STATE OF HAWAII
DEPARTMENT OF REGULATORY AGENCIES

BEFORE THE DIRECTOR OF THE DEPARTMENT

In the Matter of the Application of THE SEVEN TWENTY CORP., dba KAUAI CABLEVISION For a Permit to Serve All Areas on Kauai Except Census Tracts 404 (Puhi and Hanamaulu) and 405 (Lihue).	DOCKET NO. 00-79-04 ORDER NO. 76

ORDER ADOPTING HEARING OFFICER'S RECOMMENDED DECISION AS THE DIRECTOR'S FINAL DECISION AND ORDER

On April 3, 1980, the duly appointed Hearing Officer submitted his written "Recommended Decision" to the Director and served copies of the same on all parties and participants in the proceeding. Parties were afforded a thirty-day period to file Exceptions, or other appropriate pleadings, to the Hearing Officer's Recommended Decision.

Applicant filed its "Brief" on May 5, 1980. Applicant's Brief took issue with each of the three conclusions of law, and impliedly, with the proposed facts supporting each of those three conclusions.

Relative to the amount of revenues forecasted, the figures computed by Applicant are a result of (1) an estimated house count, (2) assumed penetration rates, and (3) proposed monthly charges which escalate annually. Upon review of all of the evidence on the three factors, it is concluded that the reliable evidence is insufficient to support a finding that revenues will be adequate to provide the services proposed in the critical early years of the completed system. Applicant admits as much in its Brief. (Refer Brief, p. 5-6.)

Relative to the financing arrangements, it is concluded that the requirements of Section 440G-6(a), Hawaii Revised Statutes, remain unsatisfied. Applicant has the burden of proving his case[1/] and has failed to meet it in regards to financing. The evidentiary record upon which the ultimate decision must be based provides no assurances whatsoever that the sources of capital -- be they financial institutions which may be interested in Applicant's proposal and/or prospective hui members who may have pledged to Applicant their support -- are in any way committed to actually providing financial support upon the approval of the application. Merely naming subscribers would not suffice, in any event.

Relative to rates proposed in an application for a permit, and justifications in support thereof, it is, as a general principle, highly desirous that Applicant select a pricing structure which will assure wide-spread acceptance of the service as well as sufficient revenues to complete the basic plant and operate it. In this case, Applicant's pricing scheme changed dramatically -- from fixed rates at a moderate level to high rates, escalating annually with inflation. Neither the proposal, nor the fact that the pricing proposals changed dramatically in the course of the proceeding, instill confidence that Applicant's philosophy for pricing cablevision services is sound. Rates to be charged the public must consider several factors in addition to the national rate of inflation.

1/ ". . . such facts as the director may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the person seeking to operate the CATV system, and complete information as to the principals and ultimate beneficial owners (including in the case of a corporation, all stockholders both nominal and beneficial, owning ten per cent or more of the issued and outstanding stock, and in the case of unincorporated associations, all members and ultimate beneficial owners, however designated) . . . ." Sec. 440G-6(a), HRS.

Having reviewed and considered the entire record in this matter, I hereby adopt the Hearing Officer's "Recommended Decision" as my decision, and order that the Application, as amended, be and hereby is, DENIED, WITHOUT PREJUDICE.

DATED: Honolulu, Hawaii, June 20, 1980.

Tany S. Hong
Director of Regulatory Agencies

CERTIFICATE OF SERVICE

Copies of the Final Order No. 76 have been sent postage prepaid on June 20, 1980 to all parties of record, and to interested persons who participated in the proceeding. Because a copy of the "Recommended Decision," dated April 3, 1980, was previously sent to each party and participant, a copy is not being attached to this order.

Sandra Y. E. Yonesaki

Sandra Y. E. Yonesaki
Secretary

This is a recommended decision. It was issued and served on all parties on April 3, 1980. Briefs of the parties, if any, are to be filed with the Director of the Department of Regulatory Agencies within thirty (30) days of issuance, or by May 5, 1980. A final decision, by the Director, will be issued soon thereafter.

