BEFORE THE DIRECTOR OF REGULATORY AGENCIES

OF THE STATE OF HAWAII

In the Matter of the Application of DERBY CABLEVISION, INC. For a Rate Increase and Extension of Time to Construct Its Permit Area.	ORDER NO. 70 DOCKET NOS. 20-78-01 and 20-78-02

ORDER

1. On September 6, 1978, DERBY CABLEVISION, INC. ("Derby") filed an application for extension of time to comply with certain conditions imposed by Decision and Order No. 20 issued on October 1, 1971 which required that Derby construct CATV facilities and provide service to all potential subscribers in its permit area by October 1, 1973. CATV facilities have not been constructed to the following areas or communities:

Eleele	Lawai (parts of)
Hanapepe	Numila
Kalaheo	Olokele
Kaumakani	Pakala Village
Kekaha	Poipu
Koloa	Port Allen
Kukuiula	Waimea

2. On October 24, 1978, Derby filed an application for approval of an increase in its rates and charges from $7.95 to $9.95 per month for residential subscribers and to initiate a rate for multiple unit dwellings.

3. The two applications were consolidated. The CATV Division undertook an investigation to determine whether the proposed rates were fair to both the public and Derby as required by Section 440G-11, Hawaii Revised Statutes, and whether Derby should be granted any extension of time within which to complete construction of its permit area. A public hearing was held on March 27,

1979 at which time the subscribers and public were afforded an opportunity to present their views and comments. Derby and the Cable Television Division presented testimony and exhibits.

4. Derby offers basic antenna CATV service only. Unlike other CATV companies operating in the State of Hawaii, it offers no distant signals from the mainland, no public access facilities, and no pay or subscription service.

5. Derby pleads financial hardship as justification for the proposed rates and as an excuse for its failure to meet the construction requirements of its permit and its failure to provide distant signals or subscription services. Derby has provided figures which indicate a net loss of $125,303 under existing rates. The Division's analysis, however, shows a net loss of $30,705 under existing rates and a profit of $18,860 under proposed rates. These computations are set forth in Exhibit "A" attached hereto. The difference between Derby and the Division's analysis largely results from their respective treatment of depreciation expense. Derby utilizes an accelerated double declining method of determining depreciation expense. It argues that this method is permitted by the Internal Revenue Code and should therefore be adopted by the Director. The Division, in its computation, adjusts the depreciation expense by utilizing a remaining life principle with a 30-year life. It is well settled that depreciation methodologies used for tax purposes are not appropriate for regulatory purposes because they do not reflect the actual useful life of the asset in question. Accordingly, the Division's methodology appears more appropriate than the Company's.

6. The Division's investigation further reveals that Derby is losing an opportunity to generate revenues and profits by its failure to provide pay or subscription service. The Division estimates that Derby could achieve a subscription penetration rate of 50% of its existing subscribers which would, given the $50,000 investment which Derby alleges would be required to provide the

service, be beneficial to the Company. The results of operations including pay or subscription service estimated by the Division are also shown in Exhibit "A."

7. Derby files consolidated income tax returns with its parent company, CIP, Inc. CIP has been able to recoup some of its investment in Derby by utilizing Derby's operating loss as a tax benefit. The tax benefit is reflected in an inter-company payable to CIP, Inc. Management has refused to provide a copy of the consolidated income tax return as requested by the Division.

8. Derby's poor results of operations result largely from the fact that its cable facilities were entirely constructed underground rather than hung from existing utility poles. This resulted in an investment which greatly exceeds that which would have been necessary if an overhead plant had been constructed. From the inception of its service to March 31, 1976, Derby capitalized all of the revenues and costs incurred in the construction and operations of its cable system. These facts account for the very large rate base shown on Exhibit "A." Whatever the reasonableness of Derby's early decision to build underground, there are no substantial barriers to overhead construction of presently unserved areas and communities. Derby's owner has nonetheless indicated an unwillingness to invest additional outside capital in order to construct CATV facilities to such areas and communities or to otherwise improve service. The reason for such unwillingness given by the owners is the poor operating results which Derby has experienced to date. It would appear apparent that if Derby's rationale were accepted, subscribers in presently unserved areas cannot expect to receive service in the foreseeable future. Even under the full amount requested, Derby's return on rate base would be 2.4%, plainly low by utility standards. Thus, Derby seems to argue that the expensive underground system should, like an albatross around Kauai's neck, preclude further development of CATV on the island.

