

Order No. 79

1. The majority of the members of the Board of Directors of HTC shall be residents of the State of Hawaii.
2. HTC's services to its consumers shall be at no less than parity with the highest quality services actually provided by any operating company presently owned or to be owned in the future by AMERICAN TELEVISION & COMMUNICATIONS CORPORATION (hereinafter ATC) which is the owner of the controlling shares of HTC; provided that HTC is entitled to a hearing to show cause why the quality of HTC's then-existing services need not be enhanced to the level of services provided by ATC's other operating divisions and subsidiaries.
3. On or before December 31, 1983, HTC shall have constructed cable facilities which pass by all potential subscribers in areas which presently have residential units, which residential areas are indicated on pages 1, 2, and 3 of Hearing Exhibit No. 4. On or before December 31, 1984, HTC shall construct cable facilities which pass by all remaining residential units situated in its franchise areas. HTC shall submit to the Director acceptable construction schedules for providing service to residential areas built after December 31, 1984 and for unbuilt business areas.
4. On or before June 30, 1985, HTC shall have constructed or otherwise secured the use of a second, on-line primary satellite receive dish.
5. On or before March 30, 1982, HTC shall construct a studio facility capable of local origination programming. The facility shall be fully equipped and staffed by personnel necessary for its operation.
6. All new construction or "re-build" of earlier construction commencing subsequent to the date of this Order shall be two-way activated by December 31, 1985, and all construction in place, as of the effective date of this Order, shall be two-way activated by December 31, 1983.
7. On or before March 30, 1982, HTC shall activate all of its microwave segments to a thirty channel capability (both the amplitude modulated links and frequency modulated links).

Order No. 79

8. HTC, in conjunction with ATC, shall formulate and submit by June 30, 1985, or at the time the last non-majority shareholder exercises the provisions of his "put agreement," whichever occurs earlier, for the Director's approval, a statement of a "dividend policy" to be pursued by ATC and HTC, including a five-year financing plan (1986-1990), exhibiting sources and application of funds.

9. On or before September 30, 1981, HTC shall submit to the Director, for her approval, and for implementation by December 31, 1981, proposals to resolve recurring complaints voiced by consumers:

(a) A method of accurately informing customers, in a timely and detailed fashion, what programs will actually be appearing on each of the channels;

(b) A construction program to provide stand-by power to provide back-up in the numerous, but usually short-lived instances, where the electric utility experiences power outages;

(c) A substantially improved customer services program detailing the practices and procedures which will enable HTC to readily receive inquiries, requests for service, etc. and which will enable HTC to respond with information and to promptly provide the services requested;

(d) HTC shall institute a public awareness program to inform community institutions, associations and organizations that it provides cost-free cablecasting or re-cablecasting of social, cultural, ethnic, and athletic events and activities occurring in Hawaii. HTC shall assist such organizations in video-taping, filming or the otherwise recording of these events and activities; and

(e) HTC shall cablecast not less than seven hours per week of local origination programming. This programming may be materials acquired from the sources described above or be programming developed and produced by HTC.

All conditions in Orders 4, 8, 9, 15, 16, 29, and 57 which are not superseded or amended by this Order, shall remain in effect subsequent to the date of this Order.

Order No. 79

Any exercise by HTC of the rights and privileges of a permittee as described by Order Nos. 4, 8, 9, 15, 16, 29, and 57 is tacit agreement to all the above conditions.

DATED: Honolulu, Hawaii, March 27, 1981.


Mary G. F. Bitterman
Director of Regulatory Agencies

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order No. 79 and Recommended Decision were served on the following by mailing the same, postage prepaid, on this 27th day of March, 1981:

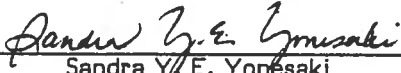
Oceanic Cablevision, Inc.
2669 Kilihau Street
Honolulu, Hawaii 96819

Mr. Thomas W. Binning
American Television & Communications
Corporation
160 Inverness Drive West
Englewood, CO 80112

Copies were also served on the following by personal delivery on this 27th day of March, 1981:

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Sandra Y. E. Yonesaki
Secretary

This is a recommended decision. It was issued and served on all parties on March 20, 1981. Briefs of the parties, if any, are to be filed with the Director of the Department of Regulatory Agencies within fifteen (15) days of issuance, or by April 6, 1981.

