STATE OF HAWAII
DEPARTMENT OF REGULATORY AGENCIES

BEFORE THE DIRECTOR OF THE DEPARTMENT

In the Matter of the Application of KAUAI CABLE TV, LTD. For a Permit to Serve Kekaha, Waimea, Kaumakani, Hanapepe, Eleele, Kalaheo, Koloa, and Poipu.	DOCKET NO. 00-79-03 ORDER NO. 77

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.

On April 8, 1980, Applicant petitioned the Director to re-open the evidentiary record for the purpose of submitting additional evidence. The Petition was granted by the Acting Director on April 8, 1980. On May 6, 1980, Applicant filed (1) a balance sheet and an income statement for six months, ending December 31, 1979, (2) a commitment by Western Systems to provide $900,000 of capital for the construction and operation of Applicant's plant, and (3) a map indicating the general routing of the system's main trunk line. This new evidence was provided counsel for Seven Twenty Corporation, was not objected to, and has been received into evidence. The additional evidence has been reviewed and considered, and is relied upon.

In addition, on May 8, Applicant filed a five page commentary on the Recommended Decision, which has been considered.

On May 27, 1980, Applicant filed a single sheet of correspondence offering to provide converters, as well as proposing new rates for the additional channels. There was no indication opposing counsel received this correspondence, and it arrived three weeks after the other evidence was submitted. It has NOT been considered.

Applicant's submissions subsequent to the issuance of the Recommended Decision resolve some of the evidentiary shortcomings in the case which were cited in the Recommended Decision. Therefore, findings numbered 18, 21, and 24 in the Recommended Decision are amended to reflect the commentary submitted by Applicant on May 8, 1980.

After giving careful consideration to the evidence originally submitted, the supplemental evidence, and the commentary, I hereby adopt as my own, all findings in the Recommended Decision, numbered 1 through 50, other than Findings 18, 21, and 24, and the minor changes which follow.

Four topics merit discussion.

First, the map submitted by Applicant is wholly inadequate and serves no practical purpose. Finding of Fact Number 46 in the Recommended Decision is accepted.

Secondly, in order to dispel apparent confusion in reference to Findings 28 and 29, I find that with the adjustments made in the Recommended Decision, the results of operation at the end of the second year show Applicant to still be unprofitable but that his cash flow approximates equilibrium, even if only the lease channel revenues are included. A rate of return (vis a vis profit) is positive in all instances in Finding 28, because a portion of the "rate of return" element is determined by the amount set aside for interest expense. To the extent this explanation alters Findings 28 and 29, the findings are so altered.

Thirdly, the Recommended Decision's Finding 48 is upheld because Applicant's submission, dated May 27, 1980, has been rejected for consideration.

Relative to rates proposed in an application for a permit, and justifications in support thereof, as a general principle, it is desirous that Applicants 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. Applicant's philosophy for pricing cablevision services appears to be tying rates to the national national rate of inflation. (Refer, Applicant's May 6 Submission, Paragraphs 31 and 48.) Whether this is done directly or indirectly, or done on a proportionate basis, or otherwise, it is the finding of the Director that rates for cablevision must be compensatory, but that factors in addition to costs must be considered.

The submission of financial data is appreciated. However, similar to the map of routings for trunk lines, the items are so vague and lacking in essential detail, as to be meaningless.

The lack of adequate financial information is pivotal in this case. The lack of adequate maps is also critical. Because the application fails on either count, it is not necessary to counter Applicant's several arguments regarding what constitutes the relevant market.

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. 77 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 KAUAI CABLE TV, LTD. For a Permit to Serve Kekaha, Waimea, Kaumakani, Hanapepe, Eleele, Kalaheo, Koloa, and Poipu.	DOCKET NO. 00-79-03

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 the record strongly indicates that Applicant is qualified to provide the needed services, Applicant's failure (1) to satisfactorily resolve issues arising from the financial arrangements of affiliate corporations, (2) to propose services for the entire market, as deemed relevant to this proceeding, and (3) to provide (a) mandated public-use channels and (b) the specific routings of the cables and conduits, require that the application be denied.