BEFORE THE DIRECTOR OF REGULATORY AGENCIES

OF THE STATE OF HAWAII

In the Matter of the Application of THE SEVEN TWENTY CORP., dba KAUAI CABLEVISION For a Permit to Serve All Areas on Kauai Except Census Tracts 404 (Puhi and Hanamaulu) and 405 (Lihue).	DOCKET NO. 00-79-04

RECOMMENDED DECISION

SUMMARY AND RECOMMENDATION

Pending before the Director of the Department for his decision are two applications to provide CATV service to selected areas on Kauai.

The analysis of the evidence and the law applicable to this proceeding is in the format suggested in Section 440G-8(b), Hawaii Revised Statutes.

The evidentiary record in this proceeding is deficient in three critical respects. It is recommended to the Director that the Application be DENIED, WITHOUT PREJUDICE.

While Applicant herein proposes to provide a high quality cable television service to nearly all of the residents in nearly all of the communities of Kauai not currently being provided service by the incumbent permittee, close scrutiny of Applicant's proposal reveals the Application deficient in the following regards: (1) Unreliable forecasts of potential customers; (2) Rates to be charged customers that increase annually at increments that are not cost justified; and (3) Financing arrangements that are so uncertain that it would be unreasonable to find Applicant financially responsible for the undertaking it proposes.

I. PLEADINGS AND PROCEDURAL MATTERS

1. On October 9, 1979, the Seven Twenty Corporation ("Applicant," herein) filed an Application dated October 8, 1979, with the Cable Television Division of the State of Hawaii, Department of Regulatory Agencies ("DRA," herein). The application requested authority to construct and operate a cable television system in all areas not presently served by the incumbent permittee, namely Derby Cablevision, Inc. ("DCV," herein).

2. On November 8, 1979 at 7:00 P.M. at the Hanapepe Recreation Center in Hanapepe, Kauai, DRA conducted a public hearing, in accordance with the requirements of Chapter 440-G, H.R.S., and the Departmental rules and regulations promulgated pursuant thereto.

3. On November 9, 1979, DRA issued "Requests for Information." On December 14, 1979 DRA received Applicant's responses to the requested information.

4. On January 9, 1980, an economic hearing was held on the merits of Applicant's proposal. The proceeding was conducted in accordance with the requirements of Chapter 91, HRS, which requires an evidentiary hearing in all contested cases. At the outset of that hearing, counsel for Applicant agreed to the type of proceeding, and waived procedural defects that possibly may have arisen up to that point in time. Applicant moved into evidence all of the materials which were filed with DRA on October 9, 1979, together with all documents in the correspondence file, plus two items submitted to the Department earlier on the day of the hearing: (a) Ozalid copies of a construction plan; and (b) the detailed description of the construction plans proposed by Applicant with a cover letter dated January 8, 1980. It should be noted for the record that the evidentiary record also includes a substantial volume of correspondence from public figures and public entities, e.g. the Provost of Kauai Community College, a Resolution of the County Council of the County of Kauai, a letter from Councilman Eddie Sarita, a letter from the Executive Director of the Kauai Chamber of Commerce, Inc., correspondence from the Mayor of the County of Kauai, and a petition in support of the application of Seven Twenty Corp., which petition includes signatures of several hundred persons with Kauai addresses.

5. Parties to the proceeding agreed that additional requests for information from any other party or supplemental information by any party, the hearing officer, or the staff of DRA could be filed within ten (10) days after the evidentiary hearing. Responses to those inquiries were to be submitted within ten days of receipt, of the requests/supplemental information, but no later than January 29, 1980. All parties were entitled to submit rebuttal to whatever had been previously submitted by February 3, 1980, at which time the evidentiary record would be formally closed. The thirty day period provided for the drafting of the recommended decision should have commenced running on that date.

6. Applicant filed with DRA on January 28, 1980, materials dated January 22, 1980, substantially "amending our application to correct certain deficiencies." The materials were not objected to by other parties and are received as evidence. On February 12, 1980, Applicant filed its Responses to the Supplemental requests. These Responses are hereby received as part of the evidentiary record.

II. PARTIES TO THE PROCEEDING

7. Applicant is The Seven Twenty Corporation, dba Kauai Cablevision, having a business address at Post Office Box 720, Eleele, Hawaii 96705. It appears from the record that Applicant is legally incorporated in the State of Hawaii, having two principal shareholders, each controlling 50% of the distributed voting stock. Those shareholders are William G. Dahle and John S. Short. Each individual holds an FCC Radio Telephone Operators License, with broadcast endorsement.