BEFORE THE DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII

In the Matter of the Application of)
)
HONOLULU TELEVISION &)
COMMUNICATIONS CORP.)
)
For Transfer of the CATV Permits)
and Assets of Oceanic Cablevision,)
Incorporated and Pacific Cablevision)
Corporation to It.)
_____)

Docket No. 29-80-03

RECOMMENDED DECISION

SUMMARY

It is herein recommended by the duly designated hearing officer that the Director grant her "consent" to the transfer of the two permits currently issued to CABLEVISION HOLDINGS, INCORPORATED and PACIFIC CABLEVISION CORPORATION (herein collectively referred to as "Oceanic") to HONOLULU TELEVISION & COMMUNICATIONS CORPORATION ("HTC").

Based on the applications, there is no compelling public interest necessitating consent to the transfer. Indeed, the facts are (1) that the quality and array of services offered by Oceanic are among the best in the country; (2) that as time progresses, Oceanic's financial health will continue to improve; and (3) that the management of Oceanic is competent and has, over the years, exhibited sensitivity to the needs of the communities it serves. It is recommended that the transfers be consented to only if there are sufficient safeguards (1) that HTC remain a quality provider of cable-transmitted signals, (2) that HTC's own long term financial well being will not be adversely affected by the change in ownership and control by AMERICAN TELEVISION & COMMUNICATIONS CORPORATION ("ATC"), and (3) that HTC's management remains sensitive to, and ready, willing and able to meet the needs of the unique communities HTC will be serving.

INTRODUCTION

On December 19, 1980, HTC filed an application with the Director of Regulatory Agencies ("Director") to be the transferee of the permits and other assets of (1) Cablevision Holdings, Incorporated and its operating subsidiary, Oceanic Cablevision, Inc., and (2) Pacific Cablevision Holdings Corporation and its operating subsidiary, Pacific Cablevision Corporation.

To afford the public an opportunity of participating in regulatory decision-making, a public hearing on this application was held on March 9, 1981 in the Conference Room of the Department of Regulatory Agencies, commencing at 9:00 a.m. Notice of the hearing was published in newspapers of statewide circulation on February 12 and 26, 1981. The record reflects that no testimony or objections were offered by the public at this hearing.

Immediately upon adjournment of the public hearing, Departmental staff undertook an informal inquiry into the several volumes of justifications submitted by HTC in support of the transfer. Those documents include: (1) a two-volume application, approximating 500 pages; (2) the Applicant's submittal on February 17, 1981 of three volumes of responses to the staff's information requests which were filed on January 27, 1981; (3) numerous responses to the staff's written inquiries (dated February 11, 1981) to the regulators of cablevision operations owned by ATC in forty-two different jurisdictions across the United States; and (4) supplemental responses by ATC to supplemental information requests by the staff of the CATV Division. Based upon the above documents, and the company's responses to inquiries at the staff hearing, which constitutes 255 pages of transcript, which is included as part of the record herein, the information submitted by HTC has been found to be complete, relevant, and factually correct (refer Sec. 440G-9(1), H.R.S.), and worthy of reliance by the Director in rendering a decision to consent to the transfer to HTC of the two permits and other assets of the two operating CATV companies which are presently a part of the Oceanic Group.

GUIDING PRINCIPLES

The regulatory powers of the Department regarding the transfer of CATV permits are set forth in Section 440G-10, H.R.S., which requires that the transferor and the proposed transferee make written application to the Director and that the information in such application be substantially the same as the information required in an original application for a permit (refer Section 440G-6, H.R.S.), together with information concerning the consideration to be paid and such other matters as the Director may deem appropriate or necessary. Section 440G-6 directs the Department to obtain information regarding:

"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 . . . with full disclosure as to the true ownership of the facilities to be employed in rendering services, as to the source of funds for the purchase, lease, rental, and installation of such facilities . . . and as to his ability to extend service at a reasonable cost to the potential subscribers in the proposed service area. Each application shall set forth the (1) rates to be charged, (2) the services to be offered, (3) the facilities to be employed, (4) the general routes of the wires, cables, conduits, or other devices used in the redistribution of signals, (5) the service area or areas, (6) the commencement and completion dates of construction of the CATV system, and (7) the proposed date service will be available to the areas named." (Emphasis added.)

