

BEFORE THE DIRECTOR OF REGULATORY AGENCIES

OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
THE SEVEN TWENTY CORP. )  
 )  
For a Permit to Provide Cable )  
Television Service on the Island )  
of Kauai. )  
\_\_\_\_\_ )

DOCKET NO. 00-80-05

ORDER NO. 83

In the Matter of the Application of )  
 )  
TELE-COMMUNICATIONS, INC. )  
 )  
(1) For Approval to Acquire the )  
CATV Permit and Other Assets )  
of Derby Cablevision, Inc., and )  
(2) For Authority to Provide Cable )  
Television Service to Census Tract )  
401 on the Island of Kauai. )  
\_\_\_\_\_ )

DOCKET NO. 20-80-03

**ORDER**

By letter dated July 6, 1981, Derby Cablevision, Incorporated (hereinafter "Derby"), notified the Director that Tele-Communications, Incorporated (hereinafter "TCI") had terminated its agreement for the purchase of Derby's cable communications system. Also, it was requested in the same letter that the application of TCI for authority to acquire the assets of Derby and to provide cable communications services to Census Tract 401 be withdrawn. Therefore, there being no application before the Director, and no pending issues to be resolved, Docket No. 20-80-03 is hereby terminated.

Upon review and consideration of the Application (filed on August 4, 1980) and the Recommended Decision (dated May 28, 1981) in the matter of the request of The Seven Twenty Corporation and The Seven Twenty Limited

Partnership (hereinafter "Limited Partnership") for authority to provide cable communications services to selected areas on the island of Kauai, the Director hereby grants The Seven Twenty Limited Partnership authority to provide the said cable communications services, subject to certain conditions herein imposed on the said authority.

The Recommended Decision, as amended, is incorporated herein.

The following conditions are imposed on the exercise of the authority granted the Limited Partnership to provide cable communications services to Census Tracts 401, 407, 408, 409, and parts of Census Tracts 402 and 406:

1. The Limited Partnership shall provide the Director within sixty days of the issuance of this Order, a certification by a regulated financial institution that one million dollars (\$1,000,000) is on deposit to the account of the Limited Partnership, and that an unconditional letter of credit from a regulated financial institution assures that an additional five hundred thousand dollars (\$500,000) is available for immediate call down for a period of at least 18 months.

2. The Limited Partnership shall complete construction of a wholly-owned distribution and origination system and begin service to:

a. All potential subscribers desiring service within the above-designated area within the time schedule attached hereto.

b. All applicants for service subsequent to the above-mentioned time schedule within six months of their application for service.

3. The Limited Partnership, within sixty days of the Department's acknowledgment of receipt of certification of funds (Condition No. 1, above) shall begin the construction of the system herein authorized.

4. The Limited Partnership shall provide all schools within its service area with not less than one free drop and shall provide all necessary tools, equipment and labor to provide for its installation. Any dispute as to this provision shall be resolved by the Director.

5. The Limited Partnership shall maintain and provide equipment, facilities and personnel for the effective use of the following "restricted use" color cable channels:

- a. Public access channels;
- b. Education channels; and
- c. Government channels.

6. The majority of the members of the Limited Partnership shall be residents of the State of Hawaii, and the majority of the members of the board of directors of The Seven Twenty Corporation, the general partner, shall be residents of the State of Hawaii. Any change in ownership or control of the limited partnership or its general partnership shall be reported to the Director of Regulatory Agencies for her approval within ten days thereof.

7. The Limited Partnership shall:

a. Within sixty days of the issuance of this permit, provide the Director of Regulatory Agencies with a performance bond and/or corporate surety in an amount not less than \$50,000.

b. Upon award of this permit, and annually each year thereafter, on or before the fifteenth day of January, file a list of all general partners, limited partners and all undisclosed principals holding one or more percent of the partnership's equity capital, noting the number and types of limited partnership units, or fractions of a unit, and the voting rights associated with the units. The Limited Partnership shall also list its interest and the amount thereof in any other partnership, corporation, or business.

c. Notify and secure the prior written approval of the Director of Regulatory Agencies for all reorganizations, acquisitions, or transfers of the cumulative amount of one percent or more of its units by any single individual, group of individuals, corporations and/or undisclosed principals.

d. Secure the prior written approval of the Director of Regulatory Agencies before selling, exchanging, or transferring assets with an original acquisition or present market value, whichever is greater, in excess of the sum of five thousand dollars (\$5,000) to any individual, group of individuals, or corporations (including parent or holding companies), other than for the payment of legitimate costs incurred in operating the cable television system. Any dispute as to this provision shall be resolved by the Director of Regulatory Agencies.

e. Secure the prior written approval of the Director of Regulatory Agencies before the limited partnership or the corporate general partner engages in any type or form of business activity other than allowed in this permit.

f. Maintain all financial and business records, ledgers, files, charts of accounts and financial computer printouts, except those as may be specifically exempted by the Director of Regulatory Agencies, at the cable television systems principal offices within the State of Hawaii.

g. Maintain a current file with the Director of Regulatory Agencies, or the name(s) of a responsible managing employee(s) who shall have the power to act for the Limited Partnership in providing effective cable television service.

8. The Limited Partnership shall, prior to the beginning of subscriber service, submit for approval by the Director of Regulatory Agencies a tariff setting forth the terms, conditions and charges for cable services to the designated service area. The original filings shall be consistent with the representations set forth in its application.


Any or all of the foregoing conditions may be modified or waived by the Director of Regulatory Agencies upon the permittee showing good cause and when it is in the best interest of the people of the State of Hawaii.

Compliance with the herein stated provisions does not waive compliance by the permittee of existing and future Federal and State statutes and regulations governing cable television.

A violation of any of these stated conditions or a violation of departmental regulations may be cause for an immediate revocation or suspension of the permit, subject to a formal hearing pursuant to Chapter 91, Hawaii Revised Statutes (the Hawaii Administrative Procedures Act), and the rules and regulations for cable television systems.

Notwithstanding any provision hereinstated, the Director of Regulatory Agencies shall have the power to do all things which are necessary or convenient to enforce the provisions and future amendments of Chapter 440G, Hawaii Revised Statutes (the Hawaii Cable Television Systems Law).

DATED: Honolulu, Hawaii, August 4, 1981.

  
\_\_\_\_\_  
Mary G. F. Bitterman  
Director of Regulatory Agencies

**THE SEVEN TWENTY LIMITED PARTNERSHIP**

**CONSTRUCTION SCHEDULE**

<u>AREA</u>	<u>START OF SERVICE DATE</u>
Kalaheo	April 30, 1982
Koloa/Poipu	June 30, 1982
Hanapepe/Eleele	December 31, 1982
Kaumakani	January 31, 1983
Makaweli	January 31, 1983
Waimea	February 28, 1983
Kekaha	March 31, 1983
Wailua Homesteads	April 30, 1983
Anahola/Kealia	July 31, 1983
Kilauea	August 31, 1983
Princeville/Hanalei	October 31, 1983

BEFORE THE DIRECTOR OF REGULATORY AGENCIES  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
THE SEVEN TWENTY CORP. )  
For a Permit to Provide Cable )  
Television Service on the Island )  
of Kauai. )  
\_\_\_\_\_ )

DOCKET NO. 00-80-05

In the Matter of the Application of )  
TELE-COMMUNICATIONS, INC. )  
(1) For Approval to Acquire the )  
CATV Permit and Other Assets of )  
Derby Cablevision, Inc., and (2) For )  
Authority to Provide Cable Tele- )  
vision Service to Census Tract 401 )  
on the Island of Kauai. )  
\_\_\_\_\_ )

DOCKET NO. 20-80-03

**RECOMMENDED DECISION**  
**(CONSOLIDATED)**

SUMMARY AND RECOMMENDATION.