I. PLEADINGS AND PROCEDURAL MATTERS

1. On August 2, 1979, Kauai Cable TV, Ltd. ("Applicant," herein), by communication to the Department of Regulatory Agencies' Cable Television Division ("DRA," herein), stated its intent to file documents in support of a cable television operating permit for Kauai. Documents in support of a transfer of portions of an existing permit were received on August 27, 1979. The submission included (a) a letter from Attorney Vernon F. L. Char dated August 23, 1979, and (b) an Application, dated August 10, 1979.

2. By correspondence dated December 28, 1979 and received by DRA on December 31, 1979, Applicant amended its application from that of a request to transfer portions of Derby Cablevision, Inc.'s ("DCV") authority to operate in the southern portion of the island of Kauai, to an original application for authority to construct and operate a cable television system for southern Kauai which is, generally, those portions of Census Tracts 406, 407, 408, and 409 not served by Derby Cablevision, Incorporated. (See Exhibit A.)

3. The data contained in the original application was supplemented by correspondence from Mr. Lee M. Holmes, dated October 12, 1979, and received on October 18, 1979. On November 9, 1979 DRA filed "Requests For Information"; Applicant responded to the Information Requests on December 11, 1979.

4. At 7:00 P.M. on Thursday, November 8, 1979 a public hearing was held at Hanapepe Recreation Center, Hanapepe, Kauai. The hearing was held pursuant to and in accordance with statutory law and pertinent rules and regulations of the DRA. Notice of the hearing was published in the Honolulu Star Bulletin on October 17 and November 1, 1979, as well as in The Garden Island on October 24 and November 7, 1979.

5. On January 9, 1980, an economic hearing was conducted in accordance with the provisions of Chapter 91, HRS, relating to contested cases, where an evidentiary proceeding is required. Counsel for the parties interposed no objections to the procedures and waived possible deficiencies in procedures up to the commencement of the hearing.

II. PARTIES TO THE PROCEEDING

6. Applicant is a corporation, incorporated in Guam on September 5, 1979. It is a wholly-owned subsidiary of Western Systems, Inc., also a Guam corporation. Western Systems, Inc. is the owner of Guam Cable TV System. Guam Cable TV, located on the island of Guam has approximately 16,700 customers (TR., p. 106). Ownership of Western Systems, Inc. is controlled by Lee M. Holmes, president, and by his wife, Joan S. Holmes, secretary.

7. The intervenor in this docket is The Seven Twenty Corporation, dba Kauai Cablevision ("720," herein). Its petition for intervention as a party in this proceeding was granted by the hearing officer at the evidentiary hearing on January 9, 1980. There was no objection by Applicant. Intervenor is an applicant in another docket before DRA, requesting authority for an operating permit for areas being examined in this docket.

8. A participant in this proceeding is DCV, which currently holds a cable television permit, and currently provides cable television services in selected areas of Kauai.

III. PUBLIC NEED FOR THE PROPOSED SERVICE

9. Applicant proposes to serve Census Tracts 406 (Koloa and Poipu), 407 (Eleele and Kalaheo), 408 (Kaumakani and Hanapepe), and 409 (Kekaha and Waimea). Within these four census tracts, there are two community areas Applicant is unwilling to serve, namely Kokee and Mana (TR., pp. 20-21). Except for the areas described in Finding of Fact No. 10, it is the expressed intent of Applicant not to serve the census tracts to the east and adjacent to the proposed area, namely Census Tract 404 (Puhi and Hanamalu) and Census Tract 405 (Lihue). Applicant further states that for the foreseeable future, e.g. five to ten years, it is unwilling to serve the remaining census tracts on the island of Kauai, namely Census Tract 401 (Hanalei), 402 (Waialua and Anahola), and 403 (Kapaa).

10. The franchise area requested to be served by Applicant overlaps the area served by DCV, but only to the extent that there would be a five hundred foot wide swath on each side of the highway, running approximately ten miles in length from Kalaheo into Lihue, and passing two principal population centers in DCV's franchised area (TR., pp. 12-19). The first is Lawai Valley Estates, a large subdivision with approximately one hundred fifty to two hundred subscribers (with approximately 75% penetration); the other is the Lamau area subdivision, having approximately 50% saturation with an unknown number of subscribers. This swath runs through Census Tracts 406 and 407. Applicant will not institute service nor promote sales within concentrated areas of the Derby-franchise which are now being served.

11. 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.

