

BEFORE THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS
OF THE STATE OF HAWAII

In the Matter of the Application of)
AMERICAN CABLE TV INVESTORS 4, LTD.)
For Transfer of CATV Permits of)
Sun Cablevision of Hawaii, Inc. Liquidating Trust)
and Kam Cablevision Co.)

DOCKET NO. 31-87-01
ORDER NO. 126

DECISION AND ORDER

I. INTRODUCTION

On January 8, 1987, AMERICAN CABLE TV INVESTORS 4, LTD. ("ACT 4"), by its managing agent, Daniels and Associates ("Daniels"), Kam Cablevision Co. ("Kam") and Sun Cablevision of Hawaii, Inc. Liquidating Trust ("Sun") filed an application with the Department of Commerce and Consumer Affairs ("Department") for approval of a transfer from Kam and Sun to ACT 4 of the permits and substantially all other assets of Kam and Sun. These cable systems provide cable communication services to the North and South Kona, North and South Kohala districts ("West Hawaii") of the island of Hawaii, Census Tracts 213 through 218.

To afford the public the opportunity to participate in regulatory decision-making, public hearings on this application were held on March 10, 1987, in the North Kohala District Courthouse, Kapaau, North Kohala, Hawaii, and on March 11, 1987, at the Kealakehe Elementary School, Kailua-Kona, Hawaii, beginning at 7:30 p.m. Notices of the hearings were published in the Honolulu Star-Bulletin and West Hawaii Today on February 23, 1987 and March 2, 1987.

In addition to the public hearings, the Department undertook an investigation of several volumes of justification submitted by ACT 4 in support of its application. These documents included ACT 4's five-volume application and its responses to the Department's information requests issued on February 10, 1987.

Certain matters relating to the application were further clarified at a meeting between the applicants and the Cable Television Division staff on April 27, 1987.

II. EVALUATION CRITERIA

Section 440G-8, Hawaii Revised Statutes, sets forth various factors the Director of Commerce and Consumer Affairs ("Director") must consider when determining whether it is in the public interest to approve an application for issuance of a cable television permit. In the past, these same criteria have guided the approval of transfer applications.

In determining whether the public interest will be served by transfer of a cable permit, the Director must consider whether there is a public need for the transfer. In addition, the Director must consider, among other things, whether the applicant has demonstrated that (1) it has the ability to offer the proposed services at reasonable cost; (2) it is suitable; (3) it is financially responsible; and (4) it has the ability to perform efficiently the service for which authorization is requested. Finally, the Director must consider any objections to the transfer received from the public or other sources.

III. PUBLIC NEED FOR ACQUISITION

Future growth and development of the West Hawaii cable systems is dependent upon the financial capacity of its investors and managers to finance expansion of the cable communications systems.

The Kona and Kohala districts of the island of Hawaii are among the fastest growing population areas in the state. Population in the next twelve years is projected to double. The closely-held business entity, Signet Cablevision Company, which presently operates the West Hawaii cable systems, because of its cable systems

acquisitions in other areas of the nation and the debt associated with such acquisitions, is unable to provide the financial resources necessary to meet the ever-growing demand for cable system construction in its Hawaii service areas. Consequently, the state and potential cable subscribers must look to new investors to provide the finances and leadership necessary for expanding and fully developing West Hawaii's cable communications potential.

Daniels, the managing agent of ACT 4, is a cable brokerage and investment banking firm with a record for obtaining financing from institutions and the public for its clients and its own projects. With this record and Daniels' desire to develop the West Hawaii systems to their fullest potential, it appears that ACT 4 is fully capable of securing the resources necessary to meet the needs of West Hawaii's fast-growing communities.

Daniels, in pre-application studies, identified areas in which action should be taken to improve the fundamental operating characteristics of the existing cable systems. The actions, when accomplished, should improve and increase the systems' channel capacity and receipt and distribution of cable signals, making possible better cable services for West Hawaii's cable subscribers.

ACT 4 and Daniels, its organizer, appear to have the resources and the commitment necessary to meet the public need to expand and develop the West Hawaii cable systems to their fullest potential.

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

Key elements in maintaining a reasonable cost of service level include the ability of the cable operator to: (1) continually broaden the revenue base of the cable operation; and (2) improve operating efficiencies in the delivery of cable services.

Over the past decade, it has become increasingly difficult for small, traditional, single or cluster cable television system owners to provide the level of technical expertise, employee training, customer services and programming demanded by a more sophisticated consumer population. The West Hawaii cable systems, with their history of austerity and meagerness in financial, human and service resources, are examples of small systems which could benefit from the economies of scale in equipment and programming purchases, high-level engineering expertise, employee training programs and sophisticated financing techniques available through responsible multiple system operators such as Daniels.