8. The only intervenor in this proceeding is Kauai Cable TV, Ltd. ("KCT," herein), an applicant in a separate proceeding requesting a permit authorizing it to construct and operate a cablevision system in the western and southern tier of Kauai. The services proposed by KCT are not as extensive as the services for the area proposed to be served in this proceeding. To the extent that Applicant and KCT propose to offer services in Census Tracts 406 (Koloa and Poipu), 407 (Eleele and Kalaheo), 408 (Kaumakani and Hanapepe), and 409 (Kekaha and Waimea), Applicant and KCT are, in a sense, competing for the right to provide cablevision services on Kauai.

9. A participant in this proceeding is DCV, a permittee, authorized by DRA to provide cablevision services to the entirety of the island of Kauai. At the present time, DCV provides cablevision services to a substantial portion of the population of Kauai residing in the concentrated population area of Lihue, its immediately adjacent areas, the outlying areas in Census Tract 404 (Puhi and Hanamaulu) and selected portions of Census Tracts 406 and 407 (principally those areas immediately adjacent to DCV's transmission line running from the Kalaheo headend in an easterly direction toward Lihue, including Lawai Valley and Omao).

III. PUBLIC NEED FOR THE PROPOSED SERVICE

10. Parties to this proceeding agree that there are present needs and future needs of the public for better cable television services. At the present time, Honolulu-originated, over-the-air signal reception for the areas requested to be served is, at best, poor.

11. Applicant proposes to serve Census Tracts 401 (Hanalei), Parts of 402 (Wailua-Anahola), 404 (Puhi-Hanamaulu), 406 (Koloa-Poipu), all of 407 (Eleele-Kalaheo), 408 (Kaumakani-Hanapepe), and 409 (Kekaha-Waimea). It is the stated intent of Applicant to serve practically all areas of Kauai not currently being provided cable services.

12. In Applicant's opinion, the areas to be served is sparsely populated, with the population configured in a ring running just mauka of the shoreline. The system will not have the economies of a hub-and-spoke configuration.

13. Applicant believes it is necessary for a cable operator to continuously ascertain the community's wants, needs and desires. This includes Applicant's need to communicate with community leaders, as well as the man on the street. In support of the present application, Applicant conducted a survey of the community's needs and desires as they relate to cablevision services. Results showed a need for improved off-air signal reception. Applicant admits that due to technical difficulties it will be difficult to provide high quality retransmission of Honolulu originated signals via cable television but that few, if any, subscribers will receive poorer reception of the Honolulu signals via cable television than directly over-the-air. Applicant states as two-way cable services become technically reliable and the desire for two-way services for meter reading, opinion poll taking, emergency and protection services, banking, data and other services develops, the cable system will be modified to provide for this expanded transmission capacity.

14. Applicant desires to serve potential subscribers in Census Tract 401, testifing that service to that remote and sparsely populated area is economically feasible according to its projections, provided that it be allowed to serve all potential subscribers on Kauai not presently served by DCV.

15. Census Tract 401 must be considered together with the rest of Kauai or a major portion of Kauai if modern television and other telecommunications services for that area are to become a reality in the foreseeable future. Constructing and operating cable facilities for a limited number of subscribers over an expansive area becomes economically feasible only if the system for that area can be joined with a cable system serving a more densely populated area.

16. The legislative mandate given to the cable television regulatory program to extend cable communications services to all parts of the State as soon as possible, cannot be met if Hawaii's Census Tract 401 were to remain the only area on Kauai not provided cable communications services.

IV. ABILITY OF THE APPLICANT TO OFFER SERVICE AT REASONABLE COST TO SUBSCRIBERS

A. FORECAST OF SALES

17. To a great extent, the economic viability of a service company depends upon how well the operator of the enterprise tailors its services to the market. Because analyses of a future market calls for a forecast, the success of the enterprise is somewhat dependent on that forecast. In this Application, Applicant has proposed a high quality service to meet a demand which is not sufficiently defined to ensure the viability of the enterprise.