12. In Applicant's opinion, the area 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's costs for signal transmission ($233,000 for a 12-channel system and $493,000 for a 36-channel system) and its costs for providing service calls to sparsely populated rural areas indicate that it would be economically unfeasible for Applicant to serve Census Tract 401 without government subsidized or guaranteed loans. Applicant's unwillingness to serve Census Tract 401 (the Hanalei District) leaves that sparse, remote rural area of Kauai without the possibility of cable communications services for now and for the foreseeable future.

14. Unless Census Tract 401 is considered together with the rest of Kauai or a major portion of Kauai, modern television and other telecommunications services for that area is unlikely for the foreseeable future. Constructing and operating cable facilities for approximately 850 potential 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.

15. 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

16. It is admitted that forecasting of sales is "in the realm of guessing" (TR., p. 101). The art of forecasting is to guess in an educated manner. Throughout this proceeding (e.g., TR., p. 32, 33, 55, 98, etc.) effort was made to document the number of existing potential subscribers in order to have a sound factual basis for projecting. That number has not been — and cannot be — substantiated in any refined sense due to the deficiencies in the evidentiary record. The estimates of 3,500 individual residences and 1,000 apartment/condominium/commercial units (TR., p. 100), while not precisely accurate, are within the bounds of reason, are verifiable[1/] and, are the numbers relied upon in this case to estimate the financial viability of the service, as proposed.

17. Similar to the difficulty in ascertaining the number of existing potential customers, the penetration rate is not easily arrived at. It appears to be 50 percent (TR., p. 102) for the first year. The 56 percent made reference to subsequent to the hearing is used for analysis herein, as the reasonable penetration rate at the end of the second year. This appears reasonable in light of the several considerations given in formulating the computation.

1/ Refer, (1) March 21 and 22, 1979 Walkout, (2) Kauai Electric Company Statistics, (3) CATV Dockets 20-78-01 and 20-78-02, and other public documents.

18. Generally, it is Applicant's opinion (a) that the cable television industry experience shows that people's desire for cable TV is similar across the country, and that there is no sound factual basis for forecasting Kauai's experience to be different than nationally; (b) that it is necessary that the operator survey his subscribers — by means of questionnaires — to determine their needs and desires; (c) that this system of surveying be used to nurture and encourage leased services; (d) that a weekly, locally-produced news program would be financially feasible only when the population base doubles; (e) that the principal purpose of this cable TV system is to improve the quality of reception of over-the-air signals; and (f) that the "non-program" services such as electric meter reading, burglary alarms, fire alarms, and button alarms have very limited potential.

19. Specifically, for the purpose of forecasting, Applicant relied heavily on (a) the high saturation DCV is experiencing (i.e., 76 percent), (b) the poor over-the-air reception, (c) the program selection being limited by the lost SATCOM III, and Applicant's experience on Guam (TR., p. 101-102).

20. Applicant projects 1,775 residential subscribers the first year with a 300 residential subscriber increase annually through the first five years for approximately 3,000 residential subscribers after five years of operation. As to commercial accounts, Applicant projects 450 commercial subscribers the first year and approximately 850 commercial subscribers on line during the fifth year. The accuracy of the figure for commercial units depends to a great extent on the number of commercial buildings authorized to be constructed in the franchise area in the next few years.

B. CONSTRUCTION AND OPERATING COSTS

21. Applicant proposes to construct its headend site and earth receive satellite station within Kukui'o Lono Park. Applicant has not discussed nor negotiated with State/County officials and the owners of the site for use of the park as the location of its cable headend and satellite dish.

22. Applicant estimates its cost of construction for its cable system to be approximately $10,000 per strand mile. A breakdown of this cost was not provided. This is an average anticipated cost for each of the 76 miles of estimated cable plant to be constructed.

23. Applicant's "walkout" was performed by Western Systems, Incorporated's engineers. It was largely performed by visual reconnaissance from an automobile, and apparently did not involve the physical measurement of distances between poles, description of the actual position of poles, number and location of homes to be provided service, nor other field data necessary for strand mapping and design purposes. This form of walkout provided only a general view of the terrain and did not provide sufficient information upon which accurate projections of construction costs could be made. Consequently, Applicant's actual costs of construction may deviate considerably from the projected construction costs of the cable system.

