

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

In the Matter of the Application of)	
)	
AMERICAN CABLE TV INVESTORS 4, LTD.)	Docket No. 94-05
dba Sun Cablevision of Hawaii)	
)	
For Approval of Cable Franchise Renewal)	
to Provide Cable Communications Service)	
_____)	

DECISION AND ORDER NO. 159

I. Introduction.

On March 4, 1994, the Director of Commerce and Consumer Affairs ("Director") accepted an application for franchise renewal from American Cable TV Investors 4, Ltd. (ACT 4), doing business as Sun Cablevision of Hawaii (Sun Cablevision). Sun Cablevision provides cable communications service for the island of Hawaii in Census Tract Areas 213 through 217.

Doing business as Kamehameha Cablevision, ACT 4 also provides cable communications services for the North Kohala area on the island of Hawaii in Census Tract Area 218. Kamehameha Cablevision's cable franchise expires May 29, 2005. ACT 4 has not requested consolidation of the Sun Cablevision and Kamehameha Cablevision cable franchises, and submitted a separate and individual franchise renewal application for the Sun Cablevision system. Accordingly, the Director's review of ACT 4's franchise renewal application did not contemplate the extension of the franchise terms and conditions incorporated herein to ACT 4's Kamehameha Cablevision system.

Pursuant to Section 440G-7, Hawaii Revised Statutes, public hearings on this application were held on April 7, 1994 at the Waimea Civic Center Conference Room in Kamuela and at Yano Hall in Captain Cook on the island of Hawaii. Notice of the hearing was published in The Hawaii Tribune Herald and The West Hawaii Today on March 13 and 20, 1994.

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 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 the 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 applicant has proposed to provide the same cable communications services it now offers. The Sun Cablevision system now provides cable communications service to approximately 13,453 subscribers, or 20,197 of the homes passed by cable in its service areas. These subscribers would be without service if it was not provided by Sun Cablevision. Most of Sun Cablevision's service area is located in an area where television reception is poor without the aid of a cable communications system. If cable services ceased to be provided, television reception for the majority of South Kohala and West Hawaii residents would be extremely marginal. This fact indicates there is a public need for continuing the existing cable service.

B. Suitability of the Applicant

The Applicant has shown a willingness to accommodate the public in general and has the support of organizations such as the Department of Education. There were

no complaints voiced at public hearings held in Waimea and South Kona. The only testimony given at the hearings were those in support for the Applicant.

C. Operational Ability of the Applicant

Periodic testing of the Applicant's cable system indicates that the Applicant maintains its cable plant in a manner that meets the State's and Federal's technical standards. The Cable Television Division's complaint records do not indicate that there are any major problems with the Applicant's cable system or its operations.

D. Technical Ability of the Applicant

The technical staff are competent, well-trained, and capable of meeting the daily technical requirements of the cable communications facilities. The staff has demonstrated its competence in routinely maintaining the cable facilities. ACT 4 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 Offer Service at Reasonable Cost and Financial Capability

Applicant continues to be able to offer the level of services approved herein at reasonable cost.

F. Public Hearing

Testimony presented in person and in writing supported renewal of Sun Cablevision's franchise.

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. The system will be upgraded to increase its channel capacity from thirty-five (35) to forty (40) channels by the end of 1994.

3. Public, Educational, and Governmental Access.

The Director intends to establish a planning process on the island of Hawaii which brings 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 of ACT 4's service areas were considered by the State's PEG access consultant. The operator's plans for continuing its local origination and public access efforts were included in this consideration. The PEG access capital requirements were based on the consultant's recommendations.

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 of ACT 4's cable franchise in the State of Hawaii. The applicant appears to possess the requisite capabilities for the renewal of its franchise.

Pursuant to Section 440G-10, Hawaii Revised Statutes, the cable franchise term shall be for 5 years, from July 1, 1994 to June 30, 1999.

NOW, THEREFORE, the application of ACT 4 to renew its cable franchise permit for Sun Cablevision is hereby APPROVED, subject to the attached terms and conditions which are incorporated by reference herein.

DATED: Honolulu, Hawaii, July 1, 1994.