Pending before the Director of the Department for her decision are: (1) an application by The Seven Twenty Corporation ("720") for the right to provide cable services to selected areas on Kauai; and (2) an application by Tele-Communications, Incorporated ("TCI") for (a) approval of its acquisition of Derby Cablevision, Inc. and (b) the right to provide service to the northern section of Kauai, which is currently not a franchised area.

A single Recommended Decision on the two Applications is required because the facts in the two cases are inter-related, and an economic analysis of one proposal without some comparisons and considerations of the other, is not practical.

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

Two determinative factors in these proceedings are the degree of willingness and the financial ability of the new permit holders to fulfill the obligation to offer cable services to all potential customers. Discussion of these factors is found in Parts A and B of this Recommended Decision. Comparison of the evidence submitted by the parties, with recommended findings based on the evidence is found in Parts C through I. Part J contains the recommended ultimate findings and conclusions:

- A. A Primary Obligation is to Offer the Services to All.
- B. The History of the Service on Kauai.
- C. Parties to the Proceedings.
- D. Pleadings and Procedural Matters.
- E. Public Need for the Proposed Services.
- F. Ability to Provide Quality Service at Reasonable Rates.
- G. Suitability of the Applicant.
- H. Financial Responsibility of the Applicant.
- I. Ability of the Applicant to Perform Efficiently.
- J. Ultimate Findings and Conclusions.

In summary, it is recommended to the Director that:

(1) Seven Twenty Corporation's application for authority to provide cable communications service to all areas on Kauai except for Census Tracts 404 (Puhi and Hanamaulu) and 405 (Lihue) be APPROVED, provided Applicant provide to this Department proof of financial responsibility, in the form of bank certifications of a minimum deposit and an assured line of credit;

(2) Tele-Communications, Incorporated's request for approval to acquire the assets of Derby Cablevision, Incorporated, including the transfer of its permit, be APPROVED, provided that such permit be limited in its authorization to serve only those areas to which Derby Cablevision, Incorporated actually provided cable communication services on January 1, 1981;



(3) Tele-Communications, Incorporated's request for authority to provide cable communication services to Census Tract 401 be DENIED, provided that if The Seven Twenty Corporation fails to provide the Department the appropriate certifications proving financial fitness, then Tele-Communications, Inc. has the right to provide cable television services to the entire island of Kauai, but only if it comes forward with a technically feasible construction plan for providing service to Census Tract 401.

A. A PRIMARY OBLIGATION IS TO OFFER THE SERVICES TO ALL.

1. The Hawaii state legislature, in its enactment of the Hawaii Cable Television Systems Law, established as public policy that "rapid and orderly expansion of cable television systems would be of great benefit to people throughout the State of Hawaii."

The legislature entrusted the responsibility for carrying out its expressed mandate to the Director of Regulatory Agencies. In its broad grant of power to that office, the Director was empowered to "attach to the exercise of the right granted by the CATV permit such terms, limitations, and conditions which he deems the public interest may require." In every grant to a non-grandfather cable permit, the Director has always imposed a requirement that all potential subscribers within the permit area be served within a prescribed time limit. Due to particular circumstances, the Director, on occasion, has allowed cable operators to delay provision of service. However, the history of the regulation of each permittee is that the primary responsibility and obligation of a cable permit holder is to construct and extend cable communication facilities to all potential subscribers in the permit area.

2. More particularly, in all orders approving transfers of cable permits and change in tariffs, the Director has firmly established the primacy of the goal of extending cable services on a priority basis to citizens who are unable to receive adequate television signals in their places of residences. The island of Kauai, with few exceptions, is a community in which over-the-air television signals are marginal, if existent at all. As indicated in recent decisions regarding

applications for authority to serve Kauai, the statutory mandate to the Director to ensure the provision of service, when combined with the geographic realities confronting Kauai's telecommunications situation, provides the Director one of her most difficult challenges in cablevision matters.

**B. THE HISTORY OF THE SERVICE ON KAUAL.**

3. The regulatory history of Kauai's cable communications services begins with Cable Order No. 6 dated October 21, 1970 which granted a "grandfather" or "A" permit to Derby Cablevision, Incorporated to serve the Koloa District. This permit recognized that Derby had completed the construction of a headend antenna for the redistribution of television signals to various Kauai communities. Derby, at the time of the issuance of the permit, had not constructed trunk and distribution facilities.

4. In Order No. 20 dated October 1, 1971, the Director of Regulatory Agencies granted Derby Cablevision the authority to provide cable communication services to the Kawaihau, Lihue and Waimea districts on the island of Kauai. In granting the additional authority, the Director imposed certain obligations and conditions on Derby Cablevision. Among the conditions and obligations were:

- "1. The permittee shall complete construction of distribution and origination facilities and begin service to:
  - a. All potential subscribers desiring service within the above designated area, within twenty-four (24) months of the award of this permit.
  - b. All applicants for service subsequent to the above-mentioned period, within six (6) months of their application for service.
  - c. All potential subscribers within an existing service area of the permittee (for which a permit was awarded prior to the 31st day of January, 1971), within one year of the award of this permit.
5. The permittee shall:
  - b. Provide a signal at the subscriber terminal of at least 0 dbmv (1,000 microvolts referred to 75 ohms) and it shall be maintained within:

- (1) 4 db of the visual signal on either adjacent cable television channel.
- (2) 10 db of the visual signal level on any other cable television channel.
- (3) Signal-to-noise ratio not less than 40 db.

7. The permittee shall:

- b. Notify and secure the prior written approval of the Director of Regulatory Agencies for all reorganizations, acquisitions, or transfers of the cumulative amount of five percent (5%) or more of its stock by any single individual, group of individuals, corporations and/or undisclosed principals."

5. Order No. 70 dated April 30, 1979 granted Derby Cablevision limited increases in monthly rates and installation charges. It also granted a limited extension of the deadline for construction of cable communication services to all subscribers -- until October, 1981. It required that Derby provide the Director by January 1, 1980 a construction plan for the completion of all construction within the extended construction period. Derby has not provided such a plan and it is assumed that Derby presently does not intend to comply with the order to construct new plant.

6. Order No. 70 is unique among all of the orders issued by the Director in regards to cablevision matters in that it invited qualified applicants to apply for authority to provide cable communications services within and without the Derby cable permit area. On October 9, 1979, 720 Corp. filed an Application in response to the invitation, but that Application was "denied, without prejudice," in Order Number 76, dated June 20, 1980. On August 27, 1979, Kauai Cable TV, Ltd. filed an Application, presumably in response to the same invitation, and that Application was also "denied, without prejudice," in Order Number 77, dated June 20, 1980. The Seven Twenty Corp. has re-applied, and contained herein is the decision on the merits of that second application.

7. Presumably, subsequent to the issuance of Order No. 70, Derby took it upon itself to respond to the Order -- but not by expanding its plant or enhancing its services. Rather, Derby apparently sought out a buyer for its permit, and other assets, which buyer would satisfy the provisions of Order No. 70 by

standing ready, willing and able to complete the build, to improve the quality of the signal, and to increase the programming and services offered.

8. Seven Twenty's willingness to serve all areas not currently served by Derby is clear. The Applicant has made a detailed proposal to provide cable communication services to Census Tract 401. It has provided: (1) cost estimates for construction of the system; (2) a method of providing signals to this segment of the system; and (3) a schedule for construction of the necessary cable facilities. The Seven Twenty Corp. appears to recognize the deep concern that the Department of Regulatory Agencies has in extending to the Hanalei District modern television and other telecommunication services.