18. Applicant's "walkout" was accomplished largely by driving along the roads of Kauai, plus some walking. This walkout was largely performed by visual reconnaissance from an automobile and did not involve the physical measurement of the distance between poles, description of the actual position of poles, number and location of homes to be provided service, nor other field data necessary for detailed cost analysis. Applicant did not do a house count. Moreover, this form of walkout provided no more than a general view of the terrain. It did not provide sufficient information upon which cost projections can accurately be made. Therefore, the projections herein are inaccurate estimates of homes passed and of costs, and may deviate considerably from the actual subscribers and costs of the cable system and, ultimately, costs to its subscribers.

19. For Applicant, the house count is critical to Applicant's case (TR., p. 36) because the vast majority of all other numbers are assumptions (TR., pp. 40, 51, 52). Applicant's case stands or falls on the reasonableness of its house count.

20. Relative to the house count, it is admitted that the market is marginal due to the remoteness of service areas to be served, e.g. Hanalei, and the sparseness of the population, even in areas considered to be separate communities. Not only are the actual numbers of residences in those remote and sparsely populated areas not known with certainty, two of the larger identifiable communities on the east side may not be in the market in any event, namely Princeville and Wailua Homesteads.

21. One of the two geographic areas which is critical to the economic viability of the east side system is the Princeville community. The original forecast included revenues from Princeville (TR., pp. 35, 39, 41, and 44). The supplemental submission, dated January 22, 1980, purports to adjust downward the sales because Princeville sales were removed. However, page 5 of said submission purports to include Princeville/Hanalei's 562 homes as homes passed. Assuming as correct Applicant's assumption of 49 percent saturation for the third year, on the average, Applicant would have 275 customers from Princeville, a number which is unreasonably high and highly unreliable, given the Princeville community's plan to construct its own satellite receiver/cable system (TR., p. 35).

22. The second of the two geographic areas which is critical to the economic viability of the east side system is the community known as Wailua Homesteads, an area in which Applicant alleges 1,127 homes are situated. (Refer p. 5, January 22, 1980 submission, TR., p. 82.) Assuming as correct Applicant's assumption of 49 percent saturation for the third year, on the average, Applicant

would have 552 customers from Wailua Homesteads, a number which is unreasonably high and highly unreliable, given two factors: (a) the current population of the area, and (b) the probable entry into that area by the incumbent permittee long before the Applicant will commence construction.

23. If the sales from either Princeville or Wailua do not materialize, which is more likely than not, or if only a portion, e.g. 50 percent, from each of the two areas does materialize, then the estimated 49 percent saturation of the total 2,880 homes passed on the east side must be reduced from a total potential (TR., p. 37) of 1,413 residential/commercial subscribers on the east side to a firmer potential (TR., p. 37) of approximately 1,000 residential subscribers for Year Three.

24. For the west side, Applicant's projections for number of homes passed, potential subscribers, and saturation are not so suspect, but are not sufficiently precise to be relied upon. Rather than doing a house count, Applicant used Kauai Electric's count for residential metered units as his base. This approach is not reliable due to the following factors: (a) certain multiple unit dwellings are counted as a single subscriber on bulk billing by DCV while Kauai Electric counted each apartment within the multiple unit dwelling as separate customers; and (b) Kauai Electric lists all metered homes regardless of distance from its nearest neighbor. Applicant stated he does not expect to provide cable to all homes regardless of distance or willingness to pay for service. The area west of Kalaheo towards Kekaha is believed to be rather stable in terms of number of homes with no indication of large numbers of homes to be constructed in the near future. DCV states it passes nearly all homes within the areas they are providing service. There will be approximately 1,500 units having electric meters which will not be passed by cable. This is a ratio of about 66%. Solely for purposes of estimation herein, it

is assumed that the counts of homes and distances are reasonable. The potential number of subscribers on the west side is estimated to be 80 percent of the number of electrical metered homes (as compared to 66 percent experienced by Derby Cablevision) since some areas to be served do not contain multiple unit buildings and because each community may have fewer homes at far distances from the center of the community.