CLIFFORD K. HIGA
Director of Commerce and Consumer
Affairs

TERMS AND CONDITIONS OF ORDER NO. 159

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 ACT 4 to the Director or the Director's designee for public, educational or governmental uses pursuant to paragraph 7.3.

"ACT 4" means American Cable TV Investors 4, Ltd. doing business as Sun Cablevision of Hawaii, a Colorado limited partnership.

"Basic service" means the lowest cost tier of cable service offered by ACT 4 to all its subscribers which includes the delivery of local television broadcast signals, access channels, and local origination programming.

"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 as interpreted and 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 ACT 4 is authorized to provide to subscribers.

"Daniels Ventures Four, Inc." means Daniels Ventures Four, Inc., a Colorado corporation, which is a general partner of IR-Daniels Partners IV, L.P.

"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 ACT 4 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 ACT 4, its affiliates, subsidiaries, parents, and any other person or entity in which ACT 4 has a financial interest or which has a financial interest in ACT 4, arising from or attributable to operation of the Sun Cablevision 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 ACT 4 or

others described above in consideration of performance by ACT 4 or others described above of any advertising or other service in connection with the Sun Cablevision system.

Gross revenues shall exclude any amounts received by others described above from ACT 4 as management fees and fees in the nature of general and administrative allocations, and partnership distributions.

"Integrated Cable Corp. IV" means Integrated Cable Corp. IV, a Colorado corporation, which is a general partner of IR-Daniels Partners IV, L.P.

"IR-Daniels Partners IV, L.P." means IR-Daniels Partners IV, L.P., a Colorado limited partnership.

"Kamehameha Cablevision" means the cable system on the island of Hawaii owned by ACT 4, which provides cable communications service for Census Tract 218.

"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, interconnection facilities, and equipment for the use of that channel capacity.

"State" means State of Hawaii.

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

"Sun Cablevision" means the cable system on the island of Hawaii owned by ACT 4, which provides cable communications service for Census Tracts 213 through 217.

Section Two

Franchise Term

2.1. Franchise Term

(a) The franchise term shall be from July 1, 1994 to June 30, 1999.

(b) Upon receipt of a written proposal together with all necessary supporting data, materials and guarantees, the Director may consider amendments to this franchise and the terms and conditions contained herein.

2.2. Consideration

(a) In consideration of the award of the franchise granted herein which permits ACT 4 to use and occupy Public Places and Public Highways to operate its cable systems, ACT 4 shall pay all fees required by Chapter 440G, Hawaii Revised Statutes, as it may be amended from time to time, pay all monies specified herein, and provide all channels, facilities, equipment, technical assistance, and services specified herein.

(b) Notwithstanding any other paragraph herein, the total amount of the Annual Fee as specified in Chapter 440G, Hawaii Revised Statutes, including the annual Access Fee, shall not exceed the greater of five percent (5%) of ACT 4's annual Gross Revenues derived from Sun Cablevision or the maximum amount permitted by the applicable provisions of federal or State law, as said law may be amended or modified throughout the term of this Order.

Section Three
Management

3.1 Limited and General Partners

(a) For the duration of the franchise term:

- (1) Daniels Ventures Four, Inc. and Integrated Cable Corp. IV shall remain the general partners of IR-Daniels Partners IV, L.P.
- (2) IR-Daniels Partners IV, L.P. shall remain the general partner of ACT 4.

(b) Any change in the general ownership of five percent (5%) or more in Daniels Ventures Four, Inc. or in Integrated Cable Corp. IV shall require the prior approval of the Director.

(c) Any change in the general partner of one percent (1%) or more of IR-Daniels Partners IV, L.P. shall require the prior approval of the Director.

3.2. Books and Records

(a) Except as hereinafter provided in this paragraph, ACT 4 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.

(b) If any such books and records are not available locally within five (5) working days of the request:

- (1) ACT 4 agrees to pay an administrative fine of \$1,000 per day for each day that these books and records have not been produced;
- (2) ACT 4 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; or

- (3) ACT 4 may petition the Director for an extension of time in which to produce the requested books and records and a waiver of the fine of \$1,000 per day.