However, its readiness and financial ability remains suspect. As the analysis herein reveals, the substantial capital requirements for completing construction within the time proposed by 720 may be beyond 720's available financial resources. If it can fulfill, sixty (60) days subsequent to the final order, its representations of adequate financing, then 720 should be permitted to proceed; if it cannot obtain the necessary financing of the system after being given the conditional authority by a final order of this Department, it should refrain from filing applications in the future until adequate financing is assured.

9. TCI's application, in one sense, complements 720's: While TCI's financial capabilities to build the Kauai system are evident, its commitment to offer service to all of the areas of the island of Kauai is not so convincing. TCI is a most reluctant applicant for the right, and the duty, to serve Census Tract 401. TCI has failed, both in its application and in its testimonies, to provide this regulatory agency with (a) routings for cable, wire and/or other facilities necessary to serve this area; (b) specification of cable facilities to be employed; and (c) a schedule for the construction and operation of the necessary cable facilities. From this series of failures to provide required information, it is sensed that TCI's seriousness or its enthusiasm is less than adequate to sustain TCI in the difficult and expensive proposition of providing services to the thinly populated and somewhat isolated sections of Kauai. These shortcomings in its application could be readily dispelled by filing additional exhibits, if and when 720 fails to provide the Department the proof it seeks that 720 is financially fit.

C. PARTIES TO THESE PROCEEDINGS.

10. Derby Cablevision, Incorporated, the incumbent permittee and presently the only permittee on the Island of Kauai, is authorized to provide service in all areas of Kauai except the northern portion of the east side of Kauai, referred to as Census Tract 401 (i.e. Hanalei District). Derby proposes to transfer its permit to TCI. Derby has 108 months remaining on its 20-year permit, which permit was granted, and later conditioned, as set forth in paragraphs 3 through 5, supra.

11. Tele-Communications, Incorporated ("TCI") and its subsidiary, Kauai Cablevision, Inc., currently have the same business address at Post Office Box 22595, Wellshire Station, Denver, Colorado. Kauai Cablevision, Inc. is legally incorporated in the State of Hawaii. Reference herein will be made to TCI.

From a series of small systems in the Rocky Mountain West, TCI has grown to encompass more than 120 systems in 40 states serving more than 1.3 million subscribers. With revenues of more than \$124 million, the MSO earned \$8.2 million in 1980. Its Pittsburgh area operations alone pass more than 140,000 households in the Pennsylvania area; yet no single TCI franchise accounts for more than five percent of its subscriber base. Of the 2.21 million homes TCI passed in 1980, it served 1.11 million, or a 50.2 percent saturation with basic service. TCI provided pay TV services to 42.2 percent of its 1.11 million basic subscribers. It is noteworthy, for purposes herein, that TCI currently has a one million home "reserve," which means that TCI has been granted authority to build systems to serve one million homes but has not, as yet, built the required systems to actually serve the homes.

Principal shareholders of TCI are Tele-Communications Investments, Inc. (43.25% of Class A and 23.85% of Class B common stocks of TCI); Kearns-Tribune Corporation (2.63% Class A and 12.76% Class B common stocks of TCI); Associated Communications Corporation (6.16% Class A and 6.19% Class B common stocks of TCI); Bob Magness (1% Class A and 14.39% Class B common stocks of TCI); and Betsey Magness (3.09% Class A and 8.18% Class B common stocks of TCI). For all intents and purposes, due to the voting rights associated

with the different classes of stock, Mr. and Mrs. Magness, together, have virtual control over the application of the considerable assets of TCI. (Refer 2/3/81 TR, p. 65)

12. The Seven Twenty Corporation ("720"), dba Kauai Cablevision, Ltd., has a business address of Post Office Box 720, Eleele, Hawaii 96705. It proposes to serve all areas of Kauai not currently being served by the incumbent permittee. It appears from the record that Applicant is legally incorporated in the State of Hawaii, that 720 is the general partner of a limited partnership, with sixteen limited partners, formed to finance, construct, and operate a cable system. The principal shareholders of 720 are: James F. Collins, William G. Dahle, and John S. Short. Messrs. Dahle and Short hold F.C.C. radio telephone licenses with broadcast endorsements. The limited partners include: James F. Collins & Associates; Kauai Builders; Norito F. Kawakami; NFK, Ltd.; Toru Kawakami & Associates; William Lackie; Masuoka & Hong; Ozaki and Ozaki Associates; Deborah Pratt; R Electric, Inc.; Sadao Shintani Associates; TAP Associates; and Winners Circle Associates. While it is the general partner that is the entity requesting the permit, both general and limited partnerships are considered as one, and is referred to throughout as 720.

13. Princeville Communications, Inc. -- an unregulated company providing cablevision services to the Princeville at Hanalei resort -- participated in these proceedings, but is not a party to either the 720 proceeding or the TCI proceeding.

#### D. PLEADINGS AND PROCEDURAL MATTERS.

14. On July 3, 1980, TCI filed an application with the Cable Television Division of the State of Hawaii, Department of Regulatory Agencies ("DRA," herein). The application requested: (a) Transfer to it of Derby Cablevision, Incorporated's permit to serve the island of Kauai except for the Hanalei District; (b) Authority to provide cable communications service to Census Tract 401; and (c) Approval of a tariff which would result in the increase of various charges to existing and potential subscribers of its services.

15. On August 4, 1980, 720 filed an application with DRA requesting authority to construct and operate a cable television system in all areas not presently served by the incumbent permittee, Derby.

16. On August 29, 1980, DRA issued "Requests for Information" to TCI. On October 9, 1980 DRA received TCI's responses to the requested information.

17. On September 10, 1980, DRA issued "Requests for Information" to 720. On November 12, 1980 DRA received 720's responses to the requested information.

18. On February 2, 1981 at 7:00 P.M. at the Lihue Neighborhood Center, DRA conducted a public hearing, in accordance with the requirements of Chapter 440G, H.R.S., and the Departmental rules and regulations promulgated pursuant thereto.

19. On February 3, 1981, informal hearings were held in order to obtain a detailed review of the TCI and 720 proposals. At the outset of the hearings, parties moved into the official record all of the materials which were filed with DRA, all documents in the correspondence file, including 720's revised exhibits (which were submitted to DRA earlier on the day of the hearing). The record includes correspondence from the Mayor of the County of Kauai, and a petition containing signatures of several hundred persons with Kauai addresses. Both documents support the 720 Application.

20. Parties to the proceeding were informed on February 3, 1981 that supplemental information could be filed within twelve (12) days of the hearing, but no later than February 17, 1981, at which time the record would be formally closed.

Due to unforeseen circumstances, a review of the record could not be completed until mid-May. Due to the passage of time and possibly other considerations, the Asset Purchase Agreement, dated May 5, 1980, and signed by TCI and Derby, which had an expiration date which was twice extended, has become, in the words of one of the principals "suspended." The only information DRA has of the changed status of the Agreement, is by means of phone conversations from Derby on May 13, 1981, which was confirmed by TCI on May 14,

1981. Since both TCI and Derby have stated that there is no fundamental disagreement between the parties in the terms and conditions of the Agreement, other than some additional consideration to be paid the Seller for renewal of an extension, it is being assumed herein, for purposes of decision-making, that there is agreement, if not an Agreement, that a purchase can be consummated. The record in this case reflects that parties to the Agreement were willing to extend the terms and conditions of the Agreement until a final decision and order by the Director of DRA was issued.

E. PUBLIC NEED FOR THE PROPOSED SERVICES.

21. In a real sense, the quality of government's regulation of utility and utility-like services can best be gauged by the availability of such services to persons and places least likely to be offered the services if there were no economic regulation. The test for regulators in cases such as this is to make reasonably-priced cable services available to all of the people of Kauai without unduly burdening any class of customers or geographic locale.