With Daniels' in-house specialists providing marketing, operations, engineering and accounting support and leadership services, a new orientation emphasizing system growth and service could be implemented for the West Hawaii cable systems. Such a new orientation would allow sophisticated marketing not only for increased basic subscriber penetration but also for expanded pay programming services to existing subscribers.

With their new orientation the West Hawaii systems could also be expected to respond more aggressively to market needs and to consider new, related commercial endeavors rather than limiting their activities to traditional cable television services. Present reliance on subscriber-initiated and financed growth could be replaced with system-initiated expansion in new growth areas of West Hawaii. This expansion would utilize new approaches and technologies to allow greater coverage of potential cable subscribers. This should result in an increased revenue base for the systems.

As evidenced by its engineering analysis, ACT 4/Daniels' in-house engineering staff has evaluated the West Hawaii cable systems to determine their strengths and weaknesses. The action plan put forth by ACT 4 commits the proposed

cable operator to early action to increase the systems' capacity and effect increased efficiencies in cable system operations.

The new growth orientation, which will result in an increased revenue base, together with the increased efficiencies in cable operations proposed by ACT 4, should lead to maintaining a reasonable cost of service level for the West Hawaii cable systems in the immediate future. Thus it appears that ACT 4 has the ability to offer the services it has proposed at a reasonable cost to subscribers.

V. SUITABILITY OF APPLICANT

It appears that, in Hawaii, small systems such as Sun and Kam can be operated most effectively when local management is allowed virtually complete autonomy but may draw upon headquarters support services in accounting, engineering, finance and operations.

With its distance from Daniels' Denver headquarters, West Hawaii's cable systems must possess sufficient autonomy in system operations to respond on a timely basis to the needs, problems and requirements of its existing and potential subscribers, as well as to regulatory concerns. The local systems manager must have the power and the authority to act for the systems' owners in all matters relating to the provision of cable communication services to the permit areas. Together with this power and authority to facilitate operations of the cable systems, the local systems' manager must have ready access to revenues and funds, as well as to all books and records of the cable systems. When confronted by problems beyond the scope of authority or capability of a local systems manager, the manager should have ready access to a competent headquarters staff capable of assisting him in resolving problems.

Daniels represents that its local systems operations have autonomy and retain local operational decisionmaking. It also claims that its systems benefit from

economies of scale in purchasing and finance which are available through Daniels and also from headquarters expertise in accounting, engineering, financing, marketing and operations. It further indicates that it has the ability to pay attention to matters which increase the efficiency and effectiveness of systems operations and subscriber services, while not creating barriers to timely response by local systems operators to subscriber needs and problems.

Assuming that Daniels representations are fully applied to its Hawaii operations, and in consideration of ACT 4's demonstration of its abilities to provide services at a reasonable cost to subscribers, to provide necessary financial resources, and to perform efficiently, the Director believes ACT 4 has shown that it is a suitable applicant to meet the needs of the West Hawaii cable systems.

VI. FINANCIAL RESPONSIBILITY

ACT 4 is a Colorado limited partnership which was organized to own and operate cable television systems. It is managed by Daniels under a Management Agreement dated October 3, 1986. That Management Agreement provides that Daniels will manage all subsequently acquired systems, including Sun and Kam, should the requested transfers be approved. As compensation for these services, ACT 4 pays Daniels a fee equal to 6% of gross revenues generated by the cable systems. In addition, Daniels will be reimbursed for direct out-of-pocket and indirect expenses.

The general partner of ACT 4 is IR-Daniels Partners IV, L.P., a Colorado limited partnership. The general partners of IR-Daniels Partners IV, L.P. are Daniels Ventures Four, Inc., a Colorado corporation, and Integrated Cable Corp. IV, a Delaware corporation. Daniels owns 100% of the stock of Daniels Ventures Four, Inc. Integrated Resources, Inc., a Delaware corporation, owns 100% of Integrated Cable Corp. IV.

At present, ACT 4 owns two cable television systems located in Colton, California and in Rosebud, Texas. ACT 4, as part of a joint venture with another Daniels limited partnership, ACT 5, owns a cable system in Newport News, Virginia. Audited financial statements for ACT 4 and subsidiary as of December 31, 1986 show equity contributions of \$31,843,322 generated primarily through the placement of partnership units sold to qualified investors. As of that same date, cash and temporary cash investments (including certificates of deposit) equalled \$5,266,707.