While Section 440G-6, H.R.S., directs the Department to require certain information from each applicant in his application, it is Section 440G-8(b), H.R.S., which establishes the requisite criteria to be considered by the Director prior to issuing a permit. In the instant case, permits have already been issued -- but to Oceanic. The real question to the Department is whether or not it is in the public interest to transfer ("re-issue," if you will) the permit to the proposed transferee, HTC:

"The Director, after a public hearing as provided by this Chapter, shall issue a CATV permit to the applicant when he is convinced that it is in the public interest to do so. In determining whether a CATV permit shall be issued, the Director shall take into consideration, among other things, (1) the public need for the proposed service or acquisition, (2) the ability of the applicant to offer service at a reasonable cost to the subscribers, (3) the suitability of the applicant, (4) the financial responsibility of the applicant, (5) the ability of the applicant to perform efficiently the service for which authority is requested, and (6) any objections arising from the public hearing, the CATV Advisory Committee, or elsewhere." Sec. 440G-8(b), H.R.S. (Emphasis added.)

ANALYSIS

Given the statutory scheme of Chapter 440G, H.R.S., and the mandatory directives in Section 440G-8(b), H.R.S., the immediately foregoing six criteria shall be utilized in the analysis of the appropriateness of this transfer.

1. PUBLIC NEED FOR THE ACQUISITION

Chapter 440G, H.R.S., was enacted in 1970 on the fundamental premise that "rapid and orderly expansion of cable television systems would be of great benefit to the people throughout the State of Hawaii." Eleven years later, many of the authorized operators still have large segments of their franchise areas remaining to be built. In the case of Oceanic, on August 12, 1973, the Director approved the application of Cablevision Holdings, Inc. to acquire Oceanic Cablevision, Inc. with a condition to complete within twenty-four months the construction of cable facilities to provide cable services to all potential subscribers within its permit area. August 12, 1975 came and went. On November 11, 1975, the Director granted Cablevision Holdings a waiver of that earlier condition and approved a revised construction schedule providing for the construction of an additional 300 miles of plant by August 31, 1978. The company completed 389 miles of plant construction by March 31, 1978, and completed construction of an additional 71 miles by March 31, 1980. There still remains an additional 220 miles of plant to be constructed.

Because only ten years remain on this permit, both practical and financial considerations must now be addressed in the determination of what period of time is reasonable for a responsible operator to complete construction of the franchised area. The application and the transcript contain much discussion of what constitutes a reasonable construction program.

Oceanic's own plan has construction completed seven years hence and costing \$5.4 million. If its past experience is prologue to what will happen in the future, the system may not be completely built at the expiration of the permit. While the transferor and the transferee both agree that the "slow build" to date has

been attributable to a lack of capital, that should not be the case in the future: the record in this proceeding is replete with representations by the Applicant, the Applicant's parent, and the Applicant's parent's parent that any and all necessary capital will be forthcoming.

The question then becomes, what construction schedule makes economic sense. The additional cost attributable to shifting from a seven-year build to a four-year build amounts to \$1.2 million, or a total construction cost of \$6.6 million. To accelerate the construction program from four years to three years, it is estimated that it will cost an additional \$3.0 million, or a total cost for a three-year build of \$9.6 million. To accelerate the construction program from four years to two years, it is estimated that it would cost \$6.4 million in addition to the \$6.6 million, or \$13.0 million. It is difficult to dispute these estimates. Analysis of the four-page document entitled "Construction Schedule" (marked as Hearing Exhibit No. 4), indicates that all of the construction on the first three pages of such document is forecasted by HTC and Oceanic Cablevision, Inc. to be completed by December, 1983. The construction contemplated and identified on the first three pages will, generally speaking, be in areas where residential units are now constructed but where coaxial trunking has not been laid, or where major multi-residential unit buildings have not authorized service.