22. Derby currently provides service to approximately 2,300 residential customers and the residential-equivalent of 700 commercial customers in the more populous areas of Kauai. The history of its operations indicates strong potential for profitability, especially if the operator were to provide pay television programming, which it currently does not provide. Given that, and the nature of the pending applications to serve, the analysis must focus on the following:

- (a) Is it economically feasible and socially desirable to build and service those portions of Kauai which are presently unserved?
- (b) If the answer to (a) is in the affirmative, does it remain economically feasible to fracture the economies of scale and have two or more permittees authorized to offer service to all of the people of Kauai?



23. Honolulu-originated, over-the-air signal reception is poor in the areas requested to be served but not currently receiving service. Parties to this proceeding agree that there are present needs and future needs of the public for better cable television services on Kauai.

24. 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 communication services. If modern television and other telecommunications services for that area are to become a reality in the foreseeable future, service to that area must be a condition to the authority to serve other areas on Kauai which promise more profitability. 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 more populated areas.

25. The economic feasibility of Applicants' proposals rests on the reasonableness of Applicants' economic and financial data which, in turn, rests on the potential number of subscribers passed by cable plant, the number of homes subject to an extension rule, the amount and cost of the plant to serve the area, and the level of the rates to be charged.

26. According to the latest census data, the housing unit count for Kauai County is 14,822 units. A listing of telephone subscribers, by areas, indicates the number of single family, multi-family, apartment, hotel and dorm/motel subscribers for the County of Kauai. The most recent listing shows the total number of single family, multiple family and apartment telephone subscribers, as of June 1980, to be 14,212. There is good correlation between the number of telephone subscribers and the total number of housing units.

## KAUAI HOUSING UNITS

<u>Census Districts</u>	<u>Number of Units</u>
Eleele-Kalaheo	1,578
Hanalei	1,732
Kapaa	1,827
Kaumakani-Hanapepe	978
Kekaha-Waimea	1,758
Koloa-Poipu	2,046
Lihue	1,598
Niihau	40
Puhi-Hanamaulu	1,301
Wailua-Anahola	<u>1,964</u>
TOTAL	14,822

---

\* These numbers have been extracted from the 1980 Census Press Release Announcement Number DO 3283.

TELEPHONE SUBSCRIBERS  
(6/80)

<u>Area</u>	<u>Single Family</u>	<u>Multiple Family</u>	<u>Apartment</u>	<u>Hotel</u>	<u>Dorm/ Motel</u>
Kekaha	897	64	59	--	--
Waimea	709	13	54	--	--
Hanapepe	1,292	32	6	--	--
Kalaheo	1,235	16	33	--	--
Koloa	<u>995</u>	<u>30</u>	<u>435</u>	<u>621</u>	<u>--</u>
Subtotal	5,128	155	587	621	0
Hanalei	564	27	627	322	--
Kilauea	<u>360</u>	<u>3</u>	<u>375</u>	<u>--</u>	<u>--</u>
Subtotal	924	30	1,002	322	0
Lihue	2,261	138	283	735	179
Kapaa	<u>3,070</u>	<u>85</u>	<u>549</u>	<u>1,427</u>	<u>35</u>
Subtotal	5,331	223	832	2,162	214
TOTAL	11,383	408	2,421	3,105	214

TOTAL SINGLE FAMILY, MULTIPLE FAMILY, AND APARTMENTS: 14,212

27. To be extracted from these island-wide phone and home counts are the number of homes in the areas not currently receiving cablevision services, and the number of miles of plant needed to be built in those areas not currently receiving cablevision service. These computations are done for the South/West side, as well as the North/East side, of the island, using the numbers provided by each of the Applicants.

SOUTH/WEST

SCHEDULE OF MILES OF PLANT AND HOMES PASSED

<u>Area</u>	<u>TCI</u>		<u>720</u>	
	<u>Miles</u>	<u>Homes</u>	<u>Miles</u>	<u>Homes</u>
Kekaha	13.0	1,000	11.6	1,006
Waimea	6.6	400	8.0	559
Pakala Village/Makaweli	3.6	180	4.0	180
Kaumakani	4.4	230	4.4	230
Hanapepe/Eleele	11.7	725	10.7	906
Kalaheo	11.0	700	15.5	820
Lawai/Omao	7.3	400	10.0	546
Koloa/Poipu	19.0	1,040	19.5	612
Puhi	<u>2.6</u>	<u>170</u>	<u>10.0</u>	<u>251</u>
	79.2	4,845	93.7	5,110
Adjustment	10.7*			
	<u>89.9</u>	<u>4,845</u>	<u>93.7</u>	<u>5,110</u>

\* Adjustment representing existing trunk cable delivering cable signals through Kalaheo and Puhi and passes Lawai and Omao.

NORTH/EAST

SCHEDULE OF MILES OF PLANT AND HOMES PASSED

<u>Area</u>	<u>TCI</u>		<u>720</u>	
	<u>Miles</u>	<u>Homes</u>	<u>Miles</u>	<u>Homes</u>
Wailua Homestead/Kawaihau	18.9	882	17.0	694
Census Tract 401	<u>32.0</u>	<u>700<sup>1/</sup></u>	<u>38.0<sup>2/</sup></u>	<u>1,056</u>
	50.9	1,582	55.0 <sup>2/</sup>	1,750

<sup>1/</sup> TCI estimates 1,400 homes on the northern rim of the island, but reduced to 700 subscribers after adjustments for subscribers of Princeville Cablevision.

<sup>2/</sup> 720's documents show that 7 miles of plant would be required to be built within Princeville to provide service within the community. Princeville Cablevision has built a cable system within the community area and therefore the cable plant projected by Seven Twenty Corporation is not required.

28. TCI's Exhibit M (Walk Out Results) shows that 23.2 miles of trunk and 74.9 miles of trunk/feeder cable plant are to be constructed to extend cable services to the remaining unserved areas within Derby Cablevision's permit area, except for the communities of Mana, Koke'e, and Anahola. During hearings held on February 3, 1981, TCI stated that if providing service to Census Tract 401 was part of the requirement to receive approval, it would build 401 with no aid-to-construction charges. TCI originally stated about one-half of the potential homes in Census Tract 401 are being provided service through Princeville Cablevision. TCI apparently expects to either purchase Princeville Cablevision or wait for Princeville Cablevision to apply for a permit to extend its service out of Princeville and into the surrounding communities. (Refer Application, page 25) TCI's Response to Initial Request for Information shows that 32 miles of plant would complete Census Tract 401, but TCI has not provided any construction schedule in this regard. TCI further states that after completion of the plant it proposes to build, "cable facilities will be expanded to serve new or existing areas whenever the number of expected cable subscribers per mile of cable strand, or portion thereof, exceeds 33. Less dense areas will be served if customers agree to pay a one-time

capital charge equal to the difference between the expected cost spread over 33 subscribers per mile, or portion thereof, and the expected capital cost per actual subscriber to be served." (Exhibit O, Expansion of Cable Facilities)

29. Seven Twenty Corp. has applied for all areas not provided cable services by Derby Cablevision, Incorporated, including Census Tracts 401, 407, 408, 409 and parts of 402, 404, and 406. Its Exhibit K, Schedule A, shows that 29.7 miles of trunk and 64 miles of trunk/feeder cable plant are to be constructed to provide cable services to the remaining unserved south/west permit area of Derby Cablevision. Mana and Koke'e will be provided service in accordance with 720's line extension policy. Exhibit K, Schedule B, shows that 22 miles of trunk and 33 miles of trunk/feeder cable plant are to be constructed to provide cable services to Census Tract 401 and the remaining north/east unserved permit area of Derby Cablevision. Total plant to be constructed would amount to 148.7 miles. Seven Twenty "would serve areas of less than 30 potential subscribers per mile if customers agreed to reimburse the system for the difference between the projected construction costs of service for 30 subscribers per mile and the actual number." (Exhibit O, Preconditions For Further Expansion)

30. In summary, there currently are a substantial number of homes on Kauai which are not currently being served which could readily be provided the availability of cable services if either TCI or 720 were granted the permit.