25. While not critical to Applicant's case (TR., p. 51, lines 20-21) the lengthy and sometimes confusing dialogue on the nature and use of the "per mile" calculations merit discussion. (Refer, generally, pp. 38, 45-58.) Up through the time of the hearing, Applicant was steadfast in its belief that 30 homes-passed-per mile was the industry standard (TR., p. 54) and that, after time, a 60-65 percent saturation would make the system profitable. The relevant figure is 30 subscribers per mile. It is unclear to what extent Applicant relied upon his original belief to evaluate the system. It is noted that the submission, dated January 22, 1980, for the stated purpose of "correcting certain deficiencies," displays projections of plant and subscriber sales with 67.5 homes passed per mile and 30.4 subscribers per mile -- both numbers higher than displayed in the earlier submissions. It is not clear how the subsequent submission had higher counts when it had deleted Princeville.

26. According to Applicant, at the end of Year Three, it will have 152.6 miles of plant in service, and there will be, according to its latest estimate, 10,312 homes of potential subscribers (residential and commercial) being passed, with a system-wide average saturation of 49 percent. This constitutes 67.6 residential/commercial units per mile of cable and 33.1 subscribers per mile of cable. (Refer Exhibit A, January 22, 1980 submission.)

27. Based on the analyses set forth in findings (21 through 26), for Year Three, Applicant will have 152.6 miles of plant in service. Assuming Applicant's system-wide average saturation of 49 percent for Year Three, there would be 2,913 subscribers on the west side and 1,000 subscribers on the east side, for 3,913 total subscribers. The system's 3,913 subscribers for Year Three equates to 25.6 subscribers per mile.

B. CONSTRUCTION AND OPERATING COSTS

28. Applicant's original estimate of its construction cost per mile of plant was $5,800. The construction cost of $9,500 per mile was submitted in the January 22, 1980 document with the 63 percent increase in costs calling into question the reasonableness of either the original projection, or the latter, or both. The reasonableness of the projections were further complicated when an estimate of $6,300 was given on January 9, 1980 (TR., p. 68). Thus, Applicant increased its construction costs by 50 percent in a period of less than two weeks. It does appear that the itemization of costs on Attachments A and B, in response to the Information Requests, are reasonable.

29. Added to the Applicant's original plant cost estimations are expenses for (a) origination equipment, though purchase was not slated until the third year of operation and (b) a second satellite receive station.

30. Construction will begin within 485 days of receiving a permit, with the first customer to be provided service approximately 60 days after construction begins. It is estimated that construction of the entire west side portion of the island will be completed at the end of the first year of construction and the east and north extensions at the end of the second year.

31. In accordance with Sec. 440G-6(a), HRS, Applicant has provided detailed descriptions of " . . . the general routes of wires, cables, conduits, or other devices used in the re-distribution of signals."

32. West side, Phase I, construction includes the installation of the antennas, earth station and headend located on map number 8 at Kukui'o Lono Park. Phase I also includes the construction of all distribution systems on map numbers 6, 7, 8, 9, and 10. The areas serviced, from the headend site at the park, include Kalaheo, Lawai, Koloa, Poipu and Puhi to the east and Eleele, Hanapepe and Hanapepe Heights to the west.

33. West side, Phase II, construction includes the trunk run and distribution system west on map numbers 1, 2, 3, 4, and 5 from Hanapepe servicing Kaumakani, Pakala Village, Waimea, Kekaha and Mana along the way. Mana will be included only if there are 30 or more average homes per mile of plant or is subsidized.

34. East side, Phase III, construction will encompass the trunk run from the headend on map number 8 to Kahili peak on map number 7. The microwave transmitter equipment and antennas on the peak and the microwave receiver antennas and equipment located on map number 15 at Anahola. An interconnect or relocation of the now proposed earth station to service the Princeville Ranch area will then be completed. The Anahola distribution system, the trunk line tie south and all distribution systems required to service all areas north of Lihue and Kapaia not currently serviced by the existing system will then be completed as a part of this phase.

35. East side, Phase IV, construction goes from Anahola north and west and will service Kilauea, Kalihiwai, the Princeville Ranch area including Hanalei.

During the detailed engineering stages of each phase, the exact distribution service boundaries will be determined. All areas where 30 homes per mile and all homes along the trunk lines that tie the areas together will be provided service.

36. The Key Map marked "Microwave Key Map" shows the proposed path as well as the expansion capability of the microwave by adding a transmission splitter, wave guide and antennas to an existing terminated output port at Kahili peak. Additional antennas and broadband receivers can be added at selected receive sites which will divide the amplifier cascades.