It is reasonable to hold HTC fully responsible for completing construction of all items indicated on pages 1, 2, and 3 of said document in the time-frame it suggests. The economics of constructing those areas identified is more favorable to the permittee than the favorable economics of the four-year construction plan. Therefore, the Department will not waiver in its commitment to have the 174.6 miles constructed by December, 1983, at an estimated cost of \$4.56 million. This will enable the permittee to pass nearly 22,000 dwelling units, constituting 125 passings per mile, at a cost of \$209.00 per passing.

Applicant and Transferor are consistent in their intent "to do what's economically right." (Transcript, p. 34, 40, 75). The economics for the construction for the first three years is favorable. The Department accepts HTC's

construction plan, as proposed. Indeed, it is the injection of \$6.6 million of capital for construction over the four-year period and \$11.036 million for capital expenditures over the first five years which constitutes the principal need of the public which HTC's application satisfies.

It must be emphasized that HTC must construct the system as it has proposed in Exhibit 4, and if, in December, 1983, the construction is not at the phase it is proposed to be at that time -- regardless of actual costs incurred -- regulatory relief in the form of rates or renewals, will be seriously jeopardized. It is noted that the construction HTC proposes for 1984 is either on-going construction in geographic locations where presently there are no residential units or where HTC must install conduit-encased facilities in existing residential areas with "direct buried" utility facilities.

2. APPLICANT'S ABILITY TO PROVIDE SERVICE AT REASONABLE RATES

For purposes of analyzing this application under the criteria set forth in Section 440G-8(b), H.R.S., subpart 2 (ability of applicant to offer services at reasonable cost to the subscribers) and subpart 5 (ability of the applicant to perform efficiently the service for which the authority is requested) are essentially the same criterion, and therefore will be analyzed together in this section.

In December, 1980, Oceanic provided justifications for its \$.85 per month rate increase request (i.e., Increment I of two increments). The Department found that the first increment of the two-phased increase was reasonable. The substantial justifications filed in that proceeding, as well as other financial and operating data on file with the Department, indicate that Oceanic has the ability to provide service at reasonable rates. Based upon all of the justifications submitted in support of the application here in question, there is no indication that the transfer of ownership from the existing shareholders to ATC will, per se, necessitate a change in the existing rates.

The Applicant provided a two-page statement entitled "Pricing Philosophy" in which it discussed the relevant market, the competitive influences, and ATC's approach to realizing its business objectives. ATC's approach does not appear to differ substantially from the approach presently being utilized by Oceanic, i.e. rates must compensate for all reasonable costs, including capital costs. But questions linger: (1) What are the reasonable costs?; and (2) From which groups of subscribers does the company recover their reasonable costs?

Relative to the determination of what constitutes reasonable compensation (revenue requirement, if you will) for the total cost of operating HTC, the costs ATC incurred for the purchase of the permits, the good will, and other "franchising costs," as ATC accounts for such costs, are not to be included in the costs to provide basic cablevision service. The Department is confident ATC's non-recovery of these costs does not and will not disable Applicant in its efforts to provide quality service.

The two-page "Pricing Policy" statement adds confusion rather than clarity of other aspects of ATC's approach to pricing. For example, on the one hand, ATC's approach relies heavily on the concept that "prices are calculated to produce a reasonable return on that investment after the expenses of operation"; on the other hand, the Company appears to want to rely on a market-oriented pricing philosophy. Mr. Binning admits that under the reasonable return on investment theory, if the market expands with all other circumstances remaining the same, rates should go down; but that the rates could go higher if there is expansion in your relative market and you are pricing on the basis of what the market will bear (refer Transcript, pp. 127-128).

ATC has as its pricing objective the generation of a return on investment commensurate with the risks (refer Hearing Exhibit No. 3); yet, Mr. Binning recognizes that the biggest risk in a market-orientated company, which ATC purports to be (and hopefully is), is that the market may not always be there (Transcript, p, 129). The Department wishes to make it very clear that if the market for cable television contracts, for whatever reason, the rates for basic

cable television should not necessarily be affected. The risks and rewards associated with contraction and expansion of cable markets should not, and will not, be reflected in rates paid by basic service subscribers. Rather, the rewards for assuming the risks Applicant has assumed lie in the "long-term potential" that Mr. Binning speaks of (Transcript, p. 77-78) and the enhanced value of a company offering more and different types of services. Applicant did not disclose its financial goals but did state that in the short run ATC is going to have to put a substantial amount of cash into this particular operation, "but we feel that the long-term potential with additional services, subscribers, and whatever will meet our internal financial goals" (refer Transcript, p. 130). The Department hopes that Applicant does not fall back and rely upon a rate base/rate of return basis for establishing rates to be paid for basic cablevision service.