Number of Homes to be Passed

	<u>TCI</u>	<u>720</u>
South/West Plant	4,845	5,110
North/East Plant	<u>1,582</u>	<u>1,750</u>
Homes to be Passed	6,427	6,860

The number of homes to be passed must be adjusted in order to determine the number of homes subject to an extension rule.

	<u>TCI</u>	<u>720</u>
Residential Phone Subscribers	11,383	11,383
Less: Homes to be Passed (see above)	6,427	6,860
Less: Homes Now Passed by Derby	<u>2,516</u>	<u>2,516</u>
	2,440	2,007

Further adjustments need to be made to TCI's projections for the exclusion of Princeville Cablevision's 700 potential subscribers. The result is a reduction from 2,440 homes to 1,740 homes which would be subject to the extension rule. TCI shows no projections for bulk accounts in its Exhibit K.

Seven Twenty's Exhibit K, Schedule C, shows 1,033 existing units in the Poipu/Koloa area. By reducing the 2,007 homes by 1,033, only 974 housing units remain to be passed by 720 which would be subject to the extension rule.

Given the number of homes on Kauai yet to be offered service, and the existing over-the-air signals, and the line extension proposals, either Applicants' proposed service could fulfill a real public need, and as indicated infra, be profitable, as well.

#### F. ABILITY TO PROVIDE QUALITY SERVICE AT REASONABLE RATES.

31. In its Exhibit C, System Design Specifications, TCI proposes to provide cable signals to its subscribers between frequencies 50 MHz and 300 MHz and return signals between frequencies 5 MHz and 30 MHz. TCI proposes a maximum cascade of 30 trunk amplifiers.

Derby's existing cable plant has in excess of 50 amplifiers, in cascade. TCI stated at the hearings that it would use a super trunk to cut the cascade down. It is herein found that for a 28 mile trunk only, the number of cascaded amplifiers would be 54 for a 3/4-inch cable, 42 for 1-inch cable, and 38 if a 1-inch fused disc cable were to be used. In all cases, this would exceed TCI's specifications of a maximum of 30 amplifiers. Therefore, TCI's proposed method provides no potential for expansion of the existing system in the north/east direction.

32. In its Exhibit C, System Design, 720 proposes to provide between frequencies 50 MHz and 300 MHz cable signals to its subscribers and frequencies between 5 MHz and 30 MHz as return channels. The Seven Twenty Corp. proposes a maximum cascade of 32 trunk amplifiers. It also proposes a second headend to provide cable services to the north/east side of Kauai, an 8-channel microwave system to connect the second headend near Anahola to its primary headend near

Kalaheo, and a second satellite receive site for the north/east system. Applicant has provided a microwave system study conducted by Hughes Microwave, dated December 12, 1979, that provides estimated carrier levels, system noise, estimated path reliability and path profiles. Though the percentage of reliability (99.879) is somewhat less than what one would find to be desirable, due to the marginal economics of providing service to Census Tract 401, a higher reliability factor cannot be justified. Because 720 proposes to feed signals in two directions from Anahola, each leg of cable system would not exceed systems specifications.

33. In the enforcement of compliance with the statutory law, rules and regulations and cable orders, the Director has demonstrated patience and tolerance in (a) allowing cable systems to delay construction of cable facilities beyond cable permit deadlines, and (b) approving rate increases despite minimal program offerings. However, because one-half of Derby's permit period has elapsed, additional postponement of construction would be detrimental to the public interest.

34. Transfers of permits should be approved when the transferee gives reasonable assurances that construction of the plant will be completed in a timely fashion. Little, if any, concern should be directed to the issue of whether or not the permit holder either fails to fully recover all of its original investment via the purchase price, or receives substantial gain in the sale. The reasonableness of the proceeds of the sale becomes an issue when payment of the purchase price prohibits the new permittee from completing a build, or when it appears that there is trafficking of permits. Neither situation exists in this proceeding.

35. The following table compares completion dates for construction in the different areas of Kauai. While TCI has not provided a construction schedule for Anahola/Kealia, Kilauea and Princeville/Hanalei, it is assumed that such information would be forthcoming, and be consistent with the time frame proposed for the other areas, which appears reasonable. Since the incumbent does not intend to construct additional plant, either Applicants' proposed construction schedule substantially improves the status quo.



Area	Complete Service to Areas	
	TCI (Months)	720 (Months)
Kalaheo	10	9
Lawai/Omao	10	10
Puhi	12	10
Koloa/Poipu	14	11
Hanapepe/Eleele	16	17
Kaumakani	18	18
Makaweli (Pakala Village)	20	18
Waimea	22	19
Kekaha	24	20
Wailua Homestead	12	21
Anahola/Kealia	N/A	24
Kilauea	N/A	27
Princeville/Hanalei	N/A	27

36. The County of Kauai takes the position in this proceeding that the County's multi-cultural composition requires any communications media serving Kauai to provide local origination and access programming. To be fully effective, such programming must have its basis in a tradition of community service and involvement.

37. Seven Twenty Corp., through its radio station KUAI, has developed a history of community involvement and participation which has been recognized by the community and political leaders of the Garden Island. This past history has been attested to by resolutions and statements by the Mayor, council, and the Kauai Chamber of Commerce. Applicant states its intent to develop local origination programming reflecting the activities, concerns and needs of the people of the Garden Island. It has indicated that it plans these programs on a daily basis, in coordination with radio station KUAI.

38. TCI has indicated that it will not establish any formal program involving itself in ascertaining the unique needs, requirements and desires of the people of Kauai. Its application states that TCI will depend upon its incumbent manager to perform this function, but it is known that that individual will be departing Kauai soon after the transfer of ownership has been effectuated. TCI indicated its hope that another employee who is a native of Kauai, and employed by Derby, may be available for service in that position. TCI has also indicated that it

has no plans for local origination, stating only it will react positively to programming produced by or originating from the community. TCI will provide training in the use of the minimal facilities it will make available for access programming.

39. Philosophical difference exists in the Applicants' views towards government, public and educational access channels: 720 proposes to provide these channels as part of its basic service; TCI intends to place its access channels on non-standard television channels requiring the use of a converter.

40. The following schedule compares Applicants' rates and charges. TCI admitted it to be unlikely that subscribers would pay \$3.00 additional each month for Tier II, which consists of four access channels, one hotel/condo service, and two channels reserved for future use. This unlikelihood is substantiated by the fact that TCI's exhibits fail to show any capital investment for converters, which would be required to receive Tier II and Tier III. Tier III is totally reserved for future use.

Seven Twenty Corp.'s Tiers II and III are basically pay movies and are to be carried on non-standard television channels. It will provide a converter for those subscribers for Tiers II and III.

Other than TCI's pricing of its Tiers II and III, the level and structure of the rates proposed by both Applicants appear reasonable: they track costs, generate cash flow, provide the permittee an opportunity to realize a return on the capital invested. Significantly, the rates are higher than rates in effect in other franchise areas, but this is consistent with the above factors, and the value of the services to be provided.

G. SUITABILITY OF THE APPLICANTS.

41. Consideration of the "suitability of applicants" is required by statutory law. The following criteria are given consideration in evaluating each applicant in this case:

- (a) Organizational and managerial structure of applicant;
- (b) Technical qualification and experience in constructing and operating cable communication systems; and
- (c) Identification and responsiveness to the community.