9. Investor interest in the CATV business in Hawaii is keen. A number of other CATV permit holders in the State have evidenced a willingness to invest

substantial capital in their systems in order to construct CATV facilities to unserved areas and to construct satellite earth stations in order to import distant television signals from the continental United States.

10. The rate base/rate of return method should not be relied on exclusively in determining the fairness of CATV rates. Factors other than the rate base/rate of return computations can and should be considered. In this case, weight should be given to the fact that Derby is missing an opportunity to generate income by providing subscription services and has failed to meet the obligation to provide sufficient capital to construct the entire permit area.

11. Derby has furnished a written legal opinion from its counsel in Washington, D.C. that its present financial condition is such as to warrant a "hardship" exemption from the Council on Wage and Price Stability.

Based on the foregoing, it is hereby ordered as follows:

1. Derby's request for an extension of time to October 1, 1985 for the extension of service to all potential subscribers within its franchised area is denied. Such period is hereby extended to October 1, 1981. The Company shall file by January 1, 1980 a construction plan to reflect an orderly extension of its facilities within said time period. The Director will look favorably toward any application for a CATV permit to construct and operate a CATV system on the Island of Kauai, provided that the Applicant shall meet the requirements of Section 440G–6, Hawaii Revised Statutes, and make an appropriate commitment to construct CATV facilities and offer service to presently unserved areas on Kauai both within and without Derby's permit area.

2. Derby's request to increase the residential rate from $7.95 to $9.95 is denied. The Director hereby approves a rate of $9.20, plus the applicable gross income tax.

3. The rates requested for multiple unit dwellings of $15.00 per outlet for installation and $3.50 per outlet for monthly service charge are hereby approved.

4. Derby shall file revised tariff sheets to reflect the foregoing rates and charges.

5. Derby shall file for an exemption from the Council on Wage and Price Stability and file a copy of the exemption with the Director.

6. Derby may have a hearing on the terms and conditions set forth in this Order in accordance with Chapter 91 and Section 440G–11, Hawaii Revised Statutes, by requesting the same in writing within twenty days after service of this Order.

DATED: Honolulu, Hawaii, April 30, 1979.

Tany S. Hong
Director of Regulatory Agencies

EXHIBIT A

DERBY CABLEVISION, INC.

RESULTS OF OPERATIONS

	COMPANY		DIVISION		
	Present Rates	Proposed Rates	Present Rates	Proposed Rates	With Pay Movies
Operating Revenues:					
Installations	$ 11,800		$ 11,800	$ 11,800	$ 11,800
Service Charges	257,000		266,195	317,860	317,860
Subtotal	$ 268,800		$ 277,995	$329,660	$329,660
Pay Movies	—		—	—	$111,780
Other Revenues	$ 10,000		$ 10,000	$ 10,000	10,000
Gain on Sale of Equipment	2,200		—	—	—
Subtotal	$ 12,200		$ 10,000	$ 10,000	$121,780
TOTAL OPER. REVENUES	$ 281,000		$ 287,995	$339,660	$451,440
Operating Expenses:					
Maintenance	$ 96,000		$ 100,100	$100,100	$100,100
Admin. & General	201,400		190,900	193,000	193,000
Pay Movies Costs	—		—	—	72,620
Subtotal	$ 297,400		$ 291,000	$293,100	$365,720
Depreciation	$ 224,568		$ 27,700	$ 27,700	$ 27,700
Income Taxes	(115,665)		—	—	—
TOTAL OPER. EXPENSES	$ 406,303		$ 318,700	$320,800	$393,420
NET OPER. INCOME (LOSS)	$(125,303)		$ (30,705)	$ 18,860	$ 58,020
DEPRECIATED RATE BASE				$784,602	$834,600
RATE OF RETURN				2.4%	6.95%

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order No. 70 was mailed, postage prepaid, to the following on this 1st day of May, 1979:

Derby Cablevision, Inc.
P. O. Box 280
Kapaa, Kauai 96746

A copy of Order No. 70 was also served on Roger Fonseca, Esq. of Torkildson, Katz, Jossem & Loden by personal delivery on this 1st day of May, 1979.

Sandra Y. E. Yonesaki

Sandra Y. E. Yonesaki

RECEIVED BY:

Judy Johnson

For Roger Fonseca, Esq.