Applicant's demonstration of its ability to perform efficiently is essentially two concepts: (1) retention of the current Oceanic management and staff to maintain the quality of its current operations; and (2) HTC's full accessibility to ATC's Denver-based expertise in engineering, design and drafting, planning of plant and facilities, and possibly marketing. It is anticipated that administration, marketing, and accounting functions be maintained locally, and that for day-to-day operation, HTC will operate as a fairly autonomous corporation.

The testimony of counsel for Oceanic is that there is no need for labor-protective provisions because Oceanic's current personnel have been given all of the assurances that they either feel they can reasonably expect or wish to demand.

A comparison of calendar year end results for 1978, 1979, and 1980 indicates that at a corporate level, ATC's general and administrative expenses have grown at a substantially faster rate, from year to year, than have ATC's revenues and ATC's investment in the distribution plant and equipment. It is hoped that this trend of ATC does not extend to HTC.

3. SUITABILITY OF APPLICANT

Not all of the experiences the Department has incurred in dealing with mainland-owned, Hawaii-based cable television operations have been enjoyable. Much of the fault may lie with the Department, insofar as it has not been wholly successful in sensitizing MSO's to the unique aspects of Hawaii's total telecommunications needs. Applicant herein appears to be anxious to continue Oceanic's efforts to meet unique community needs, to be an innovator, and to remain at the cutting edge of cablevision technology and programming. Relative to technology, HTC expresses its intent to maintain Oceanic's technical staff, including its Vice President of Engineering, which is the best assurance ATC can make that HTC will continue to be the equal of the best of ATC's operations (Transcript, p. 93).

A primary objective of the Department herein is to ensure that Oceanic/HTC maintain the leadership role it may have in the industry, and not just HTC's leadership within ATC or within Hawaii. Oceanic acquired a reputable position in the industry while its financial condition was, at times, troubled; ATC now promises to assist HTC financially. Thus, ATC's representations (Transcript, p. 93, and Paragraphs 2 and 3 of James W. Boyle's March 13, 1981 correspondence) do not suffice. The Department believes Oceanic's representation (Transcript, pp. 95-96) that if Oceanic is not progressive, the Company regresses. That is the reason why Condition No. 1 is considered a necessary condition of the Recommended Order.

In the area of public access, the Department felt strongly that Oceanic needed to do more. Here again, ATC can be a positive force. ATC's subsidiary in Durham, North Carolina has developed what is considered to be a model program wherein ATC's subsidiary employs a full-time person whose primary responsibility is to assist persons or groups interested in governmental, educational, public access, and local program origination. The company attempts to work actively in the community to insure that two-way and other future communications services will be introduced in a timely manner and used effectively for the community's benefit.

What has been proposed by HTC in its March 13, 1981 submittal -- in terms of a portable video origination module, with a one-time cost of approximately \$50,000.00, together with a local origination expediter to administer high utilization of the equipment and to work with local groups to encourage their use of local origination facilities, with an annual budget of approximately \$30,000 per year -- is a proposal which is not only readily acceptable to the Department, but is the type of proposal, when implemented, that the Department would endeavor to work with. For example, if the Department may be of assistance in soliciting "Requests For Proposals" from public agencies such as the Department of Education, the University of Hawaii, State correctional facilities, etc., the Department will be most cooperative. It is the thinking of the Department that such cooperative ventures benefit the public more directly and immediately than the Applicant's offering or being ordered by the regulator to provide numerous studios and upwards of a million dollars in community production equipment. ATC has proposed duplicative facilities for other jurisdictions (e.g. Indianapolis). The Department feels that Conditions No. 2, 3, and 4 are not duplicative or otherwise uneconomic but are necessary conditions to the reissuance of the permit.