42. As stated, supra, TCI is one of the largest multi-system operators of cable communication systems in the United States with a demonstrated capability of designing, constructing and operating cable communication systems in both rural and urban areas. While TCI generally monitors operations of subsidiaries by a local manager reporting to a divisional manager in Denver, the executive vice president of TCI has committed his personal time to oversee the construction and early operations of its Kauai operations, without the intervention of an intermediate division manager. Such a personal commitment promises excellent and expedited planning, organization and control, and when combined with other assets of TCI, makes TCI suitable in this regard.

43. Seven Twenty Corp. will be a single cable operation with technical capability and direction provided by a single individual, its general and limited partner, James F. Collins. Mr. Collins' resume indicates extensive experience and background with major cable construction companies, as well as ownership interest in several rural cable systems. Seven Twenty's management is deeply ingrained and active in the community and business life of Kauai, as depicted in Council resolutions and the petition. Through its management and through surveys, 720 promises to seek involvement of the community in 720's decisionmaking relative to the cable communications system.

#### H. FINANCIAL RESPONSIBILITY OF THE APPLICANTS.

44. For purposes herein, the financial fitness of the Applicants is determined both on the basis of the financial resources that an Applicant brings to the task, at the outset, as well as on the basis of an individual operation's ability to generate profits, over time. As set forth in Part I, it is believed that service to the areas not currently being provided service can be profitable, over time, assuming operators do not have to compete with each other.

45. Each applicant was asked its assessment of the hypothetical situation where each received approval of its application and was allowed to construct in a competitive manner. Neither applicant expressed enthusiasm for the concept of competitive services. Experiments with competitive services, even in potentially lucrative markets, have proven that dual franchising does not work. Particularly on the island of Kauai, a dual franchise would (a) be more costly to construct; (b) substantially diminish and in all probability, eliminate the profit incentives; (c) postpone further the commencement of service; and (d) present the public generally and the regulators, in particular, with continuing safety, construction, marketing, and pricing problems.

46. Exclusive franchise areas being essential for Kauai, it is recommended that (a) TCI be awarded all areas presently served by Derby Cablevision, including Kawaihau but excluding Wailua Homestead, and (b) 720 be granted all areas it applied for, except Lawai, Omao and Puhi. The bases for this recommendation are as follows:

(a) Because Derby Cablevision's existing system provides service to parts of Omao, Lawai and Puhi, these areas should be served by TCI.

(b) TCI's application and other filings indicate a reluctance to commit itself to provide service to Census Tract 401, e.g. no capital investment is projected for the area, no construction schedule has been filed.

(c) TCI's proposal to use super trunking allows for limited expansion to Kawaihau, but not Wailua Homestead.

(d) Seven Twenty's application and other filings demonstrate a willingness to provide service to Census Tract 401 which, by itself, is not economically viable. An additional area must be granted to 720 in order to provide an economic base for the service to Census Tract 401. For this reason, the south/west region of Kauai is recommended to be included with the north/east region. In this manner, a large majority of residents on Kauai will be provided the availability of cable services.

47. Awarding permits in the above fashion results in three separate cablevision operations on a thinly populated island with approximately 14,200 homes to be passed. This is not the ideal manner in which to most economically serve the people of Kauai. However, circumstances dictate such a situation: the 1600 + homes to-be-passed by the unregulated Princeville operation is presently beyond the scope of any governmental control; TCI's presentation is not technically sound, and TCI exhibited great reluctance to serve areas where service is sorely needed and where a healthy mixture of enthusiasm and capital is essential; 720 manifests ample enthusiasm but still must prove its ability to raise capital.

48. The problematic consequence under this scenario is the situation created for the people presently served by Derby, a company which offers little promise of improving services. That situation can only correct itself over time, with several possibilities, three of which would be (a) to succumb to public pressure, improve programming, up-grade the system, and charge more for the enhanced services; (b) await the results of 720's efforts to raise capital and if 720 fails, to consummate a sale to TCI; or (c) assuming 720 raises capital in sufficient amounts to satisfy the Director, to later sell its assets to 720. Each course of action is speculative: as of the date of this Recommended Order, TCI and Derby do not have a binding purchase agreement; 720 has not conclusively proven its financial fitness.

49. TCI estimates the average cost per mile of cable plant to be approximately \$8,000. (Exhibit M, Construction Cost Per Strand Mile.) Seven Twenty Corp. estimates its cost to be \$9,500 per mile of plant. (Exhibit K, Schedule B.)

The estimated costs for cable expansion for TCI for Kauai is estimated

as follows:

<u>Area</u>	<u>Trunk</u>	<u>Trunk/Feeder</u>	<u>Total Miles</u>	<u>Cost @ \$8,000/mi.</u>
Kekaha	1.5	11.5	13.0	\$ 104,000
Waimea	2.0	4.6	6.6	52,800
Pakala Village	1.5	2.1	3.6	28,800
Kaunakani	1.8	2.6	4.4	35,200
Hanapepe/Eleele/ Port Allen	3.4	8.3	11.7	93,600
Kalaheo	---	11.0	11.0	88,000
Lawai/Omao	1.0	6.3	7.3	58,400
Koloa/Poipu	7.0	12.0	19.0	152,000
Puhi	---	2.6	2.6	20,800
Wailua	3.0	10.5	13.5	108,000
Kawaihau	2.0	3.4	5.4	43,200
	<u>23.2</u>	<u>74.9</u>	<u>98.1</u>	<u>\$ 784,800</u>
Census Tract 401	---	---	<u>32.0</u>	<u>256,000</u>
	23.2	74.9	130.1	\$1,040,800

The estimated capital cost for construction of the transmission and distribution plant 720 proposes to build, is as follows:

<u>Area</u>	<u>Trunk</u>	<u>Trunk/Feeder</u>	<u>Total Miles</u>	<u>Cost @ \$9,500/mi.</u>
Kekaha	1.6	10.0	11.6	\$ 110,200
Waimea	2.0	6.0	8.0	76,000
Makaweli	2.0	2.0	4.0	38,000
Kaunakani	2.4	2.0	4.4	41,800
Hanapepe/Eleele/ Port Allen	1.7	9.0	10.7	101,650
Kalaheo	3.5	12.0	15.5	147,250
Lawai/Omao	2.0	8.0	10.0	95,000
Koloa/Poipu	7.5	12.0	19.5	185,250
Puhi	7.0	3.0	10.0	95,000
Wailua	2.0	15.0	17.0	161,500
Anahola/Kealia	3.0	5.0	8.0	76,000
Kilauea	9.0	6.0	15.0	142,500
Princeville/Hanalei	<u>8.0</u>	<u>7.0</u>	<u>15.0</u>	<u>142,500</u>
	51.7	97.0	148.7	\$1,412,650

50. In addition to the costs of installing cable, the capital costs for other necessary investments are substantial, particularly for the new construction 720 proposes. For the first two years, 720 will find it necessary to expend in excess of \$2 million, given the effects of inflation on the costs of equipment.