3.3. Other Business Activity

ACT 4 shall not cause or permit its Sun Cablevision system to engage in any type of business activity involving cable communications in Hawaii or elsewhere which is not related to the operation of Sun Cablevision and Kamehameha Cablevision without the prior written approval of the Director.

3.4. Tariff

ACT 4 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.

3.5. 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, ACT 4 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 ACT 4 proposes to take regarding the probable violation.

(b) Upon acquiring knowledge of the existence of a violation of any condition of this Order, ACT 4 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 ACT 4 proposes to take with respect to the violation.

(c) By April 30 of each year, ACT 4 shall submit to the Director a statement to the effect that no violation of this Order has occurred and that ACT 4 has observed or

performed every condition contained in this Order. In the event a violation has occurred and is continuing or if ACT 4 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 ACT 4 has taken or proposes to take with respect to the violation.

Section Four

Financial

4.1 Changes in Credit Facility

(a) On or before September 30, 1994 Sun Cablevision shall submit to the Director approved financial plans and/or commitments for the refinancing of corporate debt existing on July 1, 1994.

(b) Any change in the terms and conditions of the credit facilities approved pursuant to paragraph 4.1(a) hereof and any subsequent credit facilities which may hereinafter be approved by the Director for Sun Cablevision and its affiliate companies for the financing of the expansion or operation of Sun Cablevision shall require the prior approval of the Director.

4.2 Covenant Violations

Any violation of a covenant of any agreement involving financing for ACT 4's Sun Cablevision system shall be reported promptly in writing to the Director.

4.3 Collateralization of System Assets

The assets of ACT 4's Sun Cablevision system shall not be pledged as collateral for any additional borrowings which are not solely for the benefit of the Sun Cablevision system.

4.4 Additional Borrowing

With respect to the Sun Cablevision system and 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 partners, any borrowing or financing exceeding \$5,000 by ACT 4 from whatever source and under whatever condition, shall require prior approval of the Director, except the foregoing shall not prohibit ACT 4 from guaranteeing the debt of its partners in connection with any advances, equity contributions, and subordinated borrowings from Sun Cablevision, 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 Sun Cablevision system (including debt service) shall require the prior approval of the Director. Prior approval shall not be required for payments to the partners of ACT 4 in connection with advances, equity contributions or subordinated borrowings as permitted in paragraph 4.4 hereof, provided that the credit facilities in paragraph 4.1 hereof have been fully satisfied.

4.6 Annual Financial Statements

(a) By April 30 of each year, ACT 4 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 Hawaii System on a stand-alone basis.

(b) The financial statements required to be furnished pursuant to paragraph 4.6(a) hereof shall be accompanied by a statement showing the basis for computing any amount paid by ACT 4 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 Facility Compliance

(a) Any subsequent material amendment or modification to the credit facilities pursuant to paragraph 4.1(b) hereof, shall require the written consent of the Director.

(b) Upon acquiring knowledge of the existence of a violation of any condition of the credit facilities ACT 4 shall promptly inform the Director in writing of the following:

- (1) The nature of the violation;
- (2) The period in which the violation has been in existence; and
- (3) The actions that ACT 4 proposes to take with respect to the violation.

(c) As soon as available, but in no event more than forty-five (45) days after the end of each of the first three quarters, ACT 4 shall submit to the Director a statement from IR-Daniels IV, L.P. stating whether any event has occurred which constitutes a violation of any condition of the credit facilities for the quarter then ended and, if so, stating the facts with respect thereto.

(d) By April 30 of each year, ACT 4 shall submit to the Director a statement from IR-Daniels IV, L.P. stating whether any event has occurred which constitutes a violation of any condition of the credit facilities for the year then ended and, if so, stating the facts with respect thereto.

Section Five

Construction

5.1. Forty-Channel Upgrade

(a) By December 31, 1994, ACT 4 shall upgrade its Sun Cablevision system to a minimum bandwidth of 330 MHz having the capacity for a minimum of forty (40) channels.