37. The following depicts the plant in service at the completion of Year Three, assuming a 49 percent penetration of homes passed:

PLANT IN SERVICE

Plant	Applicant's Projected Plant	Plant Found To Be Reasonable
Franchise & Licenses	$ 7,000	$ 7,000
Antennas & Towers	42,600	42,600
Channel Converters	74,700	49,500
Headend/Building	61,800	81,200
Leasehold Improvements	20,000	30,000
Microwave Equipment	65,000	65,000
Miscellaneous Equipment	9,300	9,300
Office Furniture & Fixtures	5,000	5,000
Origination Equipment	50,000	50,000
Outside Plant (Aerial & Underground)	1,453,700	1,307,200
Pay TV Devices	13,200	8,200[a/]
Satellite Receive Equipment	95,900	91,000
Tools & Test Equipment	10,000	10,000
Vehicles	57,000	57,000
House Drop Materials	120,900	37,200[b/]
	$2,086,100	$1,850,200

a/ At $6.00, for pay TV traps for each non-pay subscriber.

b/ At $15.00, cost of installing a residence or multiple unit.

38. Applicant's revenues and earnings are analyzed herein for Year Three of its operation. In order to determine the financial condition in terms of cash flow for a system fully matured, but at different overall saturation levels, it is assumed that: (a) the number of subscribers at a particular saturation level remains constant throughout the year, and (b) the number of disconnects is equal to the number of reconnects and new installs. All other assumptions, such as 25% of the number of initial outlets shall be equal to the number of second outlets remain the same.

39. Year Three was selected for the period of analysis because construction of the vast majority of the plant will have been completed for one full year by that time, and the saturation levels are deemed to be reliably accurate after one full year of operation of a completed system.

40. Operating expenses to account for higher pole rent, repair and maintenance, electric expenses and copyright were adjusted. Assuming there would be 37 poles per strand mile for 148.7 miles of plant at a cost of $5.40 per pole contact for a total cost of $29,710 as compared to the Applicant's estimate of $2,400. Documents show that each power supply is expected to provide power for about 4 miles of plant, and for the 148.7 miles of plant, there should be about 37 power supplies installed. The electric cost would be 37 power supplies times approximately $39 per month, times 12 months, or $17,316 for the year. Also, the cost for repair and maintenance is estimated to be about 1% of the total cost of the plant, or $21,810. Adjustments were made to copyright fees since the fees are based upon basic subscriber revenues. Further adjustments were made to account for different number of subscribers as the saturation levels were changed. A49 percent saturation level is used.

41. Taking the plant-in-service at the end of Year Three, and the revenues derived from the sales reasonably to be anticipated for the third year at the rates proposed, and accepting Applicant's forecasted expenses for the third year, as adjusted, the cable television system — including box office revenues — reflects the following at the end of its third year of operations.

FORECASTED RESULTS OF OPERATIONS

(END OF THIRD YEAR OF SYSTEM'S OPERATION)

	Applicant's Forecast	Forecast Found to be Reasonable
Revenues:		
Basic	$ 765,900	$ 597,800
Pay	173,800	184,800
Subtotal	939,700	782,600
Operating Expenses:		
Basic	321,200	332,600
Pay	103,200	92,400
Subtotal	424,400	425,000
Operating Profit	515,300	357,600
Depreciation	181,900	152,500
Interest	235,300	235,300
Taxable Income	98,100	(30,200)
Income Taxes	49,100	0
Net Income After Taxes	49,000	(30,200)
Net Income After Taxes, But Before Interest	284,300	205,100
Rate Base	$1,761,700	$1,523,200
Rate of Return	16.1%	13.5%