4. CONDITIONS

The Director is empowered to issue permits and otherwise administer and enforce the CATV law (Sec. 440G-4, H.R.S.). These powers include the ultimate power to revoke permits (Sec. 440G-9, H.R.S.) for various causes. The Director has the discretion to attach to the exercise of the privilege of any CATV permit "such terms, limitations, and conditions which (s)he deems the public interest may require" (Sec. 440G-8(d), H.R.S.). If the potential transferee is awarded the permit, and exercises the rights of the permit, and in doing so violates the terms of the permit, the permit is subject to revocation (refer Sec. 440G-9(6), H.R.S.).

To ensure that the interests of the public are preserved and will progress, the Director imposes the following conditions to the exercise of the rights granted to HTC in its CATV permits:

1. That HTC's services to its consumers shall be at no less than parity with the highest quality services actually provided by any operating company presently owned or to be owned in the future by ATC; provided that HTC is entitled to a hearing to show cause why the quality of HTC's then-existing services need not be enhanced to the level of services provided by ATC's other operating divisions and subsidiaries. The Director shall consider the public interest, economic viability, and proven technology of the proposed enhanced level of service in the enforcement of this condition;
2. That all high schools, universities, and public libraries be wired to HTC's system by December 31, 1983, in order to provide for cablecasting from such institutions to all subscribers;
3. That by March 30, 1982 HTC have constructed a studio facility and have the facility fully equipped, and partially staffed;
4. That by December 31, 1981 HTC itself provide its subscribers a minimum of ten hours per week of local origination programming of social, cultural, and athletic events and activities occurring on Oahu;
5. Due to the fact that Hawaii has the highest percentage of working spouses and due to the fact that our visitor industry requires somewhat abnormal work schedules for much of our work force, that HTC, as a service industry, be required to maintain an array of customer services, e.g. repair, inquiries, etc., between the hours of 7:00 a.m. and 9:00 p.m. ;
6. That all HTC-owned microwave segments be activated to a thirty channel capability, i.e. both the amplitude modulated links and the frequency modulated links;

7. That the majority of the representation of the Board of Directors of HTC be residents of Hawaii;
8. That HTC shall construct cable facilities which pass by all potential subscribers in areas which presently have residential units on or before December 31, 1983 as indicated on pages 1, 2, and 3 of Hearing Exhibit No. 4. HTC shall, on or before December 31, 1984, construct cable facilities which pass by all remaining residential units of its cable permit. HTC shall submit to the Director acceptable construction schedules for residences built after December 31, 1984 and for unbuilt business areas. In the enforcement of this condition, the Director shall consider the economic viability, proven technology and market conditions;
9. That HTC shall, on or before June 30, 1985, construct or otherwise secure the use of a second, on-line primary satellite receive dish;
10. That all new construction or "re-build" of earlier construction commencing subsequent to the date of this Order be two-way activated by December 31, 1985, and that all construction in place, as of the effective date of this Order, be two-way activated by December 31, 1983. The Director shall, in the enforcement of this condition, consider economic viability, proven technology, and market conditions;
11. That detailed proposals -- ready for implementation -- be submitted to the Division by year-end 1981 -- to alleviate two recurring problems voiced by consumers: (a) a method of accurately informing customers, in a timely and detailed fashion, what programs will actually be appearing on each of the channels; and (b) a construction program to provide stand-by power to provide back-up in the numerous, but usually short-lived instances, where the electric utility experiences power outages;

12. That HTC, in conjunction with ATC, formulate and submit by June 30, 1985 or at the time the last non-majority shareholder exercises the provisions of his "put agreement," whichever occurs earlier, for the Director's approval, a statement of a "dividend policy" to be pursued by ATC and HTC, including a five-year financing plan (1986-1990), exhibiting sources and application of funds.



William W. Milks
Acting Administrator
Cable Television Division

DATED: Honolulu, Hawaii
March 20, 1981

CERTIFICATE OF SERVICE

I hereby certify that copies of the Recommended Decision and Proposed Order were served on all parties, postage prepaid, on this 20th day of March, 1981.



William W. Milks