5.2. Institutional Network

(a) At no charge or cost to the State except for ACT 4's cost for labor and materials, ACT 4 shall within six (6) months of a request by the Director provide two-way fiber optic interconnections between the cable system, government and public institutions, and public, educational, and governmental access sites to be determined by the Director, including but not limited to the following:

- Sun Cablevision
- County Office Building
- State Office Building
- Judiciary Building
- Police Station
- UH-West Hawaii

(b) At no charge or cost to the State, ACT 4 shall maintain and repair the fiber optic interconnections provided under paragraph 5.2(a) hereof up to the terminating points of each network site.

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

(d) ACT 4 shall work with the Director's staff, consultants, and others designated by the Director to design the institutional networks and to develop and implement coordinated plans for their use.

(e) Upon written request by ACT 4, the Director may grant an extension for the installation of the interconnections in paragraph 5.2(a) hereof for good cause.

(f) The State shall bear the following actual costs for labor and materials incurred by ACT 4 in installing, but not in maintaining and repairing, such interconnections. Upon submission of invoices for the cost of such interconnections, together with such supporting documentation as the Director may require, the State shall promptly reimburse ACT 4 for the costs of such interconnections, which shall include the cost of materials utilized, including applicable taxes and shipping charges; cost of labor,

including social security, unemployment insurance, workers' compensation insurance, and other benefits and taxes; and the rental value of equipment.

(g) ACT 4 may construct the institutional networks required herein in a manner it deems appropriate, consistent with paragraph 5.2(c) hereof. ACT 4 may utilize contractors to construct and/or maintain any or all portions of such institutional networks.

5.3. Emergency Override System

On or before March 31, 1995, ACT 4 shall configure and maintain its 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.

5.4. Interconnection with HITS

ACT 4 shall continue to support and provide carriage of HITS (Hawaii Interactive Television System) programming on its cable system in accordance with an access plan approved by the Director.

5.5. Interconnection for Access Purposes

(a) ACT 4 shall effect the required interconnections with other cable systems on the island of Hawaii on the schedule and in the manner determined in an access plan approved by the Director.

(b) The costs of the interconnections to be constructed shall be allocated among each of the cable franchise areas on the island of Hawaii. For the costs of construction allocated to the areas served by it, ACT 4 shall receive a credit for its actual costs for labor and materials to be applied against its requirement to pay the Access Fee described in paragraph 7.3 hereof or PEG capital funds described in paragraph 7.4 hereof. The taking of any credit by ACT 4 shall require the Director's prior approval. ACT 4 shall provide the Director or his designee with such verification of costs as may be requested.

5.6. University of Hawaii, West Hawaii Campus Interconnection

(a) At no charge or cost to the State, on or before December 31, 1994 ACT 4 shall install, maintain, and activate in two directions an interconnection between its Sun Cablevision system and the main campus facilities of the University of Hawaii, West Hawaii Campus.

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

Section Six
Programming Services

6.1. Mix, Quality, and Level of Service

Except to the extent permitted by federal law, ACT 4 shall not alter its current mix, quality, and level of programming services for its basic service tier, except as allowed in paragraph 6.2(c) hereof, without the prior approval of the Director.

6.2. Basic Service Tier Broad Categories of Programming

(a) Subject to availability, ACT 4 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 that is discontinued without notice to ACT 4; and
- (2) Programming changes beyond the control of ACT 4.

(c) ACT 4, on its own accord, may add broad categories of video programming to its basic service tier and the prior approval of the Director shall not be required therefore.

(d) ACT 4 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

ACT 4 shall work cooperatively with the access entity or entities which shall be designated by the Director for the management, operation and use of public, educational and governmental access facilities and equipment for the County of Hawaii.

7.2. Membership on Governing Board of Access Entity

ACT 4 shall appoint not more than one member of the governing board of the access entity which shall be approved by the Director.

7.3. Access Fee

(a) During each and every year for the remaining term of the franchise, ACT 4 shall pay to an account designated by the Director or his designee an amount up to three percent (3%) of its Gross Revenues. These payments shall be used for public, educational, and governmental access uses and for other public purposes as shall be designated by the Director.

(b) The amount of the Access Fee required may be reconsidered by the Director based on consideration of the financial condition of ACT 4, the community needs, and other factors the Director deems appropriate.

