(c) The provisions of paragraph (a) above shall be suspended for such period of time as G Force may elect to voluntarily perform its obligations under such sections; provided that G Force provides prior written notice to the Director of such voluntary performance.

10.3 New Franchise Application Not Excluded

In the event that G Force's franchise is terminated pursuant to section 10.2 hereof, nothing herein shall prevent G Force from applying for a new franchise.

Section Eleven Miscellaneous Provisions

11.1 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 way affect the construction or interpretation hereof.

11.2 Successors

All of the provisions of this Order and these terms and conditions shall apply to G Force and its permitted successors and assigns.

11.3 Notices

All required notices to the Director under this Order shall be made in writing and shall be submitted to the Cable Television Administrator, 1010 Richards Street, Honolulu, Hawaii 96813 or at such location as may otherwise be specified by the Director.

11.4 Leased Commercial Access

Consistent with the Cable Act, on or before December 31, 2000, G Force shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of the System Channels for commercial use.

11.5 Laws

G Force, its employees, and agents, shall be familiar with all federal, State, and local laws, ordinances, rules and regulations that in any manner affect the System. If G Force discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, G Force shall promptly report it to the Director in writing. G Force, 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 and all loss, liability or damage occasioned by reason of a violation of this section by G Force and its officers, employees and agents.

11.6 Performance

The failure of the Director or the State at any time to require performance by G Force 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.

11.7 Hold Harmless

G Force shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage 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.

11.8 Waiver

The Director reserves the right to waive any condition of this Order for good cause.

11.9 Authority

The State, from time to time, may adopt or issue such rules, orders or other directives governing G Force 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 G Force 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. G Force shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

11.10 Test Results

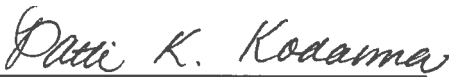
As soon as available, but in no event more than 30 days after the date of the test, G Force shall submit to the Director the annual test results from the Federal Communications Commission Cumulative Leak Index signal leakage and aeronautical offset requirements test.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 255 was served upon the following party at the address shown below by mailing the same, postage prepaid, on August 30, 2000.

WILLIAM HARKINS
President
Garden Isle Telecommunications
3022 Peleke Street
Lihue, HI 96766

For Applicant G Force, LLC dba Garden Isle
Telecommunications



Patti K. Kodama
Secretary