

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

In the Matter of the Application of)
)
UNITED VIDEO CABLEVISION OF HAWAII, INC.) Docket No. 90-02
)
For Approval of a Cable Franchise to Provide Cable)
Communications Services to Princeville, Kauai)
_____)

DECISION AND ORDER NO. 140

I. Introduction.

On July 23, 1990, United Video Cablevision of Hawaii, Inc. ("United Video Cablevision") filed an application for a cable franchise to provide cable communications services to the community of Princeville on the island of Kauai. United Video Cablevision and its predecessor entities have been serving the Princeville community without a franchise since 1979. However, this was the first such request made for issuance of a franchise in that area.

A number of years ago, the State determined that the Princeville cable system did not fall within the statutory definition of a cable system and therefore that it did not need State authority to serve the Princeville community. Subsequently, the Hawaii Cable Communications Systems Law ("Hawaii Cable Law") was amended and the State determined that the Princeville cable system was subject to regulation under Chapter 440G, Hawaii Revised Statutes. United Video Cablevision filed the present short form application in response to notice from the State of this determination.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held on August 8, 1990 at the Hanalei Courthouse, 5-5358 Kuhio Highway, Hanalei, Kauai. Notice of the hearing was published in The Sunday Star-Bulletin and Advertiser on July 22 and 29, 1990 and The Garden Island on July 18 and 22, 1990.

II. The Law.

A. State Law

The regulatory powers of the Director regarding the issuance of a cable communications franchise are set forth in Sections 440G-4, 440G-5, 440G-6, 440G-7, and 440G-8 of the Hawaii Cable Law, Chapter 440G, Hawaii Revised Statutes. These sections require the Director's approval before the issuance of a cable franchise. The application for the issuance of a cable franchise, Section 440G-6(b), Hawaii Revised Statutes, requires the Director to obtain information regarding:

- "(1) The citizenship and character of the applicant;
- (2) The financial, technical, and other qualifications of the applicant;
- (3) The principals and ultimate beneficial owners of the applicant;
- (4) The public interest to be served by the requested issuance of a cable franchise; and
- (5) Any other matters deemed appropriate and necessary by the director including the proposed plans and schedule of expenditures for or in support of the use of public, educational, and governmental access facilities."

While Section 440G-6, Hawaii Revised Statutes, specifies the information to be obtained from each applicant, it is Section 440G-8(b), Hawaii Revised Statutes, which establishes the criteria to be considered by the Director prior to issuing a cable franchise:

- "(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed

service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances."

B. The Privilege of a Franchise

The grant of a cable franchise gives the recipient a right to use and occupy public places, highways, and easements which are of a limited and scarce nature. Substantial economic benefits may flow to the holder of the franchise as a consequence of this privilege.

The privilege of a franchise therefore carries with it associated obligations. The franchisee should recognize that there are certain responsibilities it assumes when issued a franchise. These include operating a system that is both responsive and responsible to the public it serves, providing the widest possible diversity of information sources and services to its subscribers at a reasonable cost, and enhancing its community's communications capabilities by supporting public, educational, and governmental access.

III. Statutory Criteria.

A. Public Need for the Proposed Service

The Princeville community, through the Princeville Community Association, had entered into a contract with the applicant to provide cable communications services. The applicant proposes to continue to provide these same cable communications services. The Princeville community is located in an area where television reception is poor without the aid of a cable communications system. The Princeville community would be without cable communications services if United Video Cablevision ceased to provide them. These facts clearly indicate that there is a public need for the proposed service.

B. Suitability of the Applicant

United Video Cablevision is owned by Lawrence Flinn, Jr., James M. Rupp, and Charles Wallace Green. United Video Cablevision has contracted with United Video Management, Inc. (owned by Lawrence Flinn, Jr.) to manage the Princeville system.

United Video Management, Inc. ("United Video Management") has operated the Princeville system for over three and one-half years. As the 61st largest multiple system operator in the United States with over 123,000 subscribers (Cablevision, August 13, 1990), United Video Management has significant experience in operating cable systems.

It appears the applicant is suitable based on four factors: (1) the past ownership and management by United Video Cablevision and United Video Management over the past three and one-half years, (2) the lack of complaints against the applicant and its management affiliate, (3) the experience and operational resources of United Video Management; and (4) the support of the applicant by the Princeville Community Association.

C. Operational Ability of the Applicant

The applicant has operated the Princeville system for over three and one-half years without significant complaints. It has demonstrated the operational ability to provide cable communication service to the Princeville community in a responsible manner.

D. Technical Ability of the Applicant

While the Princeville system is among the smallest systems in the State, its facilities and equipment are among the best in the State. The United Video Cablevision system has a competent and well-trained staff capable of meeting the continuing technical requirements of the system.

The State has inspected the cable system and found that the existing cable trunk and feeder lines are operational to 300 MHz bandwidth and require no upgrade to carry thirty-five (35) channels. All cable lines have been adjusted and swept to 300 MHz.

E. Ability to Provide Service at Reasonable Cost and Financial Capability

United Video Cablevision incurs one of the highest per subscriber costs of providing cable programming in Hawaii due to its small size. The remoteness of the area, the equipment used to provide cable communication service, and the programming offered produces a situation where the cost of providing cable communication service to Princeville subscribers is high. This cost is born by only approximately 1,400 subscribers.

However, without cable communications, television reception in Princeville would be marginal. The programming services contracted for by the Princeville Community Association and offered by United Video Cablevision are equivalent to those typically offered by much larger systems. Because of the system's small size, the cost of cable service is spread among fewer subscribers, which results in higher costs per subscriber than other systems with comparable services. Nonetheless, it appears that the applicant has the ability to provide service at a reasonable cost relative to its size.

The financial plan presented by United Video Cablevision is based on several favorable assumptions. It assumes increased cable rates and reduced operating expenses. Notwithstanding the contract between United Video Cablevision and the Princeville Community Association, United Video Cablevision has the ability to control increases in cable rates. Further, salaries and wages expenses make up a significant portion of the operating expenses of the Princeville system. United Video Cablevision has indicated that it intends, through attrition and the greater use of part-time employees, to reduce these expenses.

Fleet National Bank is providing the senior debt financing for the system. Fleet National Bank has waived loan compliance regarding (1) Net Operating Income and (2) Subscriber Count covenants in the past. Continued waivers of the debt covenants may be necessary in the future.

The shareholders, Lawrence Flinn, Jr., James M. Rupp, and Charles Wallace Green, have provided substantial subordinated debt financing for the system. The financing provided by Lawrence Flinn, Jr., James M. Rupp, and Charles Wallace Green is necessary to the operation of the system.

Based on United Video Cablevision's financial plan which contains favorable assumptions, including those that United Video Cablevision can control, Fleet National Bank's continued support and continued subordinate debt financing by the shareholders, it appears that the applicant has the financial capability to operate the Princeville system.

F. Public Hearing

Testimony presented at the public hearing expressed the view that (1) United Video Cablevision has performed in a responsible manner in serving the Princeville community; (2) there is little demand for public access; and (3) there is a general concern over increases in cable rates.

The State does not have rate regulatory authority over United Video Cablevision. The State cannot and will not interfere with the existing contract between the Princeville Community Association and United Video Cablevision regarding the cable rates which are charged.

G. Other Matters

1) Control.

The Hawaii Cable Law states that no change of control of a cable system may occur without the prior approval of the Director. The State is concerned that the entity or individual which actually controls the operations of the cable system, regardless of the means by which that person holds that control, is known to the State, meets the threshold requirements for holding a cable franchise, and is responsible and accountable to the State.

Mr. Lawrence Flinn, Jr. is the controlling shareholder of United Video Cablevision and United Video Management. United Video Management operates the Princeville system for United Video Cablevision pursuant to a management agreement. The franchise will be issued to United Video Cablevision alone. However, through this issuance, United Video Management, Mr. Flinn, and United Video Cablevision jointly assume the obligations inherent in the operation of the system.

2) Channel Capacity.

Given the limited number of subscribers, a forty (40) channel upgrade is not being required at this time, due to the upward pressure it would create on rates. This issue will be reevaluated during the course of the franchise.

3) Public, Educational, and Governmental Access.

The State recognizes that there has been little demand for public, educational, and governmental (PEG) access by the Princeville community. However, to the extent that PEG access activities may be desirable for the Princeville community, the Director intends to bring all cable operators and interested parties on this island of Kauai together to create and implement a coordinated plan for cable access. In this way, the Director seeks to insure the best possible use of the limited resources available for PEG access purposes.

IV. Conclusion.

Based on the information presented in the application and the evaluation of this information, the Director believes that it is in the public interest to approve this application. The applicant appears to possess the requisite capabilities for the issuance of the franchise. Pursuant to Section 440G-8(d), Hawaii Revised Statutes, the cable franchise term shall be for fifteen (15) years. The area served by United Video Cablevision is that part of Census Tract 401 known as Princeville, County of Kauai, State of Hawaii.

V. Order.

NOW, THEREFORE, the application of United Video Cablevision of Hawaii, Inc. for a cable franchise to provide cable communication services to Princeville, County of Kauai, State of Hawaii, is APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, November 19, 1990.



ROBERT A. ALM
Director of Commerce and
Consumer Affairs

UNITED VIDEO CABLEVISION

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TERMS AND CONDITIONS OF DECISION AND ORDER NO. 140

Section One

Definitions

"Access channel" means any channel on the system made available for public, educational or governmental (hereinafter referred to as "Access") use.

"Access fee" means the annual fee to be paid by United Video Cablevision to the Director or his designee for public, educational or governmental uses pursuant to paragraph 6.2.

"Basic service" means the lowest cost tier of cable service offered by United Video Cablevision to all its subscribers which includes the delivery of local television broadcast signals, access channels, and local origination.

"Cable franchise" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Cable service" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Cable system" and "system" mean (1) the cable system on the island of Kauai doing business as United Video Cablevision and (2) shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Channel" means a minimum of six megahertz (6 MHz) bandwidth in the electromagnetic spectrum which is capable of carrying any type of transmission which United Video Cablevision is authorized to provide to subscribers.

"Director" shall have the meaning as interpreted and set forth in Section 440G-3, Hawaii Revised Statutes.

"Educational access channel" means any channel on the system which is made available by United Video Cablevision for use by educational authorities such as the Hawaii State

Department of Education, Kauai Community College, and other accredited educational institutions for non-commercial educational purposes.

"Government access channel" means any channel on the system made available for use by county, state, and federal government agencies.

"Gross revenues" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by United Video Cablevision, its affiliates, subsidiaries, and any other person or entity in which United Video Cablevision has a financial interest or which has a financial interest in United Video Cablevision arising from or attributable to operation of the cable system, including but not limited to:

- (a) revenue from all charges for entertainment and non-entertainment services provided to subscribers;
- (b) revenue from all charges for the insertion of commercial advertisements upon the cable system;
- (c) revenue from all charges for the leased use of a studio or cable channel;
- (d) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable system and the provision of subscriber and other service; and
- (e) revenue from the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

Gross revenues shall include, valued at agreed upon or contract price levels, the value of any goods, services, or other remuneration in non-monetary form, received by United Video Cablevision or others described above in consideration of performance by United Video Cablevision or others described above of any advertising or other service in connection with the cable system.

Gross revenues shall exclude any amounts received by others described above from United Video Cablevision as management fees and fees in the nature of general and administrative allocations.

"Leased access channel" means a channel made available to producers or programming services wishing to purchase channel time. Leased access may be commercial in nature.

"Local origination programming" means any program produced by or for the cable system and where the cable operator maintains editorial control over programming and scheduling.

"Person" means and includes any individual, partnership, firm, corporation, association, trust or other enterprise.

"PEG access programming" means any programming on any access channel developed by or made for the public, educational or governmental entities.

"Public access channel" means any channel on the system made available for use by individuals and organizations for non-commercial purposes.

"Public, educational, and governmental access facilities and equipment" means (1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for the use of that channel capacity.

"State" means State of Hawaii.

"Subscriber" means any person lawfully receiving any cable service.

"United Video Cablevision" means United Video Cablevision of Hawaii, Inc., a corporation organized under the laws of the State of Delaware.

"United Video Cablevision, Inc." means United Video Cablevision, Inc., a corporation organized under the laws of the State of Delaware.

"United Video Management, Inc." means United Video Management, Inc., a corporation organized under the laws of the State of Delaware.

Section Two
Management

2.1 Ownership

(a) For the duration of the franchise term:

- (1) Lawrence Flinn, Jr. shall own at least fifty-one percent (51%) of the outstanding common stock of United Video Cablevision.
- (2) Lawrence Flinn, Jr. shall control the appointment of a majority of the Directors of United Video Cablevision.
- (3) Lawrence Flinn, Jr. shall through United Video Management, Inc. be actively engaged in the management of United Video Cablevision unless a successor to United Video Management, Inc. has been approved in writing by Fleet National Bank within sixty (60) days after United Video Management, Inc. ceases to manage United Video Cablevision.

(b) Any change of five percent (5%) or more in the ownership of United Video Cablevision shall be reported to the Director within ten (10) calendar days of such change.

2.2 Books and Records

Except as hereinafter provided in this paragraph, United Video Cablevision shall maintain at its principal place of business in the State of Hawaii a complete set of books and records, including but not limited to subscriber records, monthly profit-and-loss statements, and other documentation relating to the transaction of its business in Hawaii. All records not maintained and available for review at the local office shall, upon request, be made available locally within five (5) working days.

If these records are not available locally within five (5) working days of the request, then (a) United Video Cablevision agrees to pay an administrative fine of \$1,000 per day for each day that these records have not been produced or (b) United Video Cablevision shall make appropriate office space available and pay for air fare, hotel,

other related travel expenses, and the salary and fringe benefits necessary to allow the Director's representative(s) to review the requested records wherever they are located.

2.3 Other Business Activity

United Video Cablevision shall not engage in any type of business activity in Hawaii or elsewhere which is not related to the operation of its cable system without the prior written approval of the Director.

2.4 Tariff

(a) Within sixty (60) days from the effective date of this Order, United Video Cablevision shall file with the Director a schedule of its rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes.

(b) United Video Cablevision shall amend its schedule of its rates of service and other information as required by the rules promulgated pursuant to Chapter 440G, Hawaii Revised Statutes, at least fourteen (14) days in advance of any changes.

(c) The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

2.5 Reporting of Violations

(a) Upon acquiring knowledge of any event which is reasonably likely to lead to a violation of any condition of this Order, United Video Cablevision shall immediately notify the Director in writing specifying: (1) the nature of such violation, (2) an opinion as to when the violation is likely to occur, and (3) the action that United Video Cablevision proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, United Video Cablevision shall promptly inform the Director in writing of (1) the nature of the violation, (2) the period in which the violation has been in existence, and (3) the actions that United Video Cablevision proposes to take with respect to the violation.

(c) By April 30 of each year, United Video Cablevision shall submit to the Director a statement to the effect that no violation of this Order has occurred and is continuing and that United Video Cablevision has observed or performed every condition contained in this Order. In the event a violation has occurred and is continuing or if United Video Cablevision has not observed or performed all of the conditions contained in this Order, it will specify the nature and period of the violation and what actions United Video Cablevision has taken or proposes to take to with respect to the violation.

Section Three

Financial

3.1 Changes in Loan Agreement

Any material change in the terms and conditions of the Loan Agreement dated March 30, 1987 between Fleet National Bank and United Video Cablevision for the financing of the Kauai cable system subsequent to the effective date of this Order, shall require prior approval of the Director.

3.2 Covenant Violations

Any violation of a covenant of any agreement involving financing for United Video Cablevision shall be reported promptly in writing to the Director.

3.3 Collateralization of System Assets

The assets of United Video Cablevision shall not be pledged as collateral for any borrowings which are not solely for the benefit of the cable system. Any additional collateralization of the system shall be reported to the Director.

3.4 Additional Borrowing

Excluding trade accounts, secured financings of vehicles and equipment in the aggregate principal amount of \$100,000, and advances, equity contributions, and subordinated borrowings from its shareholders, any borrowing or financing exceeding \$5,000 by United Video Cablevision from whatever source and under whatever condition, shall require prior approval of the Director.

3.5 Transfers or Payments

Except as provided below, any transfer or payment of a sum in excess of \$50,000 and not related to the cost of operating the Kauai cable system (including debt service) shall require the prior approval of the Director. Prior approval shall not be required for the following:

(a) Payments to Fleet National Bank under the Loan Agreement dated March 30, 1987 with United Video Cablevision; and

(b) Payments to the shareholders or affiliates of United Video Cablevision in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 3.4 above, provided that the loan with Fleet National Bank has been fully satisfied.

3.6 Annual Financial Statements

(a) By April 30 of each year, United Video Cablevision shall submit to the Director its annual financial statements for the preceding calendar year. The financial statements shall include a balance sheet, an income statement, a statement of cash flows, and notes to the financial statements. Each such financial statement shall be prepared in accordance with generally accepted accounting principles consistently applied. The financial statements shall be presented in sufficient detail to allow the analysis of the cable system on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 3.6(a) shall be accompanied by a statement showing the basis for computing and the amounts paid by United Video Cablevision or any subsidiary to its shareholders,

affiliates, subsidiaries or any person for management fees and fees in the nature of general and administrative allocations.

3.7 Loan Agreement Compliance

United Video Cablevision shall furnish to the Director, promptly upon their mailing or transmittal, all documents which show United Video Cablevision's compliance with the provisions of the Loan Agreement dated March 30, 1987 between United Video Cablevision and Fleet National Bank including, but not limited to, Sections 5.09 Net Operating Income, 5.10 Fixed Charge Coverage Ratio, 5.11 Debt to Cash Flow Ratio, 5.12 Basic Equivalent Subscribers, and 6.10 Capital Expenditures.

Section Four **Construction**

4.1 Forty-Channel Upgrade

On or before December 31, 1995, United Video Cablevision shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 330 MHz or forty (40) channels for cable services.

4.2 Interconnection for Access Purposes

On a schedule and in a manner to be determined in the plan described in paragraph 6.1 below, United Video Cablevision shall effect an interconnection with other cable systems on Kauai for the purpose of carrying access programming.

4.3 Interconnection with HITS

Within three (3) months of a request by the Director, United Video Cablevision shall provide for a single channel interface between the HITS (Hawaii Interactive Television System) and its cable system and other Kauai cable systems at no cost or charge to the State, provided that the cost to United Video Cablevision is not in excess of \$10,000.

4.4 Emergency Override System

On or before December 31, 1991, United Video Cablevision shall configure and maintain its system to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by the cable system. Emergency authorities shall include the County of Kauai Administrator of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

4.5 Completion of Franchise Requirements

Any proposed transfer of the franchise shall require completion of paragraphs 4.1 and 4.4 above before such transfer application will be considered for approval by the Director.

Section Five Programming Services

5.1 Mix, Quality, and Level of Service

United Video Cablevision shall not alter its current mix, quality, and level of programming services for the basic service tier without prior approval of the Director.

5.2 Basic Service Tier Broad Categories of Programming

(a) Subject to availability, United Video Cablevision shall carry programming in each of the following broad categories of service on its basic service tier:

- (1) Public access programming;
- (2) Educational access programming;
- (3) Governmental access programming;
- (4) Local origination programming;
- (5) Public non-profit station with national programming; and
- (6) Broadcast television stations as required by the Federal Communications Commission or applicable law.

(b) Except as provided below, no broad category of video programming may be eliminated without the prior approval of the Director. Prior approval shall not be required for the following: (1) programming is discontinued by programmers without notice to United Video Cablevision; and (2) programming changes beyond the control of United Video Cablevision.

(c) United Video Cablevision shall provide notice to the Director at least fourteen (14) days in advance of any changes in its channel lineup.

Section Six

Public, Educational, and Governmental Access

6.1 Access Plan and Implementation

United Video Cablevision shall work with the Director's staff, consultants, and others designated by the Director to develop for the Director's approval and to implement a coordinated plan for the use of public, educational, and governmental access facilities and equipment on the island of Kauai. The plan shall at a minimum consider the following:

- (a) Resources available on the island of Kauai for access use;
- (b) User needs and interests;
- (c) Models for providing public, educational, and government access;
- (d) Management of access facilities and equipment, including the interconnection of all cable systems on Kauai, the activation of additional access channels, the scheduling of channel capacity, guidelines for the interim use of access channel(s) by the cable operator, and the provision of facilities and equipment for the production of programming; and

(e) Coordination of access with HITS (Hawaii Interactive Television System), HAWAIIAN (HAWAII Wide Area Integrated Information Access Network) or any other interconnects.

6.2 Access Fee

(a) As hereinafter provided in paragraphs 6.2(b) and 6.2(c), during each and every year for the remaining term of the franchise, United Video Cablevision shall pay to an account designated by the Director or his designee an amount up to three (3) percent of its Gross Revenues. These payments shall be used for public, educational, and governmental access uses.

(b) For the years ending December 31, 1990 through December 31, 1995, United Video Cablevision shall pay on the due dates shown an annual Access Fee equal to the greater of the amounts shown below or one-half percent (1/2%) of Gross Revenues:

<u>Due Date</u>	<u>PEG Access Fee</u>
December 31, 1990	\$ 500.00
December 31, 1991	\$1,600.00
December 31, 1992	\$1,700.00
December 31, 1993	\$1,800.00
December 31, 1994	\$1,900.00
December 31, 1995	\$2,000.00

(c) For the years ending December 31, 1996 through the end of the franchise term, the Access Fee shall be three percent (3%) of Gross Revenues.

(d) The Access Fee shall be calculated on the estimated annual Gross Revenues for the calendar year. Adjustments to the Access Fee due to differences between the estimated and actual Gross Revenues will be made within thirty (30) days after the submission of United Video Cablevision's annual financial statements to the Director. For the year ending December 31, 1990, the Access Fee shall be calculated from the Gross Revenues for the period from the effective date of this Decision and Order to December 31, 1990. If United Video Cablevision is entitled to a refund, the Director or

his designee shall grant a credit toward the next payment of the Access Fee or make a refund if the last payment of the Access Fees have been made. the Director may require United Video Cablevision to submit to an audit by the Director's accountant.

(e) The amount of the Access Fee required pursuant to paragraphs 6.2(b) and 6.2(c) may be reconsidered by the Director at the following times:

- (1) By December 31, 1995 to determine the Access Fee for the years ending December 31, 1996 through December 31, 2000.
- (2) By December 31, 2000 to determine the Access Fee for the years ending December 31, 2001 through the end of the franchise term, November 19, 2005.
- (3) Upon the transfer of the franchise.

6.3 Facilities and Equipment

(a) The formula for determining the PEG capital funds is equal to:

PEG Access Capital amount per year reflected in paragraph 6.3(b) x
Percentage Cap (100% through 150%).

The Director reserves the right to reconsider the required PEG capital funds at the dates specified in paragraph 6.3(c). Upon reconsideration, the Director shall not require amounts in excess of the range of the PEG capital funds formula.

(b) For the years ending December 31, 1990 through November 19, 2005, United Video Cablevision shall, on the due dates shown, provide to the Director or his designee capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
December 31, 1990	\$ 500.00
December 31, 1991	\$ 550.00
December 31, 1992	\$ 600.00
December 31, 1993	\$ 650.00
December 31, 1994	\$ 700.00
December 31, 1995	\$ 750.00
December 31, 1996	\$ 825.00
December 31, 1997	\$ 900.00
December 31, 1998	\$ 975.00
December 31, 1999	\$1,050.00
December 31, 2000	\$1,125.00
December 31, 2001	\$1,200.00
December 31, 2002	\$1,300.00
December 31, 2003	\$1,400.00
December 31, 2004	\$1,500.00
November 19, 2005	\$1,600.00

(c) The amount of the PEG capital funds required pursuant to paragraphs 6.3(a) and 6.3(b) may be reconsidered by the Director at the following times:

- (1) By December 31, 1995 to determine the PEG capital funds for the years ending December 31, 1996 through December 31, 2000.
- (2) By December 31, 2000 to determine the PEG capital funds for the years ending December 31, 2001 through the end of the franchise term, November 19, 2005.
- (3) Upon the transfer of the franchise.

(d) Any PEG capital funds paid pursuant to paragraph 6.3, shall not be credited to the Access Fee.

(e) Any transfer of the cable system shall require the payment to the Director or his designee of the outstanding PEG capital funds for public, educational, and

governmental access pursuant to paragraph 6.3 before the effective date of the transfer. The Director reserves the right to waive or to reduce the amount due under this paragraph for good cause.

(f) For purposes of paragraph 6.3, "PEG capital funds" means the sum of money set apart specifically for public, educational, and governmental access facilities and equipment. "PEG Access Capital" means the sum of money necessary for the investment for public, educational, and governmental access facilities and equipment.

6.4 Access Channels

(a) By November 30, 1990, United Video Cablevision shall designate to the Director one full-time activated channel for public, educational, and governmental access. Two (2) additional channels shall be designated by December 31, 1990; however, United Video Cablevision may use the designated access channels as provided in this paragraph until such time as those channels are activated in accordance with the policies and procedures for activation determined under paragraph 6.1 above.

(b) The two (2) additional channels designated for access use may be activated after December 31, 1993.

(c) All access channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on United Video Cablevision's basic service.

(d) United Video Cablevision shall be permitted to use time on the access channel(s) whenever such access channel is not scheduled for use; provided that any such use by United Video Cablevision shall at all times be subordinated to access programming and shall be preempted by access programming. Any such use shall be subject to guidelines established by the Director or Director's designee or as established pursuant to paragraph 6.1 above.

(e) All non-access programming on access channel(s) shall be identified as such by an appropriate announcement made prior to and following each non-access use.

6.5 Access Organization

The Director may designate one or more entities to fund, control, manage or operate access facilities and equipment.

6.6 Access Transition

(a) United Video Cablevision shall continue to fund and operate its existing access facilities and equipment until it receives notice from the Director to alter its present activities pursuant to paragraph 6.1 above. Access shall be made available for non-commercial use on a first-come, nondiscriminatory basis to all persons or groups requesting use of public, educational, and governmental channels.

(b) All equipment presently devoted exclusively to access use shall be transferred upon the receipt of notice from the Director pursuant to paragraph 6.5 above.

(c) All expenses relating to access operations paid within a given calendar year by United Video Cablevision shall be credited towards the next annual access fee payment; however, the value of any facilities and equipment required to be transferred pursuant to paragraphs 6.5 and 6.6(b) above shall not be credited toward the payment of any access fee.

6.7 Reporting Requirements

(a) By April 30 of each year, United Video Cablevision shall submit to the Director a report of local origination expenses and a report for access programming expenses for the preceding calendar year.

(b) For the purposes of accounting for amounts expended for local origination and access programming, United Video Cablevision shall only include an appropriate portion of United Video Cablevision's total operating expenses associated with local origination and access programming. Such portions of the total operating expenses shall reflect only necessary and reasonable expenses which can be specifically identified with, or allocated to, local origination and access programming in accordance with the benefits provided by the resources presented by the expenses. For the purposes of this

paragraph, resources used for local origination and to comply with the access requirements shall be deemed to benefit local origination and access programming. In addition to operating expenses, amounts expended for local origination and access programming may include annual depreciation allowance for local origination and access related equipment and facilities, as calculated over the assets' useful lives.

(c) Amounts expended for local origination and access programming shall be subject to the State's review in conjunction with the State's review of United Video Cablevision's annual financial report. United Video Cablevision shall make such changes in its accounting for local origination and access programming expenditures as the State may reasonably require consistent with generally accepted accounting principles. Unless and until any such change is required, United Video Cablevision may continue to account for local origination and access programming expenses in the same manner as it had in the past. If the State has not required changes within six months of the State's actual receipt of United Video Cablevision's local origination and access programming expenditure reports, then United Video Cablevision's accounting for local origination and access programming shall be deemed accepted by the State.

Section Seven

Miscellaneous

7.1 The Director hereby expressly reserves the right to regulate rates to the extent permitted by law.

7.2 Consistent with Section 612(b) of the Cable Communications Policy Act of 1984, on or before December 31, 1990, United Video Cablevision shall file with the Director and implement a published schedule of terms, conditions, and charges for the leasing of cable channels for commercial use.

7.3 (a) This Order shall not be construed as exempting United Video Cablevision or any affiliated or controlling entities from any antitrust law.

(b) This Order does not constitute an adjudication upon any antitrust issues which may be involved in this proceeding.

7.4 United Video Cablevision, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the United Video Cablevision cable system. If United Video Cablevision discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, United Video Cablevision shall promptly report it to the Director in writing. United Video Cablevision, its employees, and agents, shall comply with all applicable federal, state, and local laws, rules and regulations issued pursuant thereto and shall indemnify the State against any loss, liability or damage occasioned by reason of a violation of this paragraph. United Video Cablevision and the Director have carefully reviewed this Order and believe that all of its provisions are in full compliance with all federal and state statutory requirements in effect on the date of this Order, including the Cable Communications Policy Act of 1984.

7.5 The failure of the State at any time to require performance by United Video Cablevision of any paragraph of this Order shall in no way affect the right of the State to enforce the same. The waiver by the State of any breach of any paragraph of this Order shall not be taken or held to be a waiver of any succeeding breach of such condition or as a waiver of the condition itself.

7.6 United Video Cablevision shall save and hold the State and its officials, agents, and employees free and harmless from any loss, expense or damage to person or property arising out of or resulting from any provision or requirement of the Franchise or exercising its rights or performing its duties under this Franchise.

7.7 The Director reserves the right to waive any paragraph of this Order for good cause.

7.8 Time is of the essence with respect to this Order.

7.9 The State may, from time to time, adopt or issue such rules, orders, or other directives governing United Video Cablevision as it shall find necessary or appropriate in the exercise of its police power. The Director may, from time to time, issue such orders governing United Video Cablevision as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. United Video Cablevision

agrees to comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

CERTIFICATE OF SERVICE

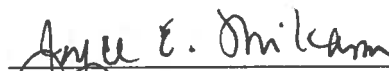
I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 140 in Docket No. 90-02 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 19th day of November, 1990:

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