(c) The Access Fee shall be calculated on the annual Gross Revenues of Sun Cablevision for the prior calendar year. If ACT 4 is entitled to a refund due to excess contribution made in the prior year, 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 Fee has been made. The Director may require ACT 4 to submit to an audit by the Director's accountant.

7.4. Facilities and Equipment

(a) Within thirty (30) days from the date of this Order, ACT 4 shall pay to the Director or his designee the amount of \$200,000 in payment of ACT 4's PEG capital funds for public, educational and governmental access facilities and equipment for the period July 1, 1994 to December 31, 1995.

(b) For the years ending December 31, 1996 through December 31, 1999, ACT 4 shall provide to the Director or his designee PEG capital funds for public, educational, and governmental access facilities and equipment in accordance with a schedule to be established by the Director after consultation with Act 4 no later than December 31, 1994.

(c) Any PEG capital funds paid pursuant to paragraphs 7.4(a) and 7.4(b) hereof 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 paragraphs 7.4(a) and 7.4(b) hereof before the effective date of the transfer.

(f) For purposes of paragraph 7.4 hereof, "PEG capital funds" means the sum of money set apart specifically for public, educational, and governmental access facilities and equipment.

7.5. Access Channels

(a) ACT 4 shall designate access channels at the following times:

(1) By December 31, 1994, ACT 4 shall designate and activate to the Director two full-time channels for public, educational, and governmental access.

(2) Two (2) full-time additional channels shall be designated by December 31, 1995 or upon completion of a forty-channel upgrade, whichever occurs earlier.

(b) ACT 4 may use the two (2) additional designated access channels as provided in paragraph 7.5(a)(2) until such time as those channels are activated in accordance with the policies and procedures for activation determined under paragraph 7.1 hereof.

(c) All access channels, once made available, shall be used for public, educational, and governmental access and shall be transmitted to all subscribers on ACT 4's basic service tier.

(d) ACT 4 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 ACT 4 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 the Director's designee or as established pursuant to paragraph 7.1 hereof.

(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.

7.6. Access Organization

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

7.7. Reporting Requirements

(a) By April 30 of each year, ACT 4 shall submit to the Director a report of local origination expenses and a report for access programming expenses for the preceding fiscal year.

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, as amended by the Cable Television Consumer Protection and Competition Act of 1992, on or before September 30, 1994, ACT 4 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 ACT 4 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. ACT 4, its employees, and agents, shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that in any manner affect the ACT 4's Sun Cablevision system. If ACT 4 discovers any provision in the plans, specifications, orders or documents which is contrary to or inconsistent with any such law, ordinance, rule or regulation, ACT 4 shall promptly report it to the Director in writing. ACT 4, its employees, and agents, shall comply with all applicable federal, state, and local laws, and all rules and regulations issued pursuant thereto and shall indemnify the State against any loss, liability or damage occasioned by reason of any noncompliance with the provisions of this paragraph 8.4 by ACT 4 and its officers, employees, and agents.

8.5. The failure of the State at any time to require performance by ACT 4 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. ACT 4 shall save and hold the State and its officials, agents, and employees free and harmless from any and all 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 ACT 4 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 ACT 4 as he shall find reasonably necessary or appropriate pursuant to and in furtherance of the purposes of this Order. Further, any action to be taken by the Director regarding this Order shall be taken in accordance with the applicable provisions of federal or state law, as said law may be amended or modified throughout the term of this Order. ACT 4 shall comply with all rules, regulations or orders lawfully binding upon it or other directives issued pursuant to this Order.

8.10 The documents constituting a franchise shall be chapter 440G, Hawaii Revised Statutes, chapters 131-133 of Title 16 of the Hawaii Administrative Rules as they may be amended from time to time, the franchise renewal application, and this Order, as it may be amended from time to time.

8.11 The transfer of control of ACT 4's Sun Cablevision franchise, including the rights, privileges, and obligations thereof, whether by change of ownership, or otherwise, shall require the prior approval of the Director.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Decision and Order No. 159 in Docket No. 94-05 was served upon the following parties at the addresses shown below by mailing the same, postage prepaid, on this 6th day of July, 1994:

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Patti K. Kodama
Secretary