In addition, unaudited financial results for the period ending February 28, 1987 show gross equity contributions of \$36,209,000 from 72,418 partnership units sold to qualified investors. An updated, unaudited statement shows that, as of April 27, 1987, ACT 4 had \$22,243,700 in cash reserves and cash equivalents. However, ACT 4's application Exhibit 32, pro forma statement on Kona-Kohala Sources and Uses of Funds, shows that ACT 4 intends to provide approximately \$12,500,000 of equity and to borrow about \$6,700,000 to finance the acquisition and initial operating needs of the systems.

Based on ACT 4's foregoing capital resources, the Director believes that ACT 4 is financially capable of consummating the anticipated acquisition of Sun's and Kam's assets and meeting all of its obligations.

VII. ABILITY OF THE APPLICANT TO PERFORM EFFICIENTLY
THE SERVICE FOR WHICH AUTHORITY IS REQUESTED

Operational efficiency requires close attention to new developments in cable standards, equipment and facilities, as well as to the day-to-day operations and needs for future expansion of an existing cable system.

Daniels' engineering and operations staff is recognized for its professional competence within the cable industry. The staff is continuously involved in the

evaluation and monitoring of cable systems for its cable brokerage and cable investment banking businesses. Consequently, it is fully capable of analyzing and following through on analyses of cable systems not performing to the optimum efficiency and capacity.

Technical Performance

The West Hawaii cable systems, with their limited human and other resources, now operate at less than peak efficiency. Certain improvements need to be made to enable Sun's cable system to realize its 300 MHz capability and to improve its signal quality and dependability.

Daniels' engineering staff has conducted what appears to be a thorough engineering analysis of West Hawaii's cable plant and facilities. The analysis, which has been accepted in principle by Daniels for implementation, involves the following:

1. The entire microwave-headend complex should be reviewed on a site-by-site basis. All engineering should be reviewed relative to the microwave system, including path analysis, fade margins, wave guide and antenna configurations.
2. An operating gain flow chart should be completed for the entire system. This flow chart should be field verified as to cable length and type, passive configuration, powering detail and all other related facilities and processes.
3. The entire powering situation should be evaluated and those problematical areas identified should be converted to 60 VAC powering voltage immediately. Other areas should be converted within four years.
4. All passives with choke cutouts should be identified and replaced.
5. For underground plant, flooded drop wire should be used to retard water contamination.
6. The entire maintenance program should be reviewed, particularly those portions dealing with sweep alignment and signal leakage control.

7. The AGC/ASC level control in the system should be increased to at least every second location. Thermal compensation networks should be added to all aerial-mounted line extenders.

8. In conjunction with the manufacturer, system and headquarters personnel should undertake a thorough evaluation of the problems being experienced with the Oak converters used by Sun to reduce the current twenty-plus per cent rate of converter failure.

9. A comprehensive training program for all field personnel should be implemented.

10. System grounding should be upgraded to ED 2.01 and 2.02 standards.

ACT 4 has represented that implementation of the above, together with incremental upgrading of systems facilities in the future, will enable both West Hawaii cable systems to operate at their 300 MHz capacity with improved signal quality and dependability. Thus, these improvements will enable the Sun cable system to operate with the technical efficiency contemplated in the permit transferred in 1978.

Customer Service

Subscriber encounters with an operator's customer service section often influence subsequent perceptions and relationships with the cable company. A positive encounter will often lead to ever-expanding relationships which are mutually beneficial as far as services requested and delivered. Negative encounters, if not limited to a passive relationship, often spread to other subscribers, fanning discontent with actual and perceived cable system inadequacies.

West Hawaii's staff may best be described as on-the-job-trained with a sole mission of keeping the cable system in operation. It is the minimum size necessary to service West Hawaii's geographic area and number of subscribers. Staff activities are primarily to collect bill payments, and schedule and perform installation, repair and

disconnect services. Staff performs little in the way of marketing cable services and other services designed to meet individual existing and potential subscribers' needs. It generally has not capitalized on opportunities to improve the systems' revenue base and subscriber satisfaction. In short, West Hawaii's staff has not acted on opportunities for expanding and developing cable communication services in West Hawaii.

Daniels has a long history of experience in assessing the strengths and deficiencies in cable systems. It has represented that ACT 4 will provide training and development staff services and will make changes in systems procedures. These changes provide a marketing and systems orientation for the West Hawaii staff. The following actions to improve West Hawaii's customer services will be undertaken:

1. Improve and expand employee training.
2. Improve internal communications, stressing proper delegation, accountability, and managerial followup.
3. Involve local management and department heads in Daniels' Regional Manager meetings.
4. Expand staff to accommodate anticipated growth in the systems.
5. Provide headquarters' guidance, supervision and support to ensure proper functions at the local operations level.
6. Establish measures of effectiveness for customer services and systems procedures.