24. Applicant proposes a construction schedule that shows actual construction to begin on July 1, 1980 and completion by February 1, 1981. The proposed construction schedule assumes receiving a cable television permit on or before March 1, 1980. The total schedule is referenced to March 1. Applicant states that the time frame for construction will hold, in any event, but that the dates will have to be referenced to the date of the final Decision and Order.

		Day
a.	Obtain DRA approval of franchise transfer for South Kauai from Derby Cablevision	0
b.	Enter into pole rental agreement with Hawaiian Telephone	90
c.	Obtain all county clearances	120
d.	Lease or buy sites for antennas, headend, and office	120
e.	Order equipment for first phase	130
f.	Authorize "make ready" to Kauai Electric and Hawaiian Telephone for first phase	130
g.	Begin construction of headend and first phase*	495
h.	Turn-on first customers in first phase	585

* Cable TV equipment lead time is now running one year.

Succeeding phases' "make ready" and actual construction times will determine the schedule thereafter, but final construction of the area from Poipu to Kekaha is estimated to be completed in six to eight months after first phase construction begins, with subscribers connected as each phase is ready.

25. At the end of the second year, Applicant will have 76 miles of plant in service; and there will be an estimated 4,500 potential subscribers (residential and commercial) passed, with a saturation of 56 percent. This constitutes 59 potential subscribers per mile of cable and 33 subscribers per mile of cable.

26. To provide the services demanded at the end of the second year, Applicant's proposed plant-in-service is reasonable, with minor exceptions. To be added to Applicant's original plant are cost estimations for (a) franchise and licenses; (b) leasehold improvement; (c) tools and test equipment; (d) origination equipment; (e) house drop material; and (f) miscellaneous equipment.

The following depicts the plant in service at the completion of the second year, assuming a 56 percent penetration of homes passed:

PLANT IN SERVICE

Plant	Applicant's Projected Plant	Plant Found To Be Reasonable
Franchise & Licenses	—	$ 7,000
Antennas & Towers	$ 25,000	10,000
Channel Converters	—	—
Headend/Building	5,000	28,600
Leasehold Improvements	—	10,000
Microwave Equipment	—	—
Miscellaneous Equipment	—	2,000
Office Furniture & Fixtures	5,000	5,000
Origination Equipment	—	33,500
Outside Plant (Aerial & Underground)	808,000	808,000
Pay TV Devices	—	9,900 a/
Satellite Receive Equipment	50,000 c/	83,800
Tools & Test Equipment	—	2,000
Vehicles	49,000	49,000
House Drop Materials	—	23,900 b/
	$942,000	$1,072,700

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.

c/ Apparently does not include receivers (fixed and variable), freight, supervision and performance testing, and leasehold improvements.

27. Projected revenues and earnings are estimated for the second year of operation, and assume (a) that the number of subscribers at a particular saturation level remains constant throughout the year, (b) that the number of disconnects is equal to the number of reconnects and new installs, (c) that five percent of the number of initial outlets shall be equal to the number of second outlets, (d) that on the average, there would be 37 poles per strand mile for 76 miles at a cost of $5.40 per pole contact for an annual cost of $15,185 (as compared to the Applicant's cost of $7,300) and (e) that the electric cost is about $9.75 per month per mile of cable system.

Lease channel revenues are based upon the applicant's submissions stating that lease channel rates would be $700 per month or 10% of subscribers' gross pay revenues. Revenues or expenses for gross income tax and regulatory fees are not included. Applicant's rates are net amounts to be charged.

ANNUAL EXPENSES

	Applicant's Proposed Expenses	Expenses Found To Be Reasonable
Salaries and Wages	$143,000	$143,000
Satellite Services	11,200	8,900
Payroll Taxes and Fringe	28,600	28,600
Legal and Accounting	12,000	12,000
Insurance	10,000	10,000
Billing Services and Postage	13,400	13,400
Office Supplies	4,000	4,000
Office and Site Rent	13,200	13,200
Pole Rent	7,300	15,200
Travel	8,000	8,000
Telephone	4,800	4,800
Utilities	6,000	8,900
Copyright Fees	5,700	4,600
Small Tools and Supplies	2,500	2,500
Vehicle Expense	14,400	14,400
Miscellaneous	15,000	15,000
	$299,100	$306,500

28. Taking the plant-in-service at the end of the second year, and the revenues derived from the sales reasonably to be anticipated for the second year at the rates proposed, and accepting Applicant's forecasted expenses for the second year, the basic cable television system attains a cash-flow equilibrium late in its second year of operations.

FORECASTED RESULTS OF OPERATIONS

(END OF SECOND YEAR OF SYSTEM'S OPERATION)

	Applicant's Adj. Forecast	Forecast Found to be Reasonable	
	Includes Lease Channel Revenues	Includes Lease Channel Revenues	Includes All Pay TV Revenues
Revenues			
Basic	$ 404,700	$ 416,500	$ 416,500
Pay	8,500	9,000	90,000
TOTAL	$ 413,200	$ 425,500	$ 506,500
Operating Expenses			
Basic	$ 299,100	$ 306,500	$ 306,500
Pay			45,000
TOTAL	$ 299,100	306,500	$ 351,500
Operating Profit (Loss)	114,100	119,000	155,000
Depreciation	46,700	53,635	53,635
Interest	116,100	116,100	116,100
Taxable Income	(48,700)	(50,735)	(14,735)
Income Taxes	0	0	0
Net Income After Taxes	(48,700)	(50,735)	(14,735)
Net Income After Taxes, But Before Interest	67,400	65,365	101,365
Rate Base	$ 954,500	$ 1,085,500	$ 1,085,500
Rate of Return	7.1%	6.0%	9.3%

29. Applicant's projections show sufficient revenues to cover projected operating expenses and allow a return on investment in the second year. A profitable system in the second year of operation is at variance with experience in Hawaii and the rest of the United States, generally. It is particularly noteworthy in light of the totality of the circumstances on Kauai.

C. RATES

30. 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. Applicant is proposing the following rate schedule:

KAUAI CABLE TV, LTD.

RATES*

	Year 1	Year 2	Year 3	Year 4	Year 5
Monthly Rates:					
Individual - Basic Service	$13.75	$14.58	$15.45	$16.38	$17.36
Individual - Second Outlet	2.75	2.92	3.10	3.29	3.49
Apartment/Hotel - Basic Service	8.25	8.75	9.27	9.83	10.42
Premium Movie Service**	7.95	8.43	8.94	9.48	10.05
Installation Rates:					
Basic Service - Individual	$34.95	$37.00	$39.25	$41.60	$44.00
Basic Service - Apartment/Hotel	Time and Materials				
Second Outlet (First Trip)	N/C	N/C	N/C	N/C	N/C
Second Outlet Connection	13.85	14.75	15.65	16.60	17.60
Premium Movie Connection (First Trip)	N/C	N/C	N/C	N/C	N/C
Premium Movie Connection	13.85	14.75	15.65	16.60	17.60
Relocate Outlet	13.85	14.75	15.65	16.60	17.60
Reconnection (Non-Pay)	34.95	37.00	39.25	41.60	44.00
Account Transfer (Office Only)	N/C	N/C	N/C	N/C	N/C

* Includes 6% annual increase, or half the estimated inflation rate.
** Premium movie service to be supplied by channel lessee at estimated rates shown.

31. In the August 10, 1979 submittal, the basic rate proposed was $12.50; by correspondence dated November 20, 1979, the proposed basic rate was raised to $13.75; after one year of operation, the proposed basic rate would be $14.58. The percentage increases (6%) in basic rates track inflation but at a lower rate. Since many of the costs comprising the total cost of providing service to customers 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. Of equal significance is Applicant's belief that the market is price-sensitive to the degree that a single six percent increase will hurt Applicant's initial penetration (TR., p. 108). Assuming Applicant's belief to be sincere, its rate proposal blatantly disregards that sensitivity once the customer is on-line, by increasing the basic monthly service charge six percent each year.

V. SUITABILITY OF THE APPLICANT

32. While Applicant is a newly-formed, wholly-owned corporation, as is its parent corporation, Western Systems, Inc., the parent's predecessor had considerable experience operating a cable television system on the island of Guam. Western Systems, Inc. is a holding company which owns Guam Cable TV. The recent incorporations were to accommodate the principal lender's manner of doing business (TR., p. 113).