C. RATES

42. Applicant is proposing the following rate schedule:

THE SEVEN TWENTY CORP., dba KAUAI CABLEVISION

RATES

	Year 1	Year 2	Year 3	Year 4	Year 5
Installation					
First Outlet	$ 45.00	$ 45.00	$ 45.00	$ 50.00	$ 50.00
Second Outlet	10.00	10.00	10.00	10.00	10.00
Commercial (Condo/Hotel)(1)	15.00	15.00	15.00	15.00	15.00
Pay TV (2)	20.00	20.00	20.00	20.00	20.00
Service Fee (Monthly)					
First Outlet	13.25	13.25	14.00	14.75	15.50
Second Outlet	2.50	2.50	2.50	2.50	2.75
Commercial (Condo/Hotel)	8.00	8.50	9.00	9.50	10.25
Pay TV (2)	10.00	10.00	10.00	10.00	10.00
Service Fee (Annual)					
First Outlet	159.00	159.00	168.00	177.00	186.00
Second Outlet	30.00	30.00	30.00	30.00	33.00
Commercial (Condo/Hotel)	96.00	102.00	108.00	114.00	123.00
Pay TV (2)	120.00	120.00	120.00	120.00	120.00

NOTES:

Relocate/Reconnect (7% Estimated Churn Per Year)	10.00
Second Pay Outlet Installation	10.00
Converter Installation	10.00
Converter Maintenance/Rental	2.00

(1) Actual Rate would be based on time and materials charges. For purpose of estimate, $15.00 per unit is used.

(2) Pay channel to be operated by channel lessee at estimated rates above.

43. Applicant's rate schedules adjust upwardly annually, reflecting systematic increases. The result is a set of rates which are substantially above those charged for similar services by cable television systems in other parts of the State.

44. The annual incremental increases in basic rates track, but follow, the inflation rate. Since many of the costs comprising the total cost of providing service are fixed costs, i.e. principal, interest, depreciation/amortization, the annual escalation of the basic rate is erroneously premised and, if adopted in principle, would constitute an ill-conceived precedent for other permittees to emulate.

V. SUITABILITY OF THE APPLICANT

45. Applicant's equipment will ultimately be capable of carrying 35 full television channels and be adaptable for two-way transmission. The cable system will have a frequency bandwidth between 5 and 300 MHz with a down stream bandwidth between 50 and 300 MHz and an upstream bandwidth between 5 and 30 MHz. The maximum number of cascaded amplifiers was originally specified as 28 and later changed to 32. Amplifier spacing between trunk amplifiers is specified as 24 dB at the frequency of 300 MHz and 24 dB spacing between line extenders. The worst case signal-to-noise ratio for fully loaded system of 35 channels shall be 42 dB. These specifications will meet the Federal Communications Commission and/or State requirements pertaining to minimum channel capacity, two-way capability, signal-to-noise ratios and cross modulation levels. The minimum tap port output level is specified to be 10 dB with a maximum tilt of 6 dB.

46. Applicant will initially provide a twenty channel system capability. The following programming is proposed: (a) KTVU-Oakland; (b) PTL; (c) Warner/Amex Movie Channel; (d) WTBS-Atlanta; (e) Madison Square Gardens/C-Span; (f) Showtime; (g) KTBN; (h) WOR-New York; (i) SPN; (j) HBO West; (k) five Honolulu stations; and (l) FM.

47. The headend site for Applicant's west system is to be constructed within Kukui'o Lono Park on land controlled by the Walter D. McBryde Estate. Applicant states the board of trustees has voted to lease to it 6,000 square feet for an earth station and headend site (TR., p. 27).

48. Applicant will provide standby power for its trunk system, headend and satellite receive station. This will allow cable service to be continually transmitted throughout its service area even though there may be a localized power outage.

49. Applicant has included all pay television revenues in the first five year projections for the proposed cable television system. Applicant has testified that the pay television operations will subsidize the construction and operations and off-set the losses of the cable system during the initial five year period of system operations. The pay television service will, however, be established as a separate non-regulated entity apart from the cable television operation.

50. Applicant has obtained a firm verbal commitment from Peter Collins, a consultant to cablevision operators, to assist Applicant in an advisory role. Mr. Collins will not be an employee but may participate as an investor (TR., p. 69-70). That leaves Applicant in a situation where it is without an engineer and a manager — both positions difficult to fill because of the scarcity of qualified personnel (TR., p. 71).

51. Applicant has stated his intent to abide by State statutes, DRA rules and regulations, Hawaii State Public Utilities Commission regulations, and the ordinances of the County of Kauai. While certain permits and authorizations have not yet been acquired, no insurmountable costs or delays are reasonably foreseen in these regards.