Given the present need for proper preparation of West Hawaii's staff for a new growth-service orientation, it appears that ACT 4's plan represents a good first step towards improving customer and marketing services in the West Hawaii systems. Continued support by headquarters personnel will be necessary for continued progress toward good customer service for West Hawaii.

With the training, a new marketing and growth orientation, and additional employees it has proposed, ACT 4 will improve West Hawaii's capacity for improving customer services and expanding cable facilities and services.

System and Service Expansion

The 1970 Legislature, in establishing the cable regulatory program, set as the program's mission the orderly expansion of cable communication systems throughout the state of Hawaii. As such, the cable program finds the continued expansion of cable facilities to potential subscribers to be a primary obligation which must be met by Hawaii cable operators. In reviewing the applications of prospective cable operators, the Director attempts to determine whether the applicants possess the resources and commitment to meet the challenge of cable expansion and development.

Historically, Sun and Kam's management has operated the systems with austerity and ingenuity. From Sun's inception as West Hawaii Cablevision in the mid-1970s, its management has displayed strength in effecting plant expansion at minimum cost to the system operator. Management has accomplished this by negotiating arrangements in which the resource burden for any expansion is placed primarily with the potential consumer of cable services. Always seeking to minimize financial exposure, Sun has strictly construed aid-to-construction requirements. Thus, Sun has demonstrated little initiative for extending cable system plant. In the past, this has caused potential cable subscribers to question Sun's commitment to serve the needs of West Hawaii residents. As noted in previous sections, Daniels has demonstrated that it possesses the necessary fiscal, managerial, engineering and marketing resources to assure the expansion and growth of the West Hawaii cable systems. ACT 4 has indicated that it will provide the infrastructure for future growth and expansion of the cable systems. New growth areas such as the developments in Waikoloa, Kawaihae and Waimea should command the attention and interest of both ACT 4's local and

headquarters management. With ACT 4's fiscal, marketing and engineering resources, the West Hawaii systems can begin to use the future potential for growth in subscribers and services rather than the existing aid-to-construction approach to gauge the feasibility of systems and service expansion. ACT 4 has represented that marketing and long-range planning will, for Hawaii's fastest growing geographical area, be the key to managerial decision-making in the immediate and distant future.

ACT 4 therefore appears both willing and able to meet the obligation of providing for the orderly expansion of cable communication services to all potential subscribers in the West Hawaii permit area.

VIII. OBJECTIONS AND COMMENTS FROM THE PUBLIC AND OTHER SOURCES

At the March 11, 1987 hearing, the Kona Palisades residents who testified asked that cable services be extended to their direct-buried utility homes at the same installation rates charged other subdivision homes with conduit-utility facilities.

Both residents and Sun, however, recognize that due to "blue rock" problems in the Kona Palisades subdivision, extension of cable services to residences with direct-buried utilities would, in the absence of alternate arrangements, be extremely costly and uneconomical. Residents and Sun's manager discussed several alternate arrangements. By letter dated March 21, 1987, Sun has begun the process of assisting these residents in obtaining cable communication services. This Department will, in conjunction with Sun and the Kona Palisades residents in question, continue to monitor the situation and to encourage an economical and reasonable resolution to the existing problem.

The Department has received no other comments or objections regarding the application.

IX. DIRECT FEED

As part of this proceeding, ACT 4 has requested a waiver of the requirement that Sun construct facilities to receive direct microwave feeds of Honolulu's television stations.

In 1973, the Director determined that there was a need for utilization of direct-feed reception. The direct microwave feeds were required because West Hawaii subscribers were not receiving the same quality and quantity of programming as Oahu subscribers.

At the time of the requirement, most of Maui and all of Hawaii were not receiving the day's full network programming because the broadcasters were shutting down the Maui television transmitters at midnight. In addition, the quality and reliability of the networks' transmitting systems in Honolulu as well as the off-air signals available on Maui and Hawaii were also questionable.

Since 1973, the transmitters for channels 4, 9, and 11 have been replaced, resulting in improved off-air reception of Honolulu's television broadcast stations on Maui.

Sun presently receives Honolulu's broadcast signals on Maui and microwaves these signals to points on the Big Island for retransmission to its service area. Therefore, waiver of the direct-feed requirement at this time will not affect Sun's ability to provide adequate signals from the Honolulu television stations to its subscribers.