## CAPITAL INVESTMENT

	TCI		720	
	Year 1	Year 2	Year 1	Year 2
Franchise & Permit	\$ 5,000	\$ 0	\$ 7,000	\$ 0
Cable Plant	374,400	0	700,150	522,500
Satellite RCVR Equip.	80,000	0	95,000	95,000
Headend Building	0	0	12,000	12,000
Headend Equipment	51,000	0	30,000	19,000
Tower & Antenna	0	0	26,000	17,000
Origination Equipment	10,000	0	0	50,000
Leasehold Improvements	0	0	20,000	0
House Drops	67,950	50,750	40,900	64,150
Traps	17,394	18,264	5,364	9,726
Converters	0	0	15,730	36,245
Tools & Test Gear	0	0	6,000	3,000
Microwave Equipment	0	0	0	65,000
Office Furniture	1,000	0	5,000	0
Contract Labor	0	0	4,200	10,000
Misc. Equip./Material	0	0	3,000	4,000
Vehicles	15,000	0	39,000	9,000
Existing Plant	<u>1,280,200</u>	<u>0</u>	<u>0</u>	<u>0</u>
	\$1,901,944	\$69,014	\$1,009,344	\$916,621

51. In addition, because it is projected that there will be a substantial negative cash flow in the initial years of operation, it will be essential for 720 to have readily available to it, additional capital for which it has neither adequately forecasted nor adequately provided. The amount of additional capital needed is estimated to be \$988,000, which is the difference between the \$2 million (refer paragraph 50), and the \$2,988,139 as shown on the following table.

SEVEN TWENTY CORP.

CASH FLOW PRO-FORMA

	First Year	Second Year	Third Year	Fourth Year	Cumulative
Source of Funds:					
Net Income Before Depreciation	\$ 800,000		\$ 89,479	\$ 61,113	\$ 61,113
Partners' Investments	550,000	\$1,300,000		187,547	1,077,026
Bank Loans-Long Term	1,350,000	1,300,000	89,479	248,660	1,850,000
Total					2,988,139
Application of Funds:					
Net Loss Before Depreciation	111,189	275,161	58,338		444,688
Purchases of Equip. & Other Assets	1,009,344	916,621	191,826	144,660	2,262,451
Repayment of Long-Term Debt	15,000	74,000	88,000	104,000	281,000
Total	1,135,533	1,265,782	338,164	248,660	2,988,139
Balance at Start of Year	0	214,467	248,685	0	0
Balance at End of Year	214,467	248,685	0	0	0



52. For purposes herein, it can be safely presumed that TCI has the financial wherewithal to undertake and satisfy any conditions reasonably imposed on the permit it seeks to acquire in this proceeding. On the other hand, it is certain that 720 will experience financial difficulties if other sources of capital are not identified at the outset of the undertaking it proposes. Based on the record, to date, 720 has three sources of funds: (a) the corporate general partner, (b) the limited partners, and (c) the Bank of Hawaii.

Relative to the corporate partner, its assets appear to be limited to the undisclosed portion of the personal net worth of Mr. and Mrs. Short, Mr. and Mrs. Collins, and Mr. and Mrs. Dahle, amounting slightly in excess of \$1.0 million and principally comprised of real estate (market value basis), stocks and bonds (undisclosed basis) and a mainland cable company. The liquidity of the assets is unknown but it appears to be restricted, particularly in light of the current real estate and capital markets.

Relative to the limited partners, the record is, at best, unclear, as to how soon the limited partnership could call upon the funds from all partners. While there is no reason to doubt the existence of the funds, the timing of the availability is not clear in this record, and is also a matter of concern.

Relative to the Bank of Hawaii's commitment to lend, reference is made to its correspondence to Seven Twenty Corp. dated January 23, 1981 and February 9, 1981. In essence, Bank of Hawaii is committed to a \$550,000 construction loan, secured by the equipment, furniture, fixtures and receivables of 720, second mortgages on the homes of Messrs. Short and Dahle, and the provisions of the loan agreement, and guaranteed by Messrs. Short and Dahle, personally, together with the Small Business Administration (SBA). In addition, there are conditions, such as pre-payment of the \$750,000 by the limited partners and receipt of approval of SBA's guaranty. Thus, there appears to be some duplicity in accounting for assets, at least to the extent of shareholders net worth also being a part of the loan's security, as well as the lender's guarantee.

The balance of \$1.3 million is not committed by the Bank in any fashion: distribution of funds to the project are subject to the bank's "satisfactory review," with no indication of what the standards might be.

53. Given the foregoing, it is concluded that prior to any debt financing being available to Applicant, lenders are requiring equity funding of \$750,000, plus the pledged security of the personal assets of the principal shareholders of the corporate general partner, and federal guarantees. Applicant must come forward with proof that the equity financing is in hand and that less stringent debt financing requirements can be found in order to ensure that the project incurs no insurmountable financial obstacles in its first four years. Therefore, one and one-half million dollars must be certified within sixty (60) days of the date of the final order by a financial institution as deposited on the account of 720 and/or the limited partnership. This amount equals to only one-half of the estimated capital required. Only then will the regulatory agency's belief in 720's proposed operation be adequately confirmed by the financiers of the operation.

I. ABILITY OF THE APPLICANT TO PERFORM EFFICIENTLY.

54. In order to determine the economic and financial viability of the proposed services for areas not currently served by Derby, it is necessary to compute the results of operations for those years in which the system is being built. In order to do such computations, the following assumptions regarding the miles of plant had to be made:

- (a) There will be minimal number of duplicated cable plant;
- (b) Each applicant will receive a permit that does not overlap in terms of areas to be served; and
- (c) The number of homes and mileage of cable plant for each specific area were derived from Applicants' data.

**MILES OF PLANT AND HOMES PASSED (SOUTH/WEST)**

<u>Area</u>	<u>TCI</u>		<u>720</u>	
	<u>Miles</u>	<u>Homes</u>	<u>Miles</u>	<u>Homes</u>
Kekaha			11.6	1,006
Waimea			8.0	559
Pahala Village			4.0	180
Kaumakani			4.4	230
Hanapepe/Eleele			10.7	906
Kalaheo			15.5	820
Lawai/Omao	7.3	400		
Koloa/Poipu			19.5	612
Puhi	<u>2.6</u>	<u>170</u>	—	—
	9.9	570	73.7	4,313

**MILES OF PLANT AND HOMES PASSED (NORTH/EAST)**

<u>Area</u>	<u>TCI</u>		<u>720</u>	
	<u>Miles</u>	<u>Homes</u>	<u>Miles</u>	<u>Homes</u>
Kawaihau	5.4	215		
Wailua Homestead			17.0	694
Anahola/Kealia			8.0	327
Kilauea			15.0	473
Princeville/Hanalei	—	—	<u>15.0</u>	<u>256</u>
	5.4	215	55.0	1,750

55. The following table shows the number of subscribers at year end for the first two years of construction based on the following assumptions:

(a) Saturation levels for each type of service provided through Applicants' filings were used except for second outlets.

(b) Second outlet saturation levels were assumed to be no higher than Derby Cablevision's existing level of about 18%.

(c) For homes passed during the second year of construction, the saturation levels for Year 1 were applied.

#### SUBSCRIBER GAINS

	TCI		720	
	Year 1	Year 2	Year 1	Year 2
Residential Subscribers	699	145	818	1,283
Second Outlets	126	26	147	231
Bulk Outlets	--	--	362	103
Pay TV/Tier II	667	642	286	659
Pay TV/Tier III	145	159	82	128

#### NUMBER OF SUBSCRIBERS

	TCI		720	
	Year 1	Year 2	Year 1	Year 2
Residential Subscribers	2,899	3,044	818	2,101
Second Outlets	526	552	147	378
Bulk Outlets	--	--	362	465
Pay TV/Tier II	667	1,309	286	945
Pay TV/Tier III	145	304	82	210

56. The projected revenues for each applicant, by year, are based on the following assumptions:

(a) The number of subscribers, shown in paragraph 55.

(b) Rates and charges proposed by applicants, as shown in paragraph 40.

(c) All installs were charged at the normal proposed rates.

(d) Monthly revenues for new installs were assumed to be one-half of one year's revenues.

## REVENUE PROJECTIONS

	TCI		720	
	Year 1	Year 2	Year 1	Year 2
<b>Installation Revenues:</b>				
First Outlet	\$ 34,950	\$ 7,250	\$ 40,900	\$ 64,150
Second Outlet	1,890	390	2,205	3,465
Bulk Outlet	--	--	5,430	1,545
Pay TV/Tier II	16,675	16,050	5,720	13,180
Pay TV/Tier III	3,625	3,975	1,640	2,560
	\$ 57,140	\$ 27,665	\$ 55,895	\$ 84,900
<b>Monthly Revenues:</b>				
First Outlet	\$312,059	\$363,712	\$ 61,350	\$218,925
Second Outlet	5,556	6,468	882	3,150
Bulk Outlet	--	--	17,376	39,696
Pay TV/Tier II	32,016	94,848	13,728	59,088
Pay TV/Tier III	13,050	40,410	7,380	26,280
	\$362,681	\$505,438	\$100,716	\$347,139
<b>TOTAL REVENUES</b>	\$419,821	\$533,103	\$156,611	\$432,039

57. In order to ascertain if 720's proposal will generate a positive cash flow, it was necessary to make certain assumptions and to project results of operations for four years, rather than only one or two years.

For forecasting revenues, assumptions similar to those in paragraph 55 were made, regarding subscriber gains and number of year end subscribers for Year 3 and Year 4.

For forecasting expenses for the first two years, it was assumed:

- (a) Expenses shown on Applicant's Exhibit K.
- (b) Pay TV expenses estimated to be 48% of pay revenues.
- (c) Satellite expenses for Tier I is estimated to be 25¢ per subscriber, per month, for CNN and WOR; and 10¢ per subscriber, per month, for WTBS, but no greater than \$3,000 per month for WTBS. Expenses for Tier II is estimated to be 21¢ per subscriber, per month.

(d) Copyright is estimated to be 1.1% of gross revenues.

(e) Ten percent (10%) inflation factor except for labor at 15% and fuel at 30%.

Additional capital investment of \$191,826 for Year 3 and \$144,660 for Year 4 were projected, with adjusted depreciation expenses (using an average service life of 15 years, for the additional investments, the majority of which are house drops, converters, and vehicles in Year 3 and Year 4). Based on the foregoing assumptions, the following income (loss) statements can be developed for 720's first four years of operation:

#### INCOME (LOSS) STATEMENT

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
Revenues	\$ 156,611	\$ 432,039	\$ 733,684	\$969,607
Expenses	<u>207,800</u>	<u>409,200</u>	<u>508,022</u>	<u>640,494</u>
Income (Loss) from Operations	\$ (51,189)	\$ 22,839	\$ 225,662	\$329,113
Interest	<u>60,000</u>	<u>298,000</u>	<u>284,000</u>	<u>268,000</u>
Income (Loss) Before Depreciation	\$ (111,189)	\$ (275,161)	\$ (58,338)	\$ 61,113
Depreciation	<u>67,290</u>	<u>128,398</u>	<u>141,198</u>	<u>150,798</u>
Net Income (Loss)	\$ (178,479)	\$ (403,559)	\$ (199,536)	\$ (89,685)

#### J. ULTIMATE FINDINGS AND CONCLUSIONS.

58. While the nature and appropriate degree of economic regulation of cablevision can be seriously debated, for rural communities situated in insular settings, such as Hanalei, Kilauea, and Waimea, on the island of Kauai, the prospect of receiving quality television signals which transmit a full array of programs ranging from local cultural, social and athletic events to up-to-the minute, 24-hour-a-day news services, can become a reality with today's technology only if there is economic regulation. In this instance, the regulator cannot forego what may be the last opportunity for a long period of time to do all that is reasonable to ensure that cablevision services are provided.

59. Nearly all of the homes on Kauai receive some type of over-the-air signals but the quality of the signals ranges from poor to non-existent. Cable passes by less than half of the 14,200 residential units on the island. This situation continues to exist where the incumbent permittee has legally had the right to provide service to nearly all of the island of Kauai for over ten years. The need for one or more new operators is compelling, and particularly compelling for the far ends of the island, where over-the-air signals are so degraded.

60. TCI and 720 have complied with the Department's formal procedures and practices, and the Department has reviewed all of the statistical, technical, economic and financial data furnished to the Department by the Applicants and has relied upon that data found to be reasonable.

61. But for its failure to provide satisfactory evidence of financial fitness to undertake the construction and operation of cablevision facilities for Kauai, 720 is found to be well suited to be a permit holder for the authorities it seeks in these proceedings. The record remains deficient on a crucial aspect of 720's proposal, namely the source and adequacy of funds to see the construction and operation of the cablevision facilities through the critical first four year period.

62. But for its demonstrated reluctance to perform two of the more difficult aspects of cablecasting on Kauai, TCI is well qualified to be a permit holder for the authorities it seeks in these proceedings. TCI has not satisfied technical requirements regarding the means by which it proposes to serve Census Tract 401. Also, TCI has failed to convincingly demonstrate its sensitivity to Kauai's need for local access channels and aggressive operator-involvement in local programming.

63. Proposing and actually providing service to Census Tract 401 must be a requirement for the grant of a permit or the transfer of a permit for operating authority on Kauai.


64. The incumbent permittee has no vested right to governmental approval to transfer those operating rights it possesses but which it has never exercised.

65. The rates proposed to be charged by 720 are reasonable.

66. The rates proposed to be charged by TCI are reasonable, except to the extent the rates for Tier II and Tier III are unreasonably high in light of the programming TCI proposes to offer for those tiers.

DATED: Honolulu, Hawaii, May 28, 1981.

Respectfully submitted,



---

William W. Milks  
Designated Hearing Officer



**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order No. 83 were served on the following by mailing the same, postage prepaid, on this 5th day of August, 1981.

The Seven Twenty Corporation  
P. O. Box 720  
Eleele, Kauai 96705

Mr. J. C. Sparkman  
Executive Vice President  
Tele-Communications, Inc.  
P. O. Box 22595, Wellshire Station  
Denver, Colorado 80222

Derby Cablevision, Inc.  
P. O. Box 278  
Kapaa, Kauai 96746

Mr. Raymond Derby  
California Industrial Products  
11525 South Shoemaker Road  
Santa Fe Springs, California 90670

Donald K. O. Wong, Esq.  
Okano, Noguchi and Wong  
10th Floor, American Savings Tower  
Financial Plaza of the Pacific  
915 Fort Street  
Honolulu, Hawaii 96813

David L. Fairbanks, Esq.  
Goodsill, Anderson & Quinn  
P. O. Box 3196  
Honolulu, Hawaii 96801

The Honorable Eduardo Malapit  
Mayor, County of Kauai  
4396 Rice Street  
Lihue, Hawaii 96766

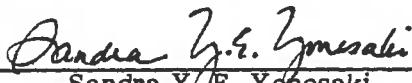
The Honorable Jeremy Harris  
Chairman, County Council  
County of Kauai  
4396 Rice Street  
Lihue, Hawaii 96766

Mr. Richard Brooks, President  
Princeville Cablevision, Inc.  
P. O. Box 612  
Hanalei, Hawaii 96714

Roger Fonseca, Esq.  
Torkildson, Katz, Jossem & Loden  
700 Bishop Street  
Amfac Building, 15th Floor  
Honolulu, Hawaii 96813

Mr. Lee K. Toole, Vice President  
Hawaiian Telephone Company  
P. O. Box 2200  
Honolulu, Hawaii 96841

Mr. Boyd Townsley, Vice President  
Kauai Electric Company  
P. O. Box 278  
Eleele, Hawaii 96705

  
\_\_\_\_\_  
Sandra Y. E. Yonesaki  
Secretary