VI. FINANCIAL RESPONSIBILITY OF THE APPLICANT

52. What little evidence there is in this case regarding the beneficial ownership of Applicant is confusing and misleading. The provisions of Section 440G-6(a), HRS, are clear; the evidence to satisfy that provision of the law is murky.

On the one hand, Applicant has represented in an undated letter that Kauai Cablevision is incorporated and is "a group of Kauai business persons who have recently formed this new corporation." On the other hand, the Application indicates Kauai Cablevision is a "dba" only. Furthermore, Applicant was emphatic in stating, "All I said is that I have talked to potential investors" and "The other company — the other, shall we say, possibility was discussed because of the sub-S" (TR., p. 122). At another point, Applicant refers to "prospective members of the hui, yes" but "no" there is no hui at the present time (TR., p. 96).

53. Applicant has submitted financial statements of its two principal organizers. These balance sheets indicate the ownership of property and securities which would be considered by financial institutions in making a determination to loan funds for the construction and operation of a cable television system. Financial statements themselves — particularly of individuals — do not assure the availability of funds required to construct and operate a system similar to the one the Applicant has proposed.

54. Applicant has paid-in capitalization of $7,500, a sum provided in equal parts by Messrs. Short and Dahle.

55. Applicant had no written commitment for funding at the time of the hearing and has no commitment in writing for funding even if granted a permit (TR., p. 94).

56. At the time of the evidentiary hearing, Applicant had not secured the funds necessary for the construction and initial operation of the proposed cable system, but indicated that it was in the process of forming a hui which would have the funds necessary for the construction and initial operation of the cable television system. Applicant has had preliminary conversations with the Rural Electrification Administration regarding a loan guarantee for the necessary funds. Applicant admits that no firm commitment for a loan guarantee from REA has been obtained or is probable (TR., p. 32, 92).

57. Applicant's reliance on any possible financial assistance from REA is ill-founded. Applicant was informed in mid-October that <u>prior</u> to submitting an application for a loan or loan guarantee, a copy of its Balance Sheet and Operating Statement are prerequisites (REA Bulletin 328-1, p. 3). Apparently, this has not been accomplished. Similarly, the same financial statements were requested to be submitted in this proceeding, but only the financial statements of two of the principals of Seven Twenty Corp. were provided.

Two individuals have subscribed to 75 percent of the authorized stock, with the ownership of the remaining 25 percent unknown. The two principals intend to retain their present percentage ownership (TR., p. 114), even if it would require them to invest three times their combined net worth to do so. Furthermore, Applicant does not perceive it as a difficult problem raising $35,000 from each of

25 persons, (TR., p. 110), even when it appears that each of these persons may be asked to be shareholders in two sub-chapter-S corporations, which would join together, as a joint venture, to be the single owner of the remaining 25 percent ownership interest in the Seven Twenty Corporation (TR.,p. 123). Even if the present state of the record were assumed to satisfy Section 440G-6(a), HRS, logic dictates that such proposals be found unreasonable.

VII. CONCLUSIONS OF LAW

1. The lack of reliable, probative and substantial evidence on the number of subscribers reasonably to be anticipated and the amount of revenues reasonably to be generated constitutes a failure by the Applicant to meet its burden of proof in this proceeding. (Refer Findings of Fact No. 18 through 24; Chapter 91, HRS.)

2. The modicum of evidence in the record relative to the financial responsibility and resources of The Seven Twenty Corp. to successfully carry out the responsibilities of a permittee to design, construct and operate a cablevision system on Kauai is insufficient to meet the requirements of the law. (Refer, Findings of Fact No. 52 through 57; Section 440G-6(a) and Chapter 91, HRS.)

3. Applicant's proposal to increase annually the rates for basic service are contrary to a sound public policy of encouraging stability in prices, generally, and rates approved by regulatory agencies, specifically, and therefore the rates are unreasonable, and are found to be contrary to the interest of the public. (Refer Findings of Fact No. 42 through 44.)

The foregoing fifty-seven (57) Findings of Fact and three (3) Conclusions of Law have been made by the undersigned, and have this day been forwarded to the Director and served upon all parties.

DATED: Honolulu, Hawaii
April 3, 1980

William W. Milks
Acting Administrator
Cable Television Division