Upon consideration of the documentation provided by Sun and obtained by the Cable Television Division, ACT 4's request for waiver of the direct-feed requirement is approved with the proviso that, should ghosting or other distortions from off-air signals increase to visibly degrade the quality of the signal, the Director will consider

reimposition of the requirement for direct feed of Honolulu broadcast stations to the island of Hawaii.

NOW, THEREFORE, IT IS HEREBY ORDERED that the request for transfer of the cable television permits of Sun Cablevision of Hawaii, Inc. Liquidating Trust and Kam Cablevision Co. to American Cable TV Investors 4, Ltd. be APPROVED, with the following conditions:

1. Control. ACT 4 shall not allow a transfer of a controlling interest in its general partnership without the Director's prior approval. By February 1 of each year, ACT 4 shall provide in writing to the Director a listing of ownership interests in its general partners.

2. Management. Daniels shall be the manager of ACT 4. ACT 4 shall not, without the Director's prior approval, enter into any contract, agreement or arrangement with any other person or entity for the same or substantially similar management services. ACT 4 shall maintain, in West Hawaii, a responsible managing employee who shall have the power and authority to act for ACT 4 in all matters relating to providing cable television services to the permit area. Any change in this responsible managing employee shall be reported in writing to the Director ten (10) days prior to such a change.

3. Receipts and Disbursements. All revenues received by ACT 4 from its operation of the West Hawaii systems shall be deposited to accounts maintained with a bank or financial institution authorized under the laws of the State of Hawaii to engage in a general banking business in the state. With the exception of extraordinary disbursements which may be issued from an ACT 4 or Daniels bank account located in Denver, all disbursements related to the daily operations of the West Hawaii cable television permits shall be made through accounts maintained with a bank or financial

institution authorized under the laws of the State of Hawaii to engage in a general banking business in the state.

4. Business Records. ACT 4 shall maintain, at its Hawaii offices, a complete set of books and records, including but not limited to invoices, subscriber records, bank statements, monthly profit and loss statements, and other documentation and records of customer accounts relating to the operation of the cable television systems.

5. Other Business Activity. ACT 4 shall secure prior written approval of the Director before engaging in any non-cable related or other business activity where such activity will have a material and adverse effect on the financial structure and/or operations of ACT 4 hereunder.

6. Programming. ACT 4 shall initially maintain, at a minimum, the mix, quality and level of programming presently offered by Sun and Kam and shall inform the Director of planned changes in specific programming services which result from the marketing studies to be undertaken by ACT 4. A listing of channels to be added to both basic and pay services shall be submitted to the Director within 90 days of this Order. Any subsequent changes in specific programming services shall be reported to the Director thirty (30) days prior to implementation.

7. Free Drop. ACT 4 shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area; provided that service is actually being delivered within a reasonable distance from the school or institution of higher education which may request service.

8. Tariff. No later than 60 days after the issuance of this Order, ACT 4 shall submit a tariff in a form specified by the Director, setting forth the terms and conditions for all cable services to be provided in the designated service area, including, for informational purposes, all rates and programming services. All

regulated rates and terms and conditions of service shall be subject to the Director's prior approval.

9. Financing. If ACT 4 utilizes debt financing for the acquisition of Sun and Kam, the terms of such financing shall be subject to the review and approval of the Director. The closing of the proposed acquisition shall occur not later than ninety (90) days following the issuance of this Order, unless extended by the Director. The review and approval process shall be completed in a timely fashion when all relevant documents evidencing such financing are submitted to the Director.

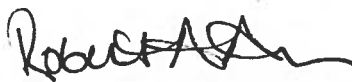
10. Disposition of Assets. ACT 4 shall not, without the Director's prior approval, sell, transfer or otherwise dispose of assets with a value in excess of \$5,000 which are reasonably necessary to provide effective cable television services within its permit areas unless such assets are replaced with assets reasonably sufficient for accomplishing such purpose.

11. Direct Feed. ACT 4 shall not be required to provide direct microwave feeds of Honolulu broadcast stations except that, should the existing system deliver signals with ghosting or other distortions which visibly degrade the quality of the signal, the Director will again address the need for direct feeds.

12. Schedule for Improvements. ACT 4 shall submit for the Director's approval, within 30 days following the issuance of this Order, a time schedule for upgrading Sun's facilities as proposed in Appendix EE of ACT 4's application.

13. Existing Franchise Obligations. All conditions in Cable Orders 31, 68, 68A, 105, 116, 119, and 125 which are not superseded or amended by this Order shall remain in effect subsequent to the date of this Order.

DATED: Honolulu, Hawaii, this 14th day of May, 1987.



ROBERT A . ALM
Director of Commerce and Consumer Affairs