

THE DIRECTOR OF REGULATORY AGENCIES

STATE OF HAWAII

In the Matter of the Application)
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 of)
)
 T.V. SYSTEMS, INCORPORATED)
)
 For Approval of an Increase in)
 Its Rates and Charges.)
 _____)

Docket No. 17-75-01
ORDER NO. 61

ORDER ADOPTING HEARING OFFICER'S
PROPOSED DECISION AND ORDER
AS THE DIRECTOR'S FINAL ORDER

On April 11, 1978, the duly appointed hearing officer submitted his written Proposed Decision and Order to the Director and served it on all parties. Although all parties were afforded a 15-day period in which to file written exceptions to the hearing officer's Proposed Decision and Order, no such exceptions were filed.

Having reviewed and considered the entire record in this matter, I hereby adopt the hearing officer's Proposed Decision and Order as the final Order in this proceeding.

DATED: Honolulu, Hawaii, May 2, 1978.

Wayne Minami
Wayne Minami
Director of Regulatory Agencies

BEFORE THE DIRECTOR OF REGULATORY AGENCIES

STATE OF HAWAII

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PROPOSED DECISION AND ORDER

1. T.V. Systems, Incorporated (TVSI), provides cable television services to certain areas within the City and County of Honolulu under authority of a permit issued by the Director on August 12, 1971 pursuant to the Hawaii Cable Television Law, Chapter 440G, Hawaii Revised Statutes.

2. On April 11, 1975 TVSI filed a request to increase its rates and charges for CATV services as follows:

- (a) Increase its basic subscriber rate from \$6.00 to \$7.50 per month and guarantee such rate for a period of three years.
- (b) As an alternative to (a), increase its basic subscriber rate from \$6.00 to \$7.95 per month and guarantee such rate for a period of five years.
- (c) Increase its charges for additional outlets from \$1.00 to \$1.25 per month.

3. The request was made under Section 440G-11, which provides in relevant part that the Director

"shall maintain surveillance over such filed rates and terms and conditions of service to insure that the rates and terms and conditions of service are fair both to the public and to the CATV company, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing CATV service to subscribers in the service area.

Any disagreement between the director and a CATV company over its filed schedule of rates shall be resolved by the director after a hearing has been held to afford the CATV company an opportunity to explain the basis of its filed schedule of rates. After a hearing, the director shall make a determination which is final and conclusive subject only to any rights of appeal as may be provided by statute."

4. The Cable Television Division (Division) undertook an investigation and analysis of the proposed increases. It held a public hearing on July 15, 1975 at which all interested persons were afforded an opportunity to present their views and comments concerning the request. Based on the Division's investigation and analysis, the Director on November 6, 1975 issued Decision and Order No. 39 in which he concluded that the increased rates and charges should not be approved. On November 17, 1975, TVSI filed with the Director a Petition for Rehearing of Decision and Order No. 39. TVSI was notified that said Petition would be treated as a request that a hearing be held pursuant to Section 440G-11.^{1/}

^{1/} Section 440G-11 provides for a hearing on "disagreements" between the Director and the CATV company at which the company must be afforded "an opportunity to explain the basis of its filed schedule of rates." The section gives little specific direction as to whether the hearing to be held should be a public hearing or a contested case. TVSI acknowledged this ambiguity and stipulated that the Administrative Procedure Act or the Rules of the Department relating to contested cases would be followed except where clearly inconsistent.

5. On May 26, 1976, these proceedings were formally opened when the Director issued an Order directing a formal hearing pursuant to Section 440G-11, Chapter 91 and Chapter I, Title VIII of the Rules and Regulations of the Department.

6. Said Order directed TVSI to inform its subscribers of their opportunity to apply for intervention in these proceedings. Pursuant to the Order a notice advising interested persons of their opportunity to intervene appeared at regular intervals five times a day on one of TVSI's channels beginning June 1, 1976 and ending July 21, 1976. In addition, the notice was mailed to each person who testified at the public hearing and was published in the Honolulu Star-Bulletin on June 17, 1976, and the Honolulu Advertiser on June 16, 1976. No applications to intervene in these proceedings were filed.

7. On January 10, 1977, TVSI filed an amended application in which it proposed reduced increases as follows:

- (a) The basic subscriber rate would be increased from \$6.00 to \$7.15 per month.
- (b) The charge for additional outlets would be increased from \$1.00 to \$1.25.
- (c) The basic installation fee would be reduced from \$65 to \$40.

8. Hearings were held on October 18, 1976 and on March 22 and 23, and December 12, 1977 and on March 23, 1978 by the undersigned Hearing Officer. TVSI was afforded full opportunity to call and cross examine witnesses and to offer all oral and documentary evidence.

9. In verbal testimony by its President and General Manager at the hearing held on March 23, 1978, TVSI further amended its requested basic subscriber rate. It requested a rate of \$7.25 effective on the effective date of a final order in this proceeding and a rate of \$7.80 effective two years thereafter.

I. THE POSITION OF TVSI

10. TVSI urges that the purpose of this proceeding should not be to set the maximum rate which it may charge but merely to insure that the proposed rates are fair. It argues that the rate base/rate of return methodology of establishing rates (commonly used in establishing utility rates) is neither necessary nor appropriate for the following reasons: (1) it is costly and burdensome; (2) TVSI's system is not yet mature; (3) TVSI's capital structure does not lend itself to such analysis; (4) CATV services are not necessities and compete with other forms of entertainment for the consumer's dollar; (5) demand for CATV services is price elastic making costs of less compelling importance; and (6) there is a need for innovation and experimentation.

11. TVSI states the proceeding should only "test" the proposed rates to insure they are fair but urges that the result must allow TVSI to charge a rate which will

"... produce sufficient total revenue to recover all costs of doing business . . . including operating costs, recovery of capital expended in connection with providing the services, taxes, and the cost of capital, including interest on debt and a reasonable rate of return to investors." (Applicant's Post-Hearing Brief, p. 4.)

12. TVSI contends that as long as its rate of return does not exceed those allowed traditional public utilities or is only "somewhat higher", the standard of fairness is met. TVSI's analysis was in terms of two test years ending on March 31, 1977 and March 31, 1978. Its calculations showed that under the proposed rates its average rate of return would be 13% which TVSI states is "well within the reasonable range." TVSI proposes a build-out schedule under which CATV facilities would be constructed throughout its permit area by December 31, 1980. Its analysis which is based on a number of assumptions discussed later is that at that time the company will have a rate of return of 7.02%. TVSI further asserts that even under the Division's analysis its rate of return will test out well below the range now allowed public utilities.

13. TVSI is willing to commit to strict compliance with a monthly construction schedule resulting in completion of cable facilities throughout its service area by December 31, 1980.

14. TVSI urges that its obligation to complete construction of the system be subject to a reasonable line extension policy under which subscribers in certain remote, low density areas where costs are far higher than normal would bear a portion of the incremental costs of extending the system.

15. TVSI first proposed that it be permitted to charge increased rates of \$14 per month for certain direct buried subdivisions and \$10 per month for the Windward Coast-line from Kahaluu to Laie. Direct buried subdivisions are

subdivisions where all utility services have been buried and there are no conduits which can be used to provide cable service. The construction of such areas requires retrenching. These circumstances and the relatively light subscriber density along the Windward Coastline were the reasons advanced by the company in support of the increased rates. At the hearing held on March 23, 1978 the company changed its proposal and agreed to commit to construction of these areas in accordance with the construction schedule referred to in paragraph 13. Under its final proposal all direct buried areas and the Windward Coastline are to be completed without any additional charges to subscribers of any nature and regardless of the penetration rate experienced. To recoup the costs of such construction the company proposed a maximum rate of \$7.25 per month effective immediately and \$7.80 per month effective two years after the effective date of a final order in this proceeding.

16. TVSI requests that it be permitted to lease converters to subscribers at the rate of \$1 per month but that it not be required to own, provide and maintain all of the converters. Instead, TVSI prefers to sell converters to its subscribers outright at a price exceeding its cost by ten percent.

II. RATE BASE/RATE OF RETURN METHOD

17. Much testimony and argument was heard in this proceeding concerning the appropriateness of the rate base/rate of return method of establishing the rates charged by TVSI in particular and cable television companies in

general. This method which is generally followed in establishing rates charged by traditional public utilities affords the operator an opportunity to recover all costs reasonably incurred in doing business, including operating costs, recovery of capital, taxes and the cost of capital. However, dissimilarities between CATV operators and traditional public utilities pose a variety of problems when the method is strictly applied to set rates for cable television operators.

18. Applicant conceded, however, that the rate base/rate of return method is an appropriate method of "testing" the proposed rates to see if they are fair or reasonable. Its expert witness testified that this method "should be given the greatest weight."

19. The rate base/rate of return methodology is appropriate for testing as opposed to establishing the revenue requirement of a CATV operator. Such methodology can be used to make reasonable estimates of the return which the proposed rates will generate in different circumstances under different assumptions. The estimates thus generated give at least some guidance as to what can reasonably be required of the operator with respect to its service obligation. Although the rate base/rate of return methodology is often extremely time consuming and expensive in proceedings involving traditional public utilities, it can be abbreviated and simplified when employed as a testing device. Testing rates, for example, in this case obviates the need for expert testimony to establish the appropriate rate of return for TVSI.

III. TESTING OF TVSI'S PROPOSED RATES

20. TVSI's proposed rates were tested by both the company and the Division several times. Each test involved different circumstances and assumptions. These tests and the resultant returns can be summarized as follows:

(a) Division's Phase Ia

Return on rate base:

| | |
|------------------|--------|
| Year ended 1977: | 26.94% |
| 1978: | 25.05% |

Forecasts for the actual level of subscriber demand during the fiscal years ending March 31, 1977 and March 31, 1978 for single-unit residential customers (average customers for the year). See Div. Reb. Ex. No. 502.

(b) Division's Phase Ib

Return on rate base:

| | |
|----------------------------|--------|
| Year ended March 31, 1977: | 23.43% |
| March 31, 1978: | 26.66% |

Forecasts for new customers, disconnections and reconnections, annualized, under no growth conditions at actual level of subscriber demand at year end for single-unit residential customers. (Year-end basis). See Div. Reb. Ex. No. 503.

(c) Division's Phase II

Return on rate base:

| | |
|----------------------------|--------|
| Year ended March 31, 1977: | 30.86% |
| March 31, 1978: | 35.19% |

Forecasts of new customers, disconnections and reconnections, annualized, at the practical optimum level of subscriber demand for

single-unit residential customers. (The practical optimum level of demand is that level which the Division estimates is reasonably attainable over a short term with the same cable facilities installed at a point in time. Phase II is also on a year-end basis.) See Div. Reb. Ex. No. 504.

(d) Division's Phase IIIa

Return on rate base:

Year ended March 31, 1978: 13.26%

Forecasts of new customers, disconnections and reconnections, annualized, at the practical optimum level of subscriber demand for single-unit residential customers in all areas which TVSI is obligated to serve. (The assumption is made that cable facilities will be constructed for all areas encompassed by TVSI's permit which do not now have cable facilities.)

(e) Division's Phase IIIb

The return on rate base was calculated for various market penetration rates. The return ranged from 5.13% at a 46% penetration rate to 10.22% at a 70% penetration rate. The assumption made was that cable television facilities had been constructed in the TVSI's entire permit area. Phase IIIb then is similar to Phase IIIa except that the effects of various penetration rates are shown. The penetration rate assumed for Phase IIIa was the Division's "practical

optimum level of subscriber demand" or 68%.

The return on rate base shown in Phase IIIa is 13.26% as compared to 9.95% shown in Phase IIIb. The difference apparently is attributable to the fact that pay TV revenues are not included in the Phase IIIb calculation.

(f) TVSI's Principal Case

Return on average capitalization:

| | |
|----------------------------|-------|
| Year ended March 31, 1977: | 12.3% |
| March 31, 1978: | 13.6% |

Estimated results of operations based upon completion of construction only in areas contemplated by TVSI's construction schedule. See TVSI Ex. No. A-36.

(g) TVSI (Utilizing Division's Phase Ib Approach)

Return on rate base:

| | |
|----------------------------|-------|
| Year ended March 31, 1977: | 12.6% |
| March 31, 1978: | 14.8% |

Assumptions made are the same as Division's Phase Ib adjusted for a difference in depreciation rate and treatment of net operating revenue from leased channels. See TVSI Ex. No. A-31.

(h) TVSI - Entire Franchise Area

Return on rate base:

| | |
|----------------------------|-------|
| Year ended March 31, 1981: | 7.02% |
|----------------------------|-------|

Estimated results of operations assuming completion of franchise area by December 30, 1980, and an estimated penetration rate of 50% at that time. See TVSI Ex. No. A-34.

21. Both TVSI and the Division take the position that the foregoing tests show that the proposed rates are not unfair, unreasonable or excessive. The tests of both the Division and TVSI do clearly demonstrate that as TVSI builds cable facilities throughout its service area its return on rate base (at least during the near term) will decline. The Division's tests show that under no growth conditions TVSI's return will be in a range of 23-27% (Phases Ia and Ib) and even higher if an "optimum level" of penetration is achieved. As the system is expanded, however, the Division estimates that the return will drop to 13.26% at a 68% penetration rate (Phase IIIa) and even lower if that rate is not achieved (Phase IIIb). TVSI's estimates show a similar drop with expansion from a range of 12-15% and without expansion down to 7% upon completion.

22. The downward trend with expansion is understandable since TVSI will be extending its service from areas where off-the-air reception is relatively poor to areas where off-the-air reception is relatively good. In the latter case, as TVSI's expert testified, penetration rates will be lower. This results in lower returns since costs are relatively fixed.

23. Although the Division and TVSI agree that as cable facilities are expanded throughout the permit area the return will decrease, they differ as to the starting and ending levels. For example, the Division estimates a 23.43% rate of return for the fiscal year ending March 31, 1977, and TVSI, for the same period, estimates 12.6%. Similarly, under the assumption that the system has been completed, the Division

estimates a return of 13.26% and TVSI estimates 7.02%. These differences between TVSI's and the Division's projections principally relate to the projected number of subscribers, the service life of certain assets used in calculating depreciation expense and the treatment of revenue received by TVSI's affiliated company, Cable Theater Inc. (See TVSI Ex. No. A-31 which makes a comparison of the projections under no growth conditions.)

24. It is unnecessary in this proceeding to determine whether the Division's or TVSI's projections are more accurate. Under either set of projections, it can be concluded that the proposed rates are not unreasonable or excessive if TVSI expands its cable facilities to cover its entire service area. If expansion does not occur, however, and if the Division's projections are accurate, the proposed rates may be unfair, particularly if greater penetration is being achieved in areas presently served. Since TVSI has in this proceeding made a commitment to develop the entire permit area, the issue need not be decided now if appropriate means can be found to insure that increased revenues flow to TVSI only as the expansion of the system is accomplished in accordance with the schedule. Barring presently unforeseen changes in circumstances, the proposed rate should generate a return sufficient to enable TVSI to complete the expansion of cable facilities to the entire service area in accordance with its proposed construction schedule.

IV. COMPLETION OF ENTIRE PERMIT AREA

25. Paragraph 1a of the CATV permit issued to TVSI on August 12, 1971 required TVSI to complete construction of distribution and origination facilities and begin service to all potential subscribers desiring service within the entire permit area. TVSI has not met this requirement. As of March 31, 1977, TVSI had passed 67% of the homes and had constructed only 66.3% of total mileage.

26. Paragraph 2 of the CATV permit issued to TVSI on August 12, 1971 required TVSI to provide all schools within reasonable distance of distribution lines with a minimum of one free drop. TVSI has failed to meet this requirement. As of March 26, 1977, TVSI had provided free drops to twenty-three schools, had failed to provide a free drop to ten schools within the vicinity of distribution lines for the reason that such schools are more than two hundred feet from distribution lines, and had failed to provide free drops to forty schools in areas where distribution lines have not been constructed.

27. The line extension policy adopted by this Order requires construction of virtually all of the permit area in monthly increments by December 31, 1980. The obligation (except for causes beyond the control of TVSI) is unconditional. To insure such construction is carried out appropriate penalty provisions are spelled out. This policy will furnish an incentive to expand facilities in accordance with the timetable. It thus directly furthers the Cable Television Law's stated aim of rapidly expanding facilities. The line extension policy originally supported by both TVSI and the Division failed to accomplish this. Under it TVSI had no obligation to serve unless

it received requests averaging one per 200 strand feet of trunk cable or received requests from 50% of the homes to be passed under a line extension. The terms of TVSI's permit do not set forth such conditions. TVSI's President and General Manager testified that an aggressive and effective sales program is the key to success in obtaining acceptable penetration rates and financial success. (Tr. Vol. 1, p. 156.) The proposed line extension policy as originally proposed did not insure such a program since the obligation to serve was not mandatory until a specified penetration rate had been guaranteed. Under it, if the company determined that expansion was not in its economic interest, it could simply do nothing to promote its system and thus avoid the obligation to serve the entire permit area. As stated the obligation to rapidly extend service throughout the permit area was the principal concern of the Hawaii Legislature and should be afforded greatest weight. It should not be conditioned on the achievement of specified penetration rates.

28. For the foregoing reasons the line extension policy herein adopted requires expansion to all reasonably dense areas regardless of the number of applications. In this way a clear and a strong incentive for an aggressive marketing program is created. Penalty provisions have been included which require TVSI during any month in which it has failed to maintain the construction schedule, to deposit in a special account the aggregate differential between its present rates and the rates herein approved. Withdrawals from such account can be made only with the concurrence of the Division and if the failure has been corrected. The construction schedule has been spelled out on maps of the service area in order to facilitate enforcement of the penalty section.

29. TVSI contends that its obligation to complete construction of cable facilities should recognize that in rare circumstances the cost of providing service to an individual subscriber or group of subscribers is so far higher than the normal or average cost that it is unfair to require all rate-payers to bear such cost. The company's proposed line extension policy thus provides for a capital contribution by subscribers in such cases. The company estimates that this policy will apply to only about 270 isolated and remote homes on the windward side of Oahu. It has indicated an unconditional commitment to build trunk and distribution lines serving all other homes in the service area. The company's obligation to serve isolated customers should be clearly distinguished from its obligation to rapidly expand its system so as to extend service throughout the permit area. As stated the latter was a principal concern of the Hawaii State Legislature when it enacted the Cable Television Law. Further, testing of the proposed rates indicates that TVSI should be able to carry out its construction schedule barring any unusual, unforeseen changes in circumstances. Nonetheless, the heavy obligation to serve the entire permit area fairly should not be so rigidly construed as to include an obligation to serve every resident no matter how isolated or unique his location may be. Such a policy would present excessive subsidization of very few subscribers by the majority. The line extension policy attached as Exhibit A hereto and hereby approved, is a reasonable balance between the interests of the isolated subscriber and those of the great majority.

V. PRICING POLICY

30. Portions of TVSI's service area include areas in which off-the-air reception is relatively good. In such areas demand for CATV service is relatively price elastic as compared to areas in which off-the-air reception is relatively poor. That is, where the subscriber need not depend on CATV service in order to receive an acceptably clear picture, increases in price are more likely to result in a termination of service.

31. It is in the interest of TVSI to price its service at a level which will maximize revenues. In general, a pricing policy maximizing revenues will also maximize the penetration rate since costs are relatively fixed once facilities are in place.

32. The Division with the concurrence of TVSI urges that management be permitted to price below the rate levels approved herein where such action will maximize revenues and penetration rates. It is contended that the maximum rate will adequately protect subscribers in areas where reception is poor and demand is therefore inelastic. This approach is reasonable and furthers the policy of rapid expansion of the system provided that it does not lead to undue subsidization of one group of customers by another and is reasonably related to varying geographic, topographic and economic characteristics within the service area. Pricing below approved rate levels should not be arbitrary.

33. For the foregoing reasons, the basic subscriber rate herein approved shall be the maximum permitted rate. Any downward deviations from such maximum rate shall be filed with

the Division along with TVSI's justification for such deviation and a precise description of the area to be affected. Such filing shall be accomplished at least 20 days before such deviated rates are to be effective.

VI. CONVERTERS

34. A converter is a device which when placed between a subscriber's television set and the cable increases the number of channels which the subscriber would otherwise be able to view. If all programming provided for the basic rate is carried on the twelve conventional channels not requiring a converter, and pay access programming is carried on channels requiring a converter, the availability of a converter can be used to distinguish the two classes of service.

35. Three significant issues concerning converters arose in the course of this proceeding. These include:

- (a) Should TVSI be permitted to sell as well as lease converters to its subscribers?
- (b) Should TVSI be required to maintain in a separate account all funds received as deposits from subscribers who lease converters or should TVSI be permitted to utilize such funds to purchase converters?
- (c) Should channels assessed for an additional charge be required to be carried on the mid- and super-band channels which require converters?

36. The decisions of these issues will affect not only TVSI but other cable operators. For example, an obvious problem is presented if other cable operators employ converters to control access to pay services and TVSI makes them generally available for outright purchase. Since the resolution of the issues surrounding these converters affects or potentially affects all companies, it would appear appropriate that these issues be determined in a generic proceeding in which all operators as well as other interested parties are afforded an opportunity to be heard. Further, at this time, there appears to be little basis for permitting different operators to make different charges for either the purchase or lease of converters. The development of a single policy concerning converters thus appears to be desirable and in the public interest. The Division will be instructed to institute such proceedings forthwith. TVSI's proposed rates and charges relative to converters are hereby approved on an interim basis subject to the outcome of such proceeding.


ORDER

NOW, THEREFORE, it is hereby ORDERED as follows:

1. TVSI's proposed rates and charges are fair to the public and to the company and are hereby approved. TVSI shall file appropriate tariffs with the Division.

2. The line extension policy attached hereto is reasonable and is hereby approved; TVSI shall comply with its provisions in all respects.

DATED: Honolulu, Hawaii, April 11, 1978.


E. John McConnell
Hearing Officer
Department of Regulatory Agencies

T.V. SYSTEMS, INCORPORATED
PROPOSED SERVICE OBLIGATION POLICY

T.V. SYSTEMS, INCORPORATED
SERVICE OBLIGATION
(INCLUDING LINE EXTENSION POLICIES)

I. GENERAL OBLIGATION TO PROVIDE SERVICE

A. T.V. Systems, Incorporated (hereinafter the "Company") shall provide service as follows:

1. Service shall be extended to the entire franchised area by December 31, 1980, in accordance with terms and conditions hereinafter specified; and the Company shall adhere to the construction schedule particularized in Schedule A attached hereto in extending service to the remainder of its franchised area.

2. Service shall be extended to all schools in the franchised area by December 31, 1980, in accordance with the provisions of the construction schedule particularized in Schedule A; and any inability or failure to provide such service shall be promptly reported in writing to the Director.

II. SERVICE OBLIGATION -- PUBLIC ACCESS TO SYSTEMS FOR RECEIVING PURPOSES

A. COMPANY SERVICE AREA MAPS.

Company Service Area Maps delineating the public highways and rights-of-way in the Company's permit area, and marked to designate the trunk and distribution lines, as appropriate, which the Company has built or will build prior to December 31, 1980, have been filed by the Company with the Cable

Television Division, Department of Regulatory Agencies. Areas where the cable system plant is underground have been identified. Current copies of the Company Service Area Maps shall be made available in the Company Business Office for inspection by prospective system subscribers.

B. PRIMARY OBLIGATION TO SERVE.

1. The Company shall install energized trunk cables or distribution lines, as appropriate, on all public highways and rights-of-way as designated on said Company Service Area Maps as necessary to provide service pursuant to this Service Obligation, in accordance with the construction schedule attached hereto as Schedule A and the provisions of Part III hereof.

2. The Company shall provide service to any applicant who occupies a residence which is 200 strand feet or less from the nearest point on the highway or right-of-way from which such residence could be reasonably served from trunk cable or distribution lines designated on the Company Service Area Maps at no cost to such applicant for system extension other than the usual connection charge required of all subscribers, provided that such extension is technically and physically feasible.

3. Whenever the Company shall receive a request for service from an applicant who occupies a residence which is more than 200 strand feet from the point on the highway or right-of-way where such residence could be reasonably served by trunk cable or distribution lines designated on the Company Service Area Maps, it shall extend its distribution lines to such subscribers under the terms and conditions prescribed in Section II.C., Obligation to Serve Under Line Extension Policy.

C. OBLIGATION TO SERVE UNDER LINE EXTENSION POLICY.

1. When proper application is made for CATV service by the owner or occupant of any residence within the Company's permit area, the Company shall construct, maintain and replace such lines as are required to provide cable service to said applicant, provided that:

a. If the nearest point on the highway or right-of-way from which the applicant could be reasonably served is within 200 strand feet of any existing trunk or distribution line designated on the Company Service Area Maps, then the Company shall provide the extension at no additional cost to the applicant. This shall be known as "free length".

b. In cases where more than one applicant is to be served initially from the same extension beyond the trunk or distribution lines designated on the Company Service Area Maps, each applicant beyond said designated trunk or lines shall be entitled to 200 feet of free length, and the total free length of the line extension beyond said designated trunk or lines will be the sum of the individual allowances made to each applicant.

c. If the requested line extension shall pass a sufficient number of potential subscriber dwelling units so as to yield an average "homes-per-mile" count of at least 52 homes per mile beyond the trunk or distribution lines designated on the Company Service Area Maps, then the Company shall provide the extension at no cost to the applicant.

d. If the applicant or applicants are not entitled to an extension without additional cost; they shall pay the Company a construction charge for the footage of trunk or distribution lines necessary to provide such extension in excess of 200 feet, on the basis of actual added cost to the Company, which charge and its underlying support shall be filed with and subject to review by the Cable Television Division. If there is more than one applicant, the construction charge shall be apportioned equitably among the applicants.

e. Whenever additional subscribers are connected to an existing line extension within a 36-month period commencing with the date service is provided to the initial applicant or applicants, the total free length of the line extension shall be increased by 200 feet for each additional subscriber. The construction charge shall be recomputed on the basis of paragraphs "b" and "d" above, and an equitable refund shall be made to the existing subscribers who have contributed to the cost of the line extension. Any existing subscriber who comes within the total free-length segment of a line extension subsequent to the date when service was commenced, but during the 36-month period, shall not be responsible for any construction charge under this policy and shall receive a full refund of any construction charge previously paid by him. In no event shall the recomputation of the construction charge result in an increase in the amount assessed against an existing subscriber. The additional length of line extension shall then be treated as a new extension, and the 36-month period for it shall commence on the date when service is provided to the new applicant.

f. Whenever a multiple-unit applicant is connected to a line extension or to an increase in a line extension during the 36-month period of said line extension, an equivalent free footage allowance shall be determined by dividing the total monthly service revenues of the multiple-unit connection by the monthly service fee for a single dwelling unit and multiplying the resultant number by 200 feet.

g. The minimum service period for any applicant or applicants requesting a line extension, or their successors and assigns, shall be three (3) years. In such case, the CATV system may request a security deposit in an amount not to exceed the equivalent of twelve (12) months' service fees. Said deposit shall accrue interest at the rate of six percent (6%) per annum, simple interest, and shall be reimbursed to the subscriber or subscribers on or before the third anniversary of the date of providing the service. If the subscriber elects to terminate the CATV service prior to the expiration of the three-year service agreement, said deposit and any accrued interest shall revert to the Company. However, should service be re-established within four (4) months from the date of termination, the original deposit plus accrued interest shall be reinstated and shall be reimbursed to the subscriber on or before the date when service will have been provided for thirty-six (36) months.

2. All requests for CATV service requiring line extensions, cost estimates made pursuant thereto and the disposition of the same shall be kept on file by the Company for a period of ten (10) years. The actual detailed costs of each line

extension constructed shall be recorded and kept on file for ten (10) years.

3. In bringing CATV service under this policy to an applicant's premises from the distribution system or any extension thereof, the Company shall furnish the normal service entrance drop wire and associated facilities required to complete the installation, in accordance with the Company's filed tariff. Any construction required on the applicant's premises in excess of the above will be borne entirely by the applicant.

4. GENERAL

a. When the application of this policy appears impractical or unjust to the Company or the applicant, either party may refer the matter to the Director, Department of Regulatory Agencies, Cable Television Division, for a ruling or for the approval of special conditions.

b. The Company shall give a copy of this policy to each customer required to make a contribution to a line extension.

c. This policy shall be effective from the date of the Final Order of the Director and until modified, amended, or cancelled by the Director.

III. SERVICE OBLIGATION -- CONSTRUCTION SCHEDULE AND PENALTY
PROVISIONS

A. PURPOSE.

The purpose of this Part III is to provide inducement to the Company to maintain and complete construction of CATV facilities within its franchised area pursuant to Part II hereof and the Schedule A attached hereto and made a part hereof (the "Schedule") by withholding the Base Rate Differential, as hereinafter defined, for each month in which there is a delay in completing any increment of the Schedule.

B. DEFINITION.

As used herein, "Old Base Rate" means the present rate of \$6.00 per month now charged to customers of the Company for basic CATV antenna service. The term "New Base Rate" means the amount actually charged to customers of the Company for such basic antenna service in excess of \$6.00, as determined and established by the Company, but in no case more than the amount which may be approved as the maximum monthly charge for such subscribers by the Director. The term "Base Rate Differential" means, in any one month, the aggregate difference between the Old Base Rate and the New Base Rate for all customers of the Company actually charged more than the Old Base Rate during the month. The Company may charge certain classes of its customers the Old Base Rate, other classes of its customers the maximum monthly rate allowed by the Director and, possibly, certain other classes of its customers at a rate in between. The Rate Base Differential shall be determined based upon the aggregate excess of charges to customers for basic antenna service over what the aggregate charges would have been for such customers under the Old Base Rate.

C. PERFORMANCE ON SCHEDULE.

1. The Schedule for completion of the CATV system is established by increments. For each such increment, the Schedule provides a "Completion Date" and a "Certification Date". Each increment of overhead construction involves approximately one month's construction time. Each increment of underground construction involves a varied amount of construction time, depending upon the size and difficulty of such increment. However, for purposes of this Part III, the controlling date for each increment is the Certification Date. Each such increment, whether overhead or underground, must be completed by the respective Certification Date in order to avoid the deposit provided below. The chronological order set forth in the Schedule is subject to reordering by substituting an increment or increments of substantially equivalent length and difficulty for any increment or increments otherwise scheduled, upon written notice to the Cable Television Division by not later than 45 days before the Completion Date set forth in the Schedule and written approval shall be deemed given by the Cable Television Division 15 days after the date of such notice, unless the Cable Television Division shall have given notice to the Company that such request has been denied.

2. Within 15 days after the actual completion, and no later than the Certification Date, the Company will conduct appropriate and necessary tests, at not less than three locations on the increment completed, to ensure that the CATV facilities

installed in such increment meet all of the performance standards established by the CATV Division or the Federal Communications Commission for CATV licensees. By no later than the Certification Date, the Company shall submit a certificate to the Cable Television Division, in accordance with present practice, certifying that as of the Certification Date construction of a given increment has been completed, and that the CATV facilities constructed in such increment meet all regulatory standards of performance.

3. In the event that the Company fails to make the foregoing certificate on or prior to the Certification Date for any given increment, or if the Cable Television Division for good cause finds that, notwithstanding such certificate, the Company has failed to complete a given increment, or that such increment has not been completed to meet all regulatory standards, and the Cable Television Division gives written notice to the Company of such finding, then the Company shall make a deposit to a special deposit account on the terms and conditions hereinafter set forth:

a. The deposit shall be made to a corporate savings account opened by the Company in the Bank of Hawaii and labeled "T. V. Systems, Incorporated - Special Account". The signature card for such special account shall provide that withdrawal may be made only upon the written signatures of any one of two officers of the Company plus any one of two representatives of the Cable Television Division. Interest earned on any deposits made in such account shall be for the account of and paid to the Company.

b. Upon the Certification Date, if the Company shall not have delivered a satisfactory certificate for such increment, or within one working day of aforesaid written notice by the Cable Television Division of non-acceptance of an increment, the Company shall deposit in such special account an amount which equals the Base Rate Differential for the month ending prior to the Certification Date. The Base Rate Differential shall be determined from the records of the Company. If, on the fifteenth day of the following month, such increment shall remain incomplete, or shall not have been accepted by the Cable Television, or if such increment shall have been completed and accepted, but the Company shall have failed to complete a subsequent increment by a subsequent Certification Date, the Company shall make a similar deposit, based upon the Base Rate Differential for the immediately preceding month. The Company shall continue to make a monthly deposit into the special account based upon the previous month's Base Rate Differential on the fifteenth day of each month until all increments scheduled for completion through a given date are completed and accepted by the Cable Television Division by the respective Certification Dates for each. Provided, however, that deposits shall not be cumulative. If, on the fifteenth day of any month more than one increment scheduled for completion has not been completed, only one deposit in the amount of the Base Rate Differential for that month shall be required.

c. Withdrawal from such special account shall be authorized only upon the signature of one officer of the Company plus the signature of one representative of the Cable

Television Division designated on the signature card for such account. No withdrawals shall be permitted until all increments scheduled for completion as of the withdrawal date have been completed and accepted by the Cable Television Division.

D. EXTENSION OF SCHEDULE.

The Completion Date and Certification Date for any increment shall be automatically extended for a reasonable period of time to account for delays caused by war or public disorder, labor disputes (whether by the employees of the Company or any contractor retained for the purpose of constructing any increment), fire, flood, earthquake, severe and prolonged rain, failure to obtain necessary supplies or materials or pole attachment or duct rights beyond the control of the Company, the pendency of any action, suit or proceeding of whatever nature to enjoin, delay or prevent such construction, the order of any court, agency or department of appropriate jurisdiction ordering the suspension of construction activities for reasons beyond the control of the Company, or any other cause beyond the Company's control. Upon becoming informed of such delays, the Company shall forthwith give notice to the Cable Television Division of such fact, stating the reason for such delay and the anticipated duration thereof. Upon the Completion Date of any increment affected by such delay, the Company shall provide the Cable Television Division with a description of the status of such delay, including supporting data if requested, and shall establish a new Completion Date and Certification Date for such increment. If the Cable Television Division is not in agreement with such new Completion Date and Certification Date, it may

issue an Order to Show Cause why another Completion Date and Certification Date should be established. PROVIDED, HOWEVER, that if and in the event any such action beyond the control of the Company affects some, but not all remaining incompletd increments of construction, the Company shall adjust and reorder the Schedule so that increments which can be completed shall be substituted for increments subject to delay by reason of such occurrence.

SCHEDULE A

T.V. SYSTEMS, INCORPORATED

CONSTRUCTION SCHEDULE BY INCREMENTS

| AREA | PHASE | MILES | EST. NO. OF HOMES | COMPLETION DATE | CERTIFICATION DATE |
|-----------|-------|-------|----------------------|--------------------|-----------------------|
| Kalihi | V | 6.50 | 800 | Nov. 1, 1977 | Nov. 15, 1977 |
| Kalihi | A* | 2.00 | - | Dec. 1, 1977 | Dec. 15, 1977 |
| Kalihi | VI | 6.50 | 800 | Dec. 1, 1977 | Dec. 15, 1977 |
| Kalihi | B* | 2.00 | - | Jan. 1, 1978 | Jan. 15, 1978 |
| Kalihi | VII | 5.40 | 800 | Jan. 1, 1978 | Jan. 15, 1978 |
| Kalihi | C* | 2.00 | - | Feb. 1, 1978 | Feb. 15, 1978 |
| Kalihi | VIII | 5.30 | 800 | Feb. 1, 1978 | Feb. 15, 1978 |
| Kalihi | D* | 2.00 | - | Mar. 1, 1978 | Mar. 15, 1978 |
| Kalihi | IX | 5.20 | 800 | Mar. 1, 1978 | Mar. 15, 1978 |
| Kalihi | E* | 2.00 | - | Apr. 1, 1978 | Apr. 15, 1978 |
| Kalihi | X | 5.20 | 800 | Apr. 1, 1978 | Apr. 15, 1978 |
| Kalihi | F* | 2.00 | - | May 1, 1978 | May 15, 1978 |
| Kalihi | G* | 2.30 | - | June 1, 1978 | June 15, 1978 |
| Salt Lake | I | 5.00 | 732 | June 1, 1978 | June 15, 1978 |
| Salt Lake | II | 4.50 | 732 | July 1, 1978 | July 15, 1978 |

| | III | 5.50 | 732 | Sept. 1, 1978 | Sept. 15, 1978 |
|-------------------------------------|-----|------|-----|---------------|----------------|
| Salt Lake | III | 5.50 | 732 | Sept. 1, 1978 | Sept. 15, 1978 |
| Salt Lake | IV | 5.00 | 732 | Nov. 1, 1978 | Nov. 15, 1978 |
| Direct Buried: | I | .64 | | Nov. 1, 1978 | Nov. 15, 1978 |
| Clubview Estates | | | 82 | | |
| Akakoa Place | | | 15 | | |
| Hoana Place | | | 5 | | |
| Waiohia Place & Pulu Place | | | 8 | | |
| Halelo Place | | | 10 | | |
| Kaneohe | A* | 3.00 | - | Nov. 1, 1978 | Nov. 15, 1978 |
| Direct Buried: | II | .78 | | Dec. 1, 1978 | Dec. 15, 1978 |
| Ahuimanu Heights Estates | | | 40 | | |
| Kahanahou Circle | | | 43 | | |
| Kanaka St., Poliahu Pl. & Iouli Pl. | | | 33 | | |
| Kaneohe | B* | 3.00 | - | Jan. 1, 1979 | Jan. 15, 1979 |
| Direct Buried: | III | .73 | | Jan. 1, 1979 | Jan. 15, 1979 |
| Dune Circle | | | 32 | | |
| Kaiea Place | | | 8 | | |
| Laiki Place | | | 11 | | |
| Kaumana Place | | | 7 | | |
| Puehala Place | | | 8 | | |
| Direct Buried: | IV | 1.08 | | Feb. 1, 1979 | Feb. 15, 1979 |
| Molokai Street & Ilikai Street | | | 40 | | |
| Hui Street & Kaaia Street | | | 33 | | |
| Kaneohe | C* | 3.00 | - | Mar. 1, 1979 | Mar. 15, 1979 |
| Direct Buried: Haiku Plantations | V | 1.68 | 103 | Mar. 15, 1979 | April 1, 1979 |
| Kaneohe | D* | 3.00 | - | May 1, 1979 | May 15, 1979 |
| Direct Buried: Alii Shores | VI | 1.97 | 180 | May 1, 1979 | May 15, 1979 |
| Kaneohe | E* | 3.00 | - | July 1, 1979 | July 15, 1979 |

| | | | | | | | | |
|----------------|---------------------|------|------|-----|---------------|----------------|--|--|
| Kaneohe | | | | | | | | |
| Direct Buried: | Crown Terrace | F* | 3.00 | - | Sept. 1, 1979 | Sept. 15, 1979 | | |
| | | VII | 4.10 | 374 | Sept. 1, 1979 | Sept. 15, 1979 | | |
| Kaneohe | | G* | 3.00 | - | Nov. 1, 1979 | Nov. 15, 1979 | | |
| Kailua | | A* | 2.00 | - | Dec. 1, 1979 | Dec. 15, 1979 | | |
| Kaneohe | | H* | 2.00 | - | Dec. 1, 1979 | Dec. 15, 1979 | | |
| Direct Buried: | Aikahi Park | VIII | 3.70 | 257 | Dec. 1, 1979 | Dec. 15, 1979 | | |
| Kailua | | B* | 2.00 | - | Jan. 1, 1980 | Jan. 15, 1980 | | |
| Kailua | | C* | 2.00 | - | Feb. 1, 1980 | Feb. 15, 1980 | | |
| Kailua | | D* | 2.00 | - | Mar. 1, 1980 | Mar. 15, 1980 | | |
| Direct Buried: | Kaimuki Improvement | IX | 6.30 | 730 | April 1, 1980 | April 15, 1980 | | |
| Kailua | | E* | 2.00 | - | April 1, 1980 | April 15, 1980 | | |
| Windward | | I | 5.00 | 198 | May 1, 1980 | May 15, 1980 | | |
| Windward | | II | 5.00 | 198 | June 1, 1980 | June 15, 1980 | | |
| Windward | | III | 5.00 | 198 | July 1, 1980 | July 15, 1980 | | |
| Windward | | IV | 5.00 | 198 | Aug. 1, 1980 | Aug. 15, 1980 | | |
| Windward | | V | 5.00 | 198 | Sept. 1, 1980 | Sept. 15, 1980 | | |
| Windward | | VI | 5.00 | 198 | Oct. 1, 1980 | Oct. 15, 1980 | | |
| Windward | | VII | 5.00 | 198 | Nov. 1, 1980 | Nov. 15, 1980 | | |
| Windward | | VIII | 5.00 | 198 | Dec. 1, 1980 | Dec. 15, 1980 | | |

* A through H = Rebuild of Existing Ex-Hawaiian Telephone Company Plant

SCHEDULE B

TARIFF PROVISIONS CONCERNING CONVERTERS

Converter Use. Subscriber may require a converter to eliminate off-the-air pickup through his TV set's tuner or may desire to receive signals available on the mid-band or pay channels. A deposit equal to the delivered cost of the converter is required plus \$1.00 a month service charge for the converter. Deposit is refunded upon return of converter in good working condition, less normal wear and tear. The Company is responsible to maintain and replace defective converters due to normal wear and tear at no additional cost to subscriber.

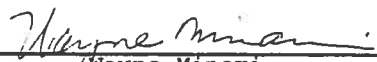
- (1) A one-time \$5.00 installation charge will be made except when the converter is installed at the same time with the initial cable installation.

Converter Sale. Subscriber may require a converter to eliminate off-the-air pickup through his TV set's tuner or may desire to receive signals available on the mid-band or pay channels. Customer may purchase converter at the Company's delivered cost plus 10%. Purchase price includes manufacturer's warranty but does not include any maintenance and repairs.

- (1) A one-time \$5.00 installation charge will be made except when the converter is installed at the same time with the initial cable installation.

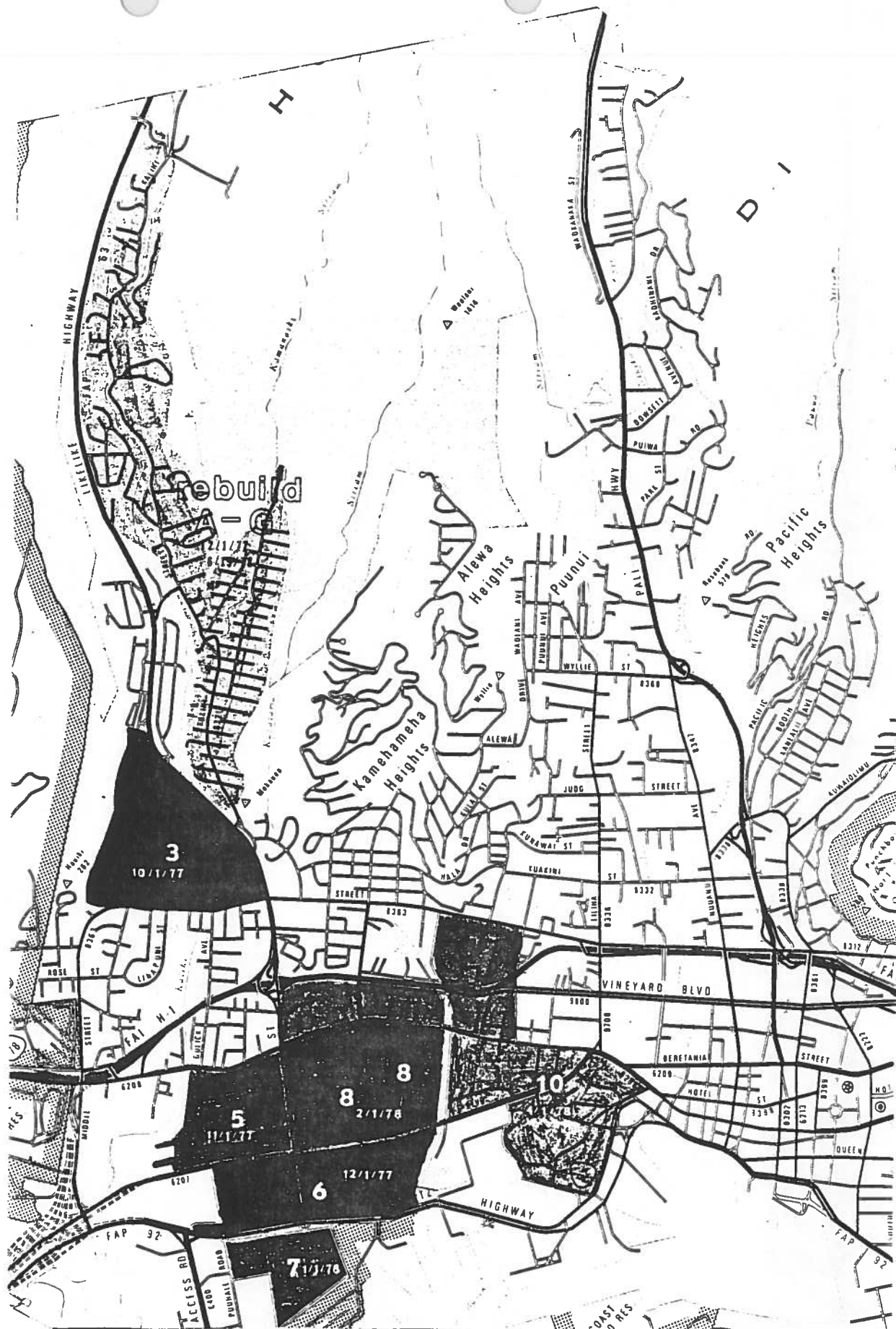
DIRECTOR'S CERTIFICATION

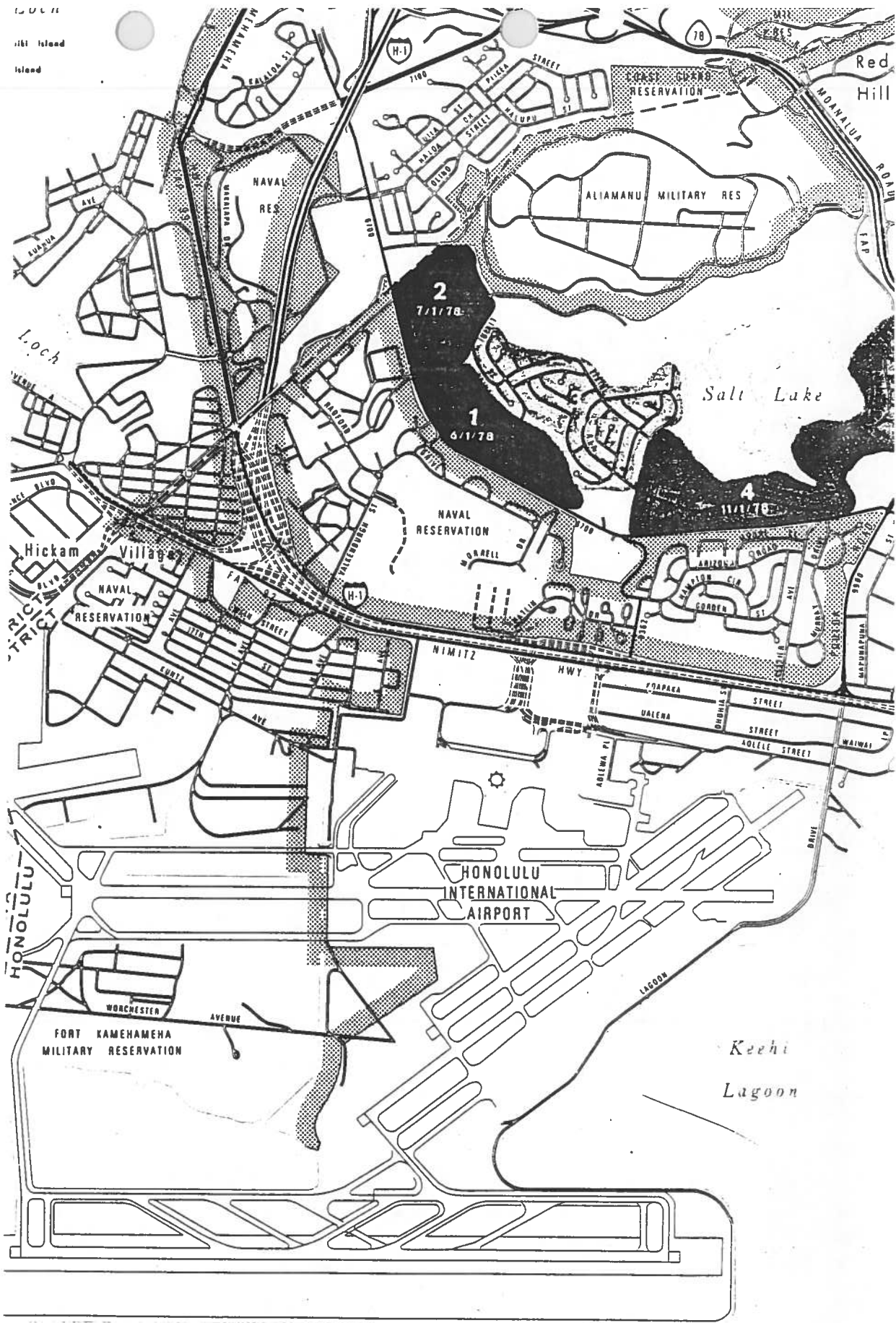
I, WAYