

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

In the Matter of the Application of	)	
	)	
The Chronicle Publishing Company	)	
Doing Business As	)	
CHRONICLE CABLEVISION OF HAWAII	)	Docket No. 90-02
	)	
For Approval of Cable Franchise Renewal to	)	
Provide Cable Communication Service	)	
_____	)	

DECISION AND ORDER NO. 141

I. Introduction.

On July 20, 1990, the Director of Commerce and Consumer Affairs ("Director") accepted an application for franchise renewal from Chronicle Cablevision of Hawaii ("Chronicle"). Chronicle provides cable communications service for the island of Oahu in Census Tract Areas 1.01, 1.02, and 1.03 ("Hawaii Kai"); for the County of Maui in Census Tract Areas 301 through 313, inclusive, 316 through 319, inclusive ("Maui County"); and for the island of Hawaii in Census Tract Area 212 ("Ka'u").

Chronicle's application seeks to renew and consolidate the company's cable permits for all areas. Notably, the application includes a renewal proposal for Chronicle's Maui County service areas, for which its existing franchise does not expire until July 1996.

Pursuant to Section 440G-7, Hawaii Revised Statutes, a public hearing on this application was held on August 23, 1990 at the Maui Community College and via the "Skybridge" system at the MCC Center on Lanai and Molokai; on August 27, 1990 at the Ka'u High and Pahala Elementary School; and on August 29, 1990 at the Hawaii Kai Library. Notice of the hearing was published in the Sunday Star-Bulletin and Advertiser on August 5 and 12, 1990; The Hawaii Tribune-Herald and The Maui News on August 1 and 8, 1990; and The Lanai Times and The Molokai Dispatch on August 15, 1990.

## II. The Law.

### A. State Law

The regulatory powers of the Director regarding the renewal of a cable communications franchise are set forth in Sections 440G-10, 440G-7, and 440G-8 of the Hawaii Cable Communications Systems Law ("Hawaii Cable Law"), Chapter 440G, Hawaii Revised Statutes. These sections require the Director's approval before any renewal of a cable franchise occurs. The application for renewal contains substantially the same information as an original application for a grant of 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."

The regulatory powers enable the Director to determine the length of the franchise renewal term. Section 440G-10, Hawaii Revised Statutes, states that:

"Any cable franchise issued pursuant to this chapter may be renewed by the director upon approval of a cable operator's application or proposal therefor. The form of the application or proposal shall be prescribed by the director. The periods of renewal shall not be less than five nor more than twenty years each. The director shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational, or governmental access facilities."

Finally, Section 440G-8(d), Hawaii Revised Statutes, delineates the Director's authority in making a determination of the terms and conditions of the franchise:

"(d) In issuing a cable franchise under this chapter, the director is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the by the cable franchise terms, limitations, and conditions which the director deems the public interest may require . . . ."

#### B. The Privilege of a Franchise

The grant of a cable franchise, whether at initial issuance or by a renewal of authority, 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, enhancing its community's communications capabilities by supporting public, educational, and governmental access.

### **III. Statutory Criteria.**

#### **A. Public Need for the Proposed Service**

The applicant has proposed to provide the same cable programming services it now offers. The Chronicle system now provides cable communications service to the islands of Oahu, Maui, Molokai, Lanai, and Hawaii ("the Hawaii system"). Chronicle serves approximately 8,500 subscribers in Hawaii Kai on Oahu; 22,800 subscribers on Maui, excluding the district of Lahaina; 575 subscribers on Molokai; 865 subscribers on Lanai; and 1,000 subscribers in Ka'u on Hawaii.

On the island of Oahu, Hawaii Kai is located in an area where, because of a restrictive covenant against the use of television antennas, television reception would be marginal for most of its residents. Consequently, in order to receive television signals, cable communications service is required and 92 percent of the residents whose homes are passed by a cable line subscribe to Chronicle.

The Maui County has a unique cable system. Chronicle provides service to its subscribers on Maui, Lanai, and Molokai through the use of microwave distribution networks. It is through the use of the microwave distribution networks that subscribers in the areas of Hana, as well as Lanai and Molokai, are able to receive up to twenty-eight (28) channels.

The district of Ka'u on the island of Hawaii is located in a remote area where television reception is almost non-existent. Without cable communications services, subscribers would only receive one broadcast channel. Consequently, about 85 percent of the residents whose homes are passed by a cable line subscribe to Chronicle and are able to receive up to fifteen (15) cable channels.

Therefore, it is through the cable communication service provided by Chronicle that most of the subscribers in Chronicle's service are able to receive television reception.

B. Suitability of the Applicant

The cable systems now owned by Chronicle have changed hands three times in the past five years. In 1985, after years of neglect due in part to the fact that the system was up for sale, the Hawaii Kai system, then known as Kaiser Teleprompter of Hawaii, Inc., was sold by Group W Cable, Inc. and Kacor, Inc. to a subsidiary of the McCaw telecommunications operations based in Washington state ("McCaw"). Because Kaiser had failed to upgrade the system as it had promised, the Director required the system to be completely upgraded from a substandard 12 to a 54-channel capable system prior to the transfer of the cable franchise to McCaw.

McCaw Cablevision also sought authority for and built the cable systems on Lanai and Molokai, and improved the systems on Maui and in Ka'u. In seeking the transfer of all of these Hawaii systems to it, McCaw assured the State of its historical links and commitment to the islands, and its intent to remain the operator of the Hawaii systems for a long time.

However, within three years, McCaw received numerous cellular telephone franchises across the United States. McCaw decided that it would leave the cable television business and that its Hawaii systems would be sold.

Prior to the consummation of Chronicle's purchase of the Hawaii systems in late 1988 from McCaw, the systems and their subscribers suffered due to uncertainties caused by the impending sale. During this time period, it was difficult for management

to obtain the necessary financial and personnel support to operate the systems in the best interests of the subscribers.

To effectuate the transfer of the McCaw Hawaii systems to Chronicle, a one-day transfer to Cooke Cablevision, Inc. for the sole purpose of allowing the ultimate sale of the cable systems to Chronicle was approved by the Director.

The systems now owned by Chronicle have gone through three (3) ownership changes in the past five (5) years. As a result of the changes in ownership, the subscribers have endured a level of service below their expectations. Consequently, the Director is concerned that the owner of the cable system in Hawaii Kai, Ka'u, and in Maui County possess the character, desire, and willingness to operate the systems in the best interests of the communities it serves. In fact, if only the Hawaii Kai portion of the franchise was renewed, only the minimum renewal term would likely have been granted in order to give Chronicle an opportunity to demonstrate its commitment to the subscribers of Hawaii Kai.

The Chronicle Publishing Company ("The Company"), doing business as Chronicle Cablevision of Hawaii, currently provides cable communications service to subscribers in the district of Hawaii Kai on Oahu, Maui County, and the district of Ka'u on Hawaii. The Chronicle Publishing Company is a diversified media company whose principal operations are newspaper publishing, television broadcasting, and cable television operations.

The Company, through Western Communications ("Western"), a division of the Company, owns and operates seven (7) cable communications systems in the states of California, New Mexico, and Hawaii. Western has been in the cable communications business for over 20 years. Western is the 36th largest multiple system operator in the United States. (Paul Kagan Associates Report, September 24, 1990.)

It appears the applicant is suitable based on three factors: (1) the ownership and management of the Hawaii systems by The Chronicle Publishing Company, (2) Western's status as one of the larger multiple system operators, and (3) during its brief tenure, Chronicle has generally improved the responsiveness of its systems to the communities' needs and desires.

C. Operational Ability of the Applicant

The history of Chronicle's Hawaii systems shows that the ability of the cable operator to operate its systems is directly related to the operator's suitability. The general manager of the Chronicle systems has been employed since ownership by McCaw. The greater availability of personnel and financial resources under Chronicle's ownership has improved management's ability to operate the systems in the best interest of the public.

Since the transfer of ownership, Chronicle has demonstrated a capacity to operate its cable systems in a manner generally attuned to the needs and requirements of its Hawaii subscribers.

D. Technical Ability of the Applicant

Generally, the same technical personnel have been with the systems now operated by Chronicle throughout the ownership changes of the past five years. Prior to its 1985 rebuild, the Hawaii Kai system was the source of numerous complaints of outages and interruption of services. However, it appears that this was due more to the condition of the system than the ability of its technical staff, as fewer complaints of this nature have been received since that time.

The technical staff are competent, well-trained, and capable of meeting the daily technical requirements of the cable communications facilities. In addition to meeting routine needs, the staff has demonstrated its competence in planning and executing system upgrades. Chronicle has also augmented staffing as needed to meet technical and engineering needs. The applicant has demonstrated its technical ability to operate the cable systems in Hawaii.

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

The financial plan presented by Chronicle is based on several favorable assumptions. It assumes increased cable rates, an increased base of subscribers, and increased revenues from premium services and ancillary services. Based on these factors, it appears Chronicle has the ability to provide service at a reasonable cost.

Chronicle obtained its Hawaii systems through an exchange of its Chico, California cable system with Cooke. As part of the exchange, Chronicle incurred a \$2,500,000 debt. Chronicle has stated that the substantial financial resources of Western Communications and The Chronicle Publishing Company are available to it. Therefore, based on these factors, it appears Chronicle has the financial capability to operate its cable systems.

F. Public Hearing

Hearings on Chronicle's renewal application were held on all islands served by the company. Most of the comments received related to public, educational, and governmental ("PEG") access.

On Oahu, 'Olelo: The Corporation for Community Programming testified that it believes that PEG access programming for Hawaii Kai should be the equivalent of PEG access programming provided to the rest of the island of Oahu, served by Oceanic Cablevision. 'Olelo has been designated by the Director to manage PEG access resources and activities for Oceanic Cablevision's service areas. 'Olelo expressed its interest in managing PEG access activities for the Hawaii Kai area. It recommended that the Hawaii Kai franchise renewal include funds for access equipment and facilities for the community.

On Maui, testifiers spoke in favor of increased support for access activities, indicating their belief that Chronicle and its predecessors had failed to provide the necessary equipment, facilities, and channel space for access programming. Subscribers testifying from the islands of Molokai and Lanai supported the renewal of Chronicle's franchise noting that the islands had received the benefits of higher education via the Skybridge system (an interactive teleconferencing system between the islands of Maui, Molokai, and Lanai) operated by Maui Community College, and that modern television was brought to their islands through the cable programming services provided by Chronicle.

On Hawaii, the Department of Education expressed a need for Hawaii District Public schools to receive advanced educational services via the Hawaii Interactive Television System operated by the Hawaii Public Broadcasting Authority.

Testimony was received in support of the renewal of Chronicle's franchise and indicated general satisfaction with the service provided by the company. However, concern was expressed about increased subscriber rates under Chronicle's ownership, the lack of comparable programming offered by Chronicle's Hawaii Kai system when measured against Oceanic Cablevision, and poor signal reception on some channels on Oahu.

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.

2. Channel Capacity. A key consideration in the State's review of cable system franchises in Hawaii is to assure that they are technically capable of meeting the future needs and desires of the communities they serve. The Director has generally accepted the operator's proposals for increasing channel capacity. This will result in the Ka'u area increasing its channel capacity from 21 to 36 channels in five years.

The Molokai and Lanai systems, newly built in 1985, can carry 42 channels. The feasibility of increasing the channel capacity of the Molokai and Lanai systems to 50 channels will be studied by 1995, so that the Director may decide whether this added channel capacity should be required.

In Hawaii Kai, the system will be upgraded to sixty (60) channels on a schedule intended to coincide with the sixty (60) channel upgrade for Oceanic Cablevision's cable system.

For Maui, only a forty (40) channel upgrade to be completed by December 31, 1995 is being required at this time. In this proceeding, Chronicle has indicated that it will likely complete a sixty (60) channel upgrade voluntarily within the next ten (10) years; however, the applicant felt that the estimated expense of the upgrade at this time is too high to allow its firm commitment to the project. It is the Director's belief that the

needs of the Maui community for telecommunications capabilities will continue to grow and that the need for a sixty (60) channel system will become even more apparent as the end of the century nears. Chronicle will be required to do a sixty (60) channel feasibility study by the end of 1997. This will be just shortly before the company is expected to seek renewal, when the issue of the need for greater channel capacity will be revisited.

3. Public, Educational, and Governmental Access. As previously noted, the issue of PEG access was the focus of most of the public testimony in this proceeding. The Director has, through the requirements of this Order, sought to meet the needs for access resources expressed by the communities served by Chronicle.

The Director intends to establish planning processes on the islands of Oahu and Hawaii, and in Maui County, which bring together all cable systems and interested parties to create and implement coordinated plans for access activities which make the most effective use of the resources available. Specific concerns with respect to lack of equipment and facilities, channel time, and other matters will be addressed in the development of these plans.

The needs for the three areas were considered by the State's PEG access consultant. The PEG access capital requirements were based on the consultant's recommendation.

It is the Director's intention that 'Olelo: The Corporation for Community Television be initially designated to manage access resources for the benefit of Chronicle's Hawaii Kai subscribers as part of an integrated plan for the support of access activities on the island of Oahu.

4. Extension of Franchise Term. The Director notes that the franchise term for Chronicle's Hawaii Kai system was extended twice: (1) for no more than one month, from October 21, 1990 to the earlier of November 21, 1990 or the date of issuance of a final order in this matter, and (2) from November 21, 1990 to November 23, 1990. This extension was made under the authority of Section 440G-12, Hawaii Revised Statutes.

5. Franchise Renewal Term. The Director noted that Chronicle submitted one application for its Hawaii systems, although Hawaii Kai's franchise expires in November 1990, Ka'u's franchise expires in June 1991, and Maui County's franchise expires in July

1996. For purposes of efficiency and economy, the Director has accepted Chronicle's proposal to consolidate its Hawaii systems, in order to review one application for renewal rather than three separate and individual applications for renewal for the franchise areas.

The discussions between the State and Chronicle have been based on the Director's acceptance of the view that Chronicle's Hawaii systems should be consolidated. Consequently, the Director has considered the following factors as a whole in his consolidated review of the application: (1) public need for the proposed service, (2) the suitability of the applicant, (3) the operational ability of the applicant, (4) the technical ability of the applicant, and (5) the ability to provide service at a reasonable cost and the financial capability of the applicant. The Director did not have the opportunity to consider what terms and conditions would be appropriate for each of the Hawaii Kai, Ka'u, and Maui County system franchises in the same manner as he would have if the applications were individually and separately submitted.


#### V. 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 the renewal and consolidation of all Chronicle's franchises in the State of Hawaii. The applicant appears to possess the requisite capabilities for the issuance of the franchise. Pursuant to Section 440G-10, Hawaii Revised Statutes, the cable franchise term shall be for approximately ten (10) years. The area served by Chronicle shall be for the island of Oahu in Census Tract Areas 1.01, 1.02, and 1.03; for the County of Maui in Census Tract Areas 301 through 313, inclusive, 316 through 319, inclusive; and for the island of Hawaii in Census Tract Area 212.

VI. Order.

NOW, THEREFORE, the application of Chronicle Cablevision of Hawaii to renew its cable franchise permits is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, November 23, 1990.

A handwritten signature in dark ink, appearing to read "Robert A. Alm", is written over a horizontal line.

ROBERT A. ALM  
Director of Commerce and Consumer  
Affairs

**THE CHRONICLE PUBLISHING COMPANY  
DBA CHRONICLE CABLEVISION OF HAWAII**

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## TERMS AND CONDITIONS OF ORDER NO. 141

### Section One

#### Definitions

"Access channel" means any channel on the system made available for public, educational or governmental use.

"Access fee" means the annual fee to be paid by Chronicle Cablevision of Hawaii to the Director or his designee for public, educational or governmental uses pursuant to paragraph 7.2.

"Basic service" means the lowest cost tier of cable service offered by Chronicle Cablevision of Hawaii 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" shall have the meaning set forth in Hawaii Revised Statutes Section 440G-3.

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

"The Chronicle Publishing Company" means The Chronicle Publishing Company, doing business as Chronicle Cablevision of Hawaii, incorporated under the laws of Nevada.

"Chronicle Cablevision of Hawaii" means that entity which operates Chronicle's cable systems in the State.

"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 Chronicle Cablevision of Hawaii for use by educational authorities such as the Hawaii State Department of Education, 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 Chronicle Cablevision of Hawaii, its affiliates, subsidiaries, parents, and any other person or entity in which Chronicle Cablevision of Hawaii has a financial interest or which has a financial interest in Chronicle Cablevision of Hawaii, 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 studios or channels;
- (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) 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 Chronicle Cablevision of Hawaii or others described above in consideration of performance by Chronicle Cablevision of Hawaii 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 Chronicle Cablevision of Hawaii 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.

"Western Communications" means the Western Communications, a division of The Chronicle Publishing Company.

## Section Two

### Franchise Term

#### 2.1. Franchise Term

The franchise term shall be from November 23, 1990 to December 31, 2000 subject to the following condition:

Taken as a whole, the provisions of this Order represent the optimum balance of interests in this case. Each provision has been weighed and balanced to form an integrated document. The elimination of any portion of this Order would consequently undermine the entire document. Therefore, if any section, subsection, sentence, clause, phrase or other portion of this Order is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, and the State determines that the unenforceable or unlawful provision(s) represent a substantial breach to the integral nature of this Order, then the franchise term for Chronicle Cablevision of Hawaii will revert to:

- A five (5) year franchise (measured from the date the franchise was originally awarded if the invalidation occurs within the first two (2) years of operations); or
- A three (3) year franchise (measured from the date of the invalidation if such action occurs after the first two (2) years of operations, but in no event will the amended franchise term exceed the original franchise term).

## Section Three

### Management

#### 3.1. Books and Records

Except as hereinafter provided in this paragraph, Chronicle Cablevision of Hawaii shall maintain at its principal place of business in the State 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 the State. All books and 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 books and records are not available locally within five (5) working days of the request:

(1) Chronicle Cablevision of Hawaii agrees to pay an administrative fine of \$1,000 per day for each day that these books and records have not been produced;  
or

(2) Chronicle Cablevision of Hawaii 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.

### 3.2. Other Business Activity

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

### 3.3. Tariff

Chronicle Cablevision of Hawaii 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 thirty (30) days in advance of any changes. The terms and conditions of service shall be subject to approval by the Director to the extent permitted by law.

### 3.4. 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, Chronicle Cablevision of Hawaii 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 Chronicle Cablevision of Hawaii proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, Chronicle Cablevision of Hawaii 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 Chronicle Cablevision of Hawaii proposes to take with respect to the violation.

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

## Section Four

### Financial

#### 4.1 Changes in Credit Line

Any material change in the terms and conditions of the credit line as approved in Decision and Order No. 136 subsequent to the date of this Order with Wells Fargo Bank, N.A. (agent) and Banque Paribas, made for the financing of the acquisition, expansion or operation of the cable system shall require the prior approval of the Director.

#### 4.2 Covenant Violations

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

#### 4.3 Collateralization of System Assets

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

#### 4.4 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 The Chronicle Publishing Company and its related entities, any borrowing or financing exceeding \$5,000 by Chronicle Cablevision of Hawaii from whatever source and under whatever condition, shall require prior approval of the Director, except the foregoing shall not prohibit Chronicle Cablevision of Hawaii from guaranteeing the debt of The Chronicle Publishing Company and its related entities in connection with any advances, equity contributions, and subordinated borrowings from The Chronicle Publishing Company and its related entities, and the prior approval of the Director shall not be required therefor.

#### 4.5 Transfers or Payments

Any transfer or payment of a sum in excess of \$50,000 and not related to the cost of operating the Chronicle Cablevision of Hawaii cable system (including debt service) shall require the prior approval of the Director. Prior approval shall not be required for payments to The Chronicle Publishing Company and its related entities in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 4.4 above, provided that the borrowings from the credit line in paragraph 4.1 with Wells Fargo Bank, N.A. (agent) and Banque Paribas have been fully satisfied.

#### 4.6 Annual Financial Statements

(a) By April 30 of each year, Chronicle Cablevision of Hawaii 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 4.6 shall be accompanied by a statement showing the basis for computing any amount paid by Chronicle Cablevision of Hawaii or any subsidiary to its parent, affiliates, subsidiaries, or any person for management fees and fees in the nature of general and administrative allocations.

#### 4.7. Credit Line Compliance

Chronicle Cablevision of Hawaii shall furnish to the Director, promptly upon their mailing or transmittal, all documents which show The Chronicle Publishing Company's compliance with the provisions of the credit line in paragraph 4.1 with Wells Fargo Bank, N.A. (agent) and Banque Paribas.

### Section Five Construction

#### 5.1. Channel Upgrade

##### (a) Hawaii Kai

(1) On or before June 30, 1995, Chronicle Cablevision of Hawaii shall provide a study to the Director relating to the feasibility of providing a

minimum bandwidth of 450 MHz or sixty (60) channel capacity for its Hawaii Kai system.

(2) Chronicle Cablevision of Hawaii shall rebuild or upgrade its Hawaii Kai system to a minimum bandwidth of 450 MHz or sixty (60) channel capacity by December 31, 1998.

(i) Six (6) months prior to commencing construction, Chronicle Cablevision of Hawaii shall submit to the Director a construction schedule complete with construction milestones and relevant dates of completion so as to enable the Director to verify the progress of construction to rebuild or upgrade its cable system to a minimum bandwidth of 450 MHz or sixty (60) channel capable in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1998 timetable.

(ii) If by January 1, 1999 the rebuild or upgrade is not completed, Chronicle Cablevision of Hawaii shall set aside an amount equal to \$27,500 less the accumulated amount expended to date for this upgrade, but not less than what is estimated to complete the upgrade. The Director, in his sole discretion, shall determine the reasonableness of the amount necessary to complete the upgrade.

(3) Pursuant to Decision and Order No. 124, the Director reserved the right to address the issue of direct feeds of local broadcast television stations to Hawaii Kai.

(i) On or before January 31, 1991, Chronicle Cablevision of Hawaii shall provide the Director an explanation as to why direct feeds for existing off-air reception of local broadcast television station channels 2, 4, 9, 11, and 13 are still unnecessary.

(ii) The Director, by March 31, 1991, shall determine whether Chronicle Cablevision of Hawaii shall obtain direct feeds for

existing off-air reception of local broadcast television station channels 2, 4, 9, 11, and 13 considering the best interests of the subscribers in Chronicle Cablevision of Hawaii's service area, and Chronicle Cablevision of Hawaii's explanation.

- If the Director determines that the direct feeds for existing off-air reception of local broadcast television station channels 2, 4, 9, 11, and 13, are necessary, then the direct feeds shall be completed by December 31, 1992.
- If the Director determines that the direct feeds for existing off-air reception of local broadcast television station channels 2, 4, 9, 11, and 13 are not necessary at that time, then the Director reserves the right to reconsider the propriety of requiring the direct feeds in the future considering the best interests of the subscribers in Chronicle Cablevision of Hawaii's service area.

(b) Maui

(1) Forty-Channel Upgrade

- (i) Chronicle Cablevision of Hawaii shall upgrade its Maui system to a minimum bandwidth of 330 MHz by December 31, 1995 and provide a minimum of forty (40) available channels.
- (ii) Six (6) months prior to commencing construction, Chronicle Cablevision of Hawaii shall submit to the Director a construction schedule complete with construction milestones and relevant dates of completion so as to enable the Director to verify the progress of construction to reconfigure its Haleakala and Wailuku Headends, upgrade its receive sites and rebuild or upgrade its cable system to a minimum bandwidth of 330 MHz or forty (40) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1995 timetable.

- (iii) If by January 1, 1996 the rebuild or upgrade is not completed, Chronicle Cablevision of Hawaii shall set aside an amount equal to \$3,408,400 less the accumulated amount expended to date for this upgrade, but not less than what is estimated to complete the upgrade. The Director, in his sole discretion, will determine the reasonableness of the amount necessary to complete the upgrade.

(2) **Sixty-Channel Upgrade**

On or before December 31, 1997, Chronicle Cablevision of Hawaii shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 450 MHz or sixty (60) channel capacity for its Maui system. The study shall address the impact of the sixty-channel upgrade on the transmission of AML and FML microwave signals between Chronicle Cablevision of Hawaii's cable systems in the State.

(c) **Molokai and Lanai**

On or before June 30, 1995, Chronicle Cablevision of Hawaii shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 400 MHz or fifty (50) channel capacity for its Molokai and Lanai systems. The study should address the impact of the channel upgrade on the transmission of AML and FML microwave signals between Chronicle Cablevision of Hawaii's cable systems in the State.

(d) **Ka'u**

(1) **Thirty-Six Channel Upgrade**

- (i) Chronicle Cablevision of Hawaii shall upgrade its Ka'u system to a minimum bandwidth of 300 MHz by December 31, 1995 and provide a minimum of thirty-six (36) available channels.
- (ii) Six (6) months prior to commencing construction, Chronicle Cablevision of Hawaii shall submit to the Director a construction schedule complete with construction milestones and relevant dates of completion so as to enable the Director to verify the progress of construction to rebuild or upgrade its cable system

and reconfigure its headend to a minimum bandwidth of 300 MHz or thirty-six (36) channel capacity in the forward direction to all subscribers' terminals. Approval of the construction schedule by the Director is not required provided that the construction schedule meets the December 31, 1995 timetable.

- (iii) If by January 1, 1996 the rebuild or upgrade is not completed, Chronicle Cablevision of Hawaii shall set aside an amount equal to \$467,500 less the accumulated amount expended to date for this upgrade, but not less than what is estimated to complete the upgrade. The Director, in his sole discretion, shall determine the reasonableness of the amount necessary to complete the upgrade.

(2) Sixty-Channel Upgrade

On or before June 30, 1995, Chronicle Cablevision of Hawaii shall provide a study to the Director relating to the feasibility of providing a minimum bandwidth of 450 MHz or sixty (60) channel capacity for its Ka'u system.

5.2. Emergency Override System

(a) Hawaii Kai

On or before December 31, 1992, Chronicle Cablevision of Hawaii shall configure and maintain its Hawaii Kai system to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by this system. Emergency authorities shall include the City and County of Honolulu Deputy Director of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

(b) Maui, Molokai, and Lanai

On or before December 31, 1992, Chronicle Cablevision of Hawaii shall configure and maintain its Maui, Molokai, and Lanai systems to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by these cable systems. Emergency authorities shall include the County of Maui Administrator of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

(c) Ka'u

On or before December 31, 1992, Chronicle Cablevision of Hawaii shall configure and maintain its Ka'u system to permit emergency authorities to override, simultaneously by remote control, all audio signals on all channels provided by this system. Emergency authorities shall include the County of Hawaii Administrator of Civil Defense. The emergency authorities shall have sole discretion to determine when to activate the emergency override system.

5.3. Institutional Network

(a) At no charge or cost to the State except for Chronicle Cablevision of Hawaii's cost for labor and materials, Chronicle Cablevision of Hawaii shall within six (6) months of a request by the Director provide and maintain two-way fiber optic interconnections at the following sites:

(1) Hawaii Kai

Chronicle Cablevision of Hawaii shall cooperate with Oceanic Cablevision on the island of Oahu to complete connectivity between the institutional network required by Decision and Order No. 137 and sites within the Hawaii Kai service areas to be determined by the Director.

(2) Maui

Chronicle Cablevision of Hawaii shall cooperate with DCPLP to complete connectivity between:

- Chronicle Cablevision of Hawaii's cable system
- State Office Building - Wailuku
- Police station
- Maui Community College
- State Office Building - Kahului
- Judiciary Building
- Maui High School
- Maui Correctional Facility

— Sites within Chronicle Cablevision of Hawaii's service area to be determined by the Director

(b) These interconnections shall be capable of carrying T-1 circuits for data, voice, video, and analog in both directions.

(c) Chronicle Cablevision of Hawaii shall work with the Director's staff, consultants, and other designated by the Director to design the institutional networks.

(d) Upon written request by Chronicle Cablevision of Hawaii, the Director may grant an extension for the installation of the interconnections in paragraph 5.3(a) for good cause.

#### 5.4. Interconnection with HITS

(a) Chronicle Cablevision of Hawaii shall continue to support and provide carriage of HITS (Hawaii Interactive Television System) programming on all of its cable systems in accordance with the applicable access plan.

(b) Chronicle Cablevision of Hawaii shall cooperate with the State to provide carriage of up to four channels for HITS' programming from Lanai Hale to Lanai City.

#### 5.5. Interconnection for Access Purposes

On a schedule and in a manner to be determined in the plan described in paragraph 7.1. below, Chronicle Cablevision of Hawaii shall effect interconnections with other cable systems on Oahu, Maui, and Hawaii for the purpose of carrying access programming.

#### 5.6. Maui Community College Interconnection

(a) At no charge or cost to the State except for Chronicle Cablevision of Hawaii's cost for materials, on or before December 31, 1991, Chronicle Cablevision of

Hawaii shall install, maintain, and activate in two directions a fiber optic interconnection between its cable system and the main campus facilities of Maui Community College.

(b) This interconnection shall be capable of carrying T-1 circuits for data, voice, and video in both directions.

#### 5.7. Additional Funding

Where additional funds are required to cover capital expenditures in excess of those originally proposed in paragraph 5.1 above, Chronicle Cablevision of Hawaii shall submit to the Director the sources of funding. If additional funds are to be made available in the form of equity, the source or sources of equity funding and the amounts to be contributed shall be fully disclosed. If additional funds are to be made available in the form of debt, such funding is subject to paragraph 4.4 above.

#### 5.8. Construction Reports

Upon commencement of construction and continuing until all scheduled system improvements have been completed pursuant to paragraphs 5.1(a)(2), 5.1(b)(1), 5.1(d)(1), and 5.2, Chronicle Cablevision of Hawaii shall submit monthly written construction status reports to the Director.

#### 5.9. Completion of Franchise Requirements

Any proposed transfer of the franchise, during the franchise term, shall require completion of paragraphs 5.1(a)(1), 5.1(a)(2), 5.1(b)(1), 5.1(b)(2), 5.1(c), 5.1(d)(1), 5.1(d)(2), and 5.2 before such transfer application shall be considered for approval by the Director.

**Section Six**  
**Programming Services**

**6.1. Mix, Quality, and Level of Service**

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

**6.2. Basic Service Tier Broad Categories of Programming**

(a) Subject to availability, Chronicle Cablevision of Hawaii 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 deleted without the prior approval of the Director. Prior approval shall not be required for the following:

- (1) Programming is discontinued without notice to Chronicle Cablevision of Hawaii; and
- (2) Programming changes beyond the control of Chronicle Cablevision of Hawaii.

(c) Chronicle Cablevision of Hawaii shall provide notice to the Director at least thirty (30) days in advance of any changes in its channel lineup.

**Section Seven**  
**Public, Educational, and Governmental Access**

**7.1. Access Plan and Implementation**

Chronicle Cablevision of Hawaii 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 for the City and County of Honolulu, and the Counties of Maui and Hawaii. The plan shall at a minimum consider the following:

(a) Resources available on the City and County of Honolulu, and the Counties of Maui and Hawaii for access use;

(b) User needs and interests;

(c) Models for providing public, educational, and governmental access;

(d) Management of access facilities and equipment, including the interconnection of the cable systems within the City and County of Honolulu, and the Counties of Maui and Hawaii, 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, including local original programming; and

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

(f) Coordination of access with the Institutional Network as set forth above in paragraph 5.3.

## 7.2. Access Fee

(a) As hereinafter provided in paragraphs 7.2(b) and 7.2(c), during each and every year for the remaining term of the franchise, Chronicle Cablevision of Hawaii 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, Chronicle Cablevision of Hawaii shall pay on the due dates shown an annual Access Fee equal to the greater of the amounts shown below for all of its cable systems in the State of Hawaii or the following percentages:

<u>Area</u>	<u>PEG Access Percentage of Gross Revenues</u>
Hawaii Kai	3%
Maui	2%
Molokai	2%
Lanai	2%
Ka'u	2%

<u>Due Date</u>	<u>PEG Access Fee</u>
December 31, 1990	\$ 17,000
December 31, 1991	\$218,000
December 31, 1992	\$235,000
December 31, 1993	\$252,000
December 31, 1994	\$271,000
December 31, 1995	\$288,000

(c) 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 Chronicle Cablevision of Hawaii'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 Chronicle Cablevision of Hawaii is entitled to a refund, the Director or designee shall grant a credit toward the next payment of the Access Fee or make a refund if the last payment of Access Fees have been made. The Director may require Chronicle Cablevision of Hawaii to submit to an audit by the Director's accountant.

(d) The amount of the Access Fee required pursuant to paragraphs 7.2(a) and 7.2(b) may be reconsidered by the Director based on consideration of the financial condition of Chronicle Cablevision of Hawaii, the community needs, and other factors the Director deems necessary.

(e) For the years ending December 31, 1996 through the end of the franchise term, the Access Fee shall be three (3) percent of Gross Revenues for all Chronicle Cablevision of Hawaii cable systems in the State of Hawaii.

(f) For the year ending December 31, 1996 through the end of the franchise term, the amount of the Access Fee required pursuant to paragraph 7.2(e) 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) Upon transfer of the franchise.

### 7.3. Facilities and Equipment

(a) For the years ending December 31, 1990 through December 31, 2000, Chronicle Cablevision of Hawaii shall, on the due dates shown, provide to the Director or his designee PEG capital funds for public, educational, and governmental access facilities and equipment in accordance with the following schedule:

<u>Due Date</u>	<u>Hawaii Kai &amp; Ka'u Amounts</u>	<u>Maui Amounts</u>	<u>Total Amount</u>
December 31, 1990	\$ 3,000.00	\$ 7,000.00	\$ 10,000.00
December 31, 1991	\$183,300.00	\$115,025.00	\$298,325.00
December 31, 1992	\$ -0-	\$245,200.00	\$245,200.00
December 31, 1993	\$ -0-	\$ -0-	\$ -0-
December 31, 1994	\$ -0-	\$ -0-	\$ -0-
December 31, 1995	\$ 8,423.00	\$ 16,846.00	\$ 25,269.00
December 31, 1996	\$ 56,088.00	\$ 66,102.00	\$122,190.00
December 31, 1997	\$ -0-	\$ 85,896.00	\$ 85,896.00
December 31, 1998	\$ 70,402.00	\$ 38,721.00	\$109,123.00
December 31, 1999	\$ 15,875.00	\$128,208.00	\$144,083.00
December 31, 2000	\$ -0-	\$ 48,584.00	\$ 48,548.00

(b) The amount of the PEG capital funds required pursuant to paragraphs 7.3(a) and 7.3(b) may be reconsidered by the Director based on community needs and assessments.

(c) Any PEG capital funds paid pursuant to paragraph 7.3, shall not be credited to the Access Fee.

(d) 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 7.3 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.

(e) For purposes of paragraph 7.3, "PEG capital funds" means the sum of money set apart specifically for public, educational, and governmental access facilities and equipment.

#### 7.4. Access Channels

(a) Chronicle Cablevision of Hawaii shall designate access channels at the following times:

(1) By December 31, 1990, Chronicle Cablevision of Hawaii shall designate to the Director one full-time activated channel for public, educational, and governmental access for its cable system in Hawaii Kai on the island of Oahu, Maui County, and Ka'u on the island of Hawaii.

(2) Two (2) additional channels shall be designated by February 28, 1991 for Hawaii Kai on the island of Oahu and Maui County.

(3) The two (2) additional channels designated for access use may be activated after December 31, 1993 for Hawaii Kai on the island of Oahu and Maui County.

(4) One (1) additional channel shall be designated and activated by December 31, 1995 for Ka'u on the island of Hawaii.

(b) Chronicle Cablevision of Hawaii may use the designated access channels as provided in subparagraphs 7.4(a)(2) and 7.4(a)(3) until such time as those channels are activated in accordance with the policies and procedures for activation determined under paragraph 7.1 above.

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

(d) Chronicle Cablevision of Hawaii 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 Chronicle Cablevision of Hawaii 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 7.1.

(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.

#### 7.5. Access Organization

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

#### 7.6. Access Transition

(a) Chronicle Cablevision of Hawaii 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 7.1 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 7.5 above.

(c) All expenses relating to access operations paid within a given calendar year by Chronicle Cablevision of Hawaii 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 7.5 and 7.6(b) above shall not be credited toward the payment of any access fee.

#### 7.7. Reporting Requirements

(a) By April 30 of each year, Chronicle Cablevision of Hawaii 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, Chronicle Cablevision of Hawaii shall only include an appropriate portion of Chronicle Cablevision of Hawaii'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 an 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 Chronicle Cablevision of Hawaii's annual financial report. Chronicle Cablevision of Hawaii 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, Chronicle Cablevision of Hawaii may continue to account for local origination and access programming expenses in the same manner as it has in the past. If the State has not required changes within six (6) months of the State's actual receipt of Chronicle Cablevision of Hawaii's local origination and access programming expenditure reports, then Chronicle Cablevision of Hawaii's accounting for local origination and access programming shall be deemed accepted by the State.

#### 7.8. Payment by The Chronicle Publishing Company

(a) Within thirty (30) days from the date of this Order, The Chronicle Publishing Company shall pay to the Director the amount of \$30,000. This amount shall be in full and complete satisfaction of all past obligations. This amount shall be used to support public, educational, and governmental access for the areas of Hawaii Kai on the island of Oahu, the County of Maui, and Ka'u on the island of Hawaii.

(b) Chronicle Cablevision of Hawaii understands that the Director and The Chronicle Publishing Company have agreed that the amount paid pursuant to paragraph 7.8(a) is not a payment in return for renewing, extending, transferring or issuing a cable franchise.

(c) Chronicle Cablevision of Hawaii acknowledges that the amount paid by The Chronicle Publishing Company pursuant to paragraph 7.8(a) will have no effect on the Access Fee paid pursuant to paragraph 7.2 or PEG capital funds paid pursuant to paragraph 7.3.

(d) The Chronicle Publishing Company and Chronicle Cablevision of Hawaii agree that the amount paid by The Chronicle Publishing Company shall not be passed through to Chronicle Cablevision of Hawaii's subscribers in any form.

#### **Section Eight** **Miscellaneous**

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

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

8.3. (a) This Order shall not be construed as exempting Chronicle Cablevision of Hawaii 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.

8.4. Chronicle Cablevision of Hawaii, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the Chronicle Cablevision of Hawaii cable system. If Chronicle Cablevision of Hawaii discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, Chronicle Cablevision of Hawaii shall promptly report it to the Director in writing. Chronicle Cablevision of Hawaii, 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. Chronicle Cablevision of Hawaii 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.

8.5. The failure of the State at any time to require performance by Chronicle Cablevision of Hawaii of any condition 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 condition 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.

8.6. Chronicle Cablevision of Hawaii 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.

8.7. The Director reserves the right to waive any condition of this Order for good cause.

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

8.9. The State may, from time to time, adopt or issue such rules, orders or other directives governing Chronicle Cablevision of Hawaii 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 Chronicle Cablevision of Hawaii as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. Chronicle Cablevision of Hawaii agrees to comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

8.10. Chronicle Cablevision of Hawaii shall submit audited financial statements for years ending December 31, 1990 and 1991. For the years subsequent to the year ending December 31, 1991, Chronicle Cablevision of Hawaii shall submit financial statements reviewed by an independent certified public accountant for so long as long-term debt is reflected in the books and records of Chronicle Cablevision of Hawaii from whatever source.

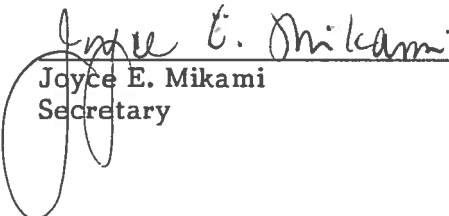
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing DECISION AND ORDER NO. 141 in Docket No. 90-03 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 23rd day of November, 1990:

Christopher J. Lammers  
Western Communications  
P. O. Box 193942  
San Francisco, California 94119

Mr. Ross Waggoner  
Chronicle Cablevision  
350 Hoohana Street  
Kahului, Hawaii 96732

Steven Nagata, Esq.  
Carlsmith, Ball, Wichman, Murray, Case, Mukai & Ichiki  
1001 Bishop Street, Pacific Tower 2200  
Honolulu, Hawaii 96813

  
\_\_\_\_\_  
Joyce E. Mikami  
Secretary