33. Guam Cable TV, formerly Marianas Communications System, has operated and continues to operate as a system unregulated by government. Initially, the Guam government guaranteed a loan to Guam Cable TV, then it became necessary for the government to take over the ownership and operation for a short period of time, until individuals with private capital repurchased the system. At the time of the reversion back to private ownership, the Guam government guaranteed a $343,000 loan for funds to repay the system's creditors. It appears from the circumstances that Holmes' purchase of Guam Cable TV was timely. The system now produces a profit.

34. Guam Cable TV has been operating for approximately ten years, and now enjoys a 60 to 65 percent penetration in the home market (TR., p. 101). The commercial establishments receiving the services of Guam Cable TV are favorably impressed with the quality of the system's services and the attitude of the company's personnel.

35. Applicant's president is Lee M. Holmes. His work experience in the past seventeen years includes management responsibility both at General Dynamics, where he was responsible for radar and missile systems, and with the U.S. Marine Corps where, as a major, he was a manager of a systems evaluation office. Mr. Holmes has also been associated with two other firms: (a) Resources and Technology Management Company, a venture capital firm, and (b) Decision Technology, Inc., a management consulting firm.

The firm has, as its secretary, Joan Holmes who is the wife of the president. She has experience in evaluation of franchise areas, personnel selection, and subscriber policies.

In addition, there is a Mr. William Norwood who has a background in construction, who serves as a member of the board of directors and was a director of the Federal Disaster Agency established to rehabilitate the island of Guam after Typhoon Pamela struck Guam in 1976.

36. Applicant's Kauai manager, at the outset, will be an employee presently serving the Saípan affiliate of Western Systems, Incorporated. Applicant will give substantial local autonomy to the Kauai manager, subject to budgetary controls and other established operational controls. In major decision-making, the Kauai manager will have access to the president either in person or by trans-pacific telephone. Budget preparation and approval for expenses of the Kauai system will

be made jointly between the local manager and the Guam office of Western Systems, Incorporated. Purchases for the Kauai system will be made by and through the Guam offices of Western Systems, Incorporated. Basic financial transactions and accounting will take place with and through suppliers and institutions serving the Guam headquarters of Western Systems, Incorporated.

37. Applicant possesses the experience and technical qualifications necessary to successfully construct and operate the cable television system as it has been proposed.

VI. FINANCIAL RESPONSIBILITY OF THE APPLICANT

38. Applicant's financial exhibits indicate neither the amount nor the type of capitalization of Applicant.

39. Applications for cable television permits must include "complete information as to the . . . ultimate beneficial owners," as the director deems appropriate or necessary (Sec. 440G-6(a), HRS). Applicant is a wholly-owned subsidiary of Western Systems, Inc., a holding company. On the basis that Western Systems is both (a) a "beneficial owner" and (b) a "stockholder. . . owning more than ten percent . . . of the issued and outstanding stock" (Sec 440G-6(a), HRS) of Applicant, financial statements of Western Systems, Inc. were specifically requested to be a part of the evidentiary record. Applicant and/or Western Systems' refused to disclose information deemed appropriate and necessary.

40. Western Systems, Inc. is a recently incorporated entity, which was provided a $750,000 loan, during a capital-short period, at a <u>favorable</u> fixed rate (TR., p. 78), without any guarantor (TR., p. 113). The apparent sole security for those funds is Western Systems equity interest in Guam Cable TV. Given that fact,

plus the fact that until recently Guam Cable TV would otherwise have been the only source providing the security for borrowed funds for Applicant, the financial statements of Guam Cable TV are appropriate and necessary in this proceeding. Applicant has apparent access to such records but, when specifically requested to make them available, failed to disclose them. Applicant testified that the revelation of the financial results of operation of Guam Cable TV would "prejudice our operations as being a high-cost operator" (TR., p. 67). What is particularly ironical is that throughout this proceeding, Applicant based its projections on the Guam experience (e.g., TR., p. 67, 69, 101, etc.), yet Applicant refuses to disclose those bases.

41. Applicant's refusal to submit financial accounts, records and documents of its sister affiliate cable system operations somewhat undermines Applicant's forecasts of operations and indeed, Applicant's willingness to operate a system in a regulated environment.

42. Applicant's parent corporation having obtained from Mutual Life Insurance Company of New York $750,000.00, apparently provides Applicant an amount sufficient to begin construction of the proposed cable television system. These funds have already been drawn down from Mutual of New York and have been placed in certificates of deposit. A photocopy of a Statement of Security Account of Merrill, Lynch, Pierce, Fenner and Smith for a Western Systems, Incorporated account is the documentary evidence in the record. Applicant has declined to provide the loan documents or disclose the terms under which funds from Mutual Life Insurance Company of New York have been obtained by Western Systems, Inc.

43. The absence of financial statements for Applicant's parent company and sister affiliate leaves serious questions relative to the financial fitness, capabilities and resources of the corporate applicant.

VII. ABILITY OF APPLICANT TO PERFORM EFFICIENTLY

44. The proposed system, as designed, appears to be free of inherent inefficiencies. There is promise of minor efficiencies in areas such as administrative and general functions, attributable to the holding company's ability to eliminate duplicity. Proposed cost allocation formulae appear reasonable.

45. Applicant proposes a 5-300 MHz system which will have an initial twelve channel capacity. Applicant proposes to provide its cable subscribers with the five over-the-air television signals from Honolulu and the following satellite signals: (1) KTVU-Oakland; (2) WGN or WOR; (3) KTBS-Atlanta; (4) Madison Square Gardens and C-Span; (5) SPN-ESPN; and (6) pay television. As demands require, applicant will expand the cable channel offerings to thirty-six channels. Applicant proposes utilization of equipment capable of carrying 36 full television channels and 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 30. Amplifier spacing between trunk amplifiers is specified as 20 dB at the frequency of 300 MHz and 29 dB spacing between line extenders. The worst case signal-to-noise ratio for fully loaded system of 36 channels will be 40 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 12 dB with a maximum tilt of 6 dB. Applicant proposes to have standby power only for its trunk system and not for its headend, and/or satellite earth receive station. Without standby power for the headend and earth receive station, a localized power outage at the headend would result in total signal outages for all subscribers.

46. The evidentiary record in this proceeding is virtually devoid of the necessary data setting forth ". . . the general routes of the wires, cables, conduits, or other devices used in the redistribution of signals" (Sec. 440G-6(a), HRS).

47. Applicant has testified that the profit-sharing, stock-option and other employee benefit plans available to qualifying employees of the subsidiaries of Western Systems, Inc. will be equally available to qualifying employees of Kauai Cable TV, Limited. The qualifying standards appear reasonable.

48. State of Hawaii regulations, as distinguished from Federal law, require all licensed systems to be a minimum of twenty channels, three of which are mandated to be dedicated to public use. Applicant proposes offering twelve channels, none of which are dedicated to public use. Applicant's position in this regard is based on fact and law. Factually, given the size of the system, to require public access and other channels is to require an uneconomic system; legally, Applicant would argue, the U.S. Supreme Court's decision in the <u>Midwest Video</u> case has pre-empted state requirements in this regard. Based on the entirety of the record, the 20/3 channel requirement does not make the service prohibitively expensive.

49. 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.

50. Applicant proposes to separate and keep apart its pay-television company for Kauai from its cable television system operation on Kauai. Applicant proposes that revenues accruing to Applicant from pay television be limited to revenues received under a pay television tariff. It is reasonably anticipated that the pay television operation will be profitable and that Applicant or Applicant's sister or parent corporation will be the beneficiary of income so derived.

VIII. CONCLUSIONS OF LAW

1. The absence of the financial results of operations of Applicant's parent and sister corporations constitutes a deficiency of evidence which is essential if the Applicant was to meet its burden of proof in this proceeding. (Refer, Findings of Fact No. 39 through 43, and Sec. 440G-6(a), HRS.)

2. Applicant's failure to provide, with specificity, the general routings of cable, conduit, and equipment constitutes a deficiency of evidence necessary to meet the Applicant's burden of proof in this proceeding. (Refer Finding of Fact No. 46, and Sec. 440G-6(a), HRS.)

3. Applicant's proposal to serve the western area of Kauai but not to serve the eastern and northern areas of Kauai constitutes a failure to provide adequate service to the relevant market. (Refer Findings of Fact No. 13 through 15, and Sec. 440G-2, HRS.)

4. Applicant's failure to provide at the outset of service at least twenty (20) channels of capacity, three (3) of which are to be dedicated to public use, constitutes a substantial variance to administrative regulations and shall not be condoned. (Refer Finding of Fact No. 48.)

5. 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.

The foregoing fifty (50) Findings of Fact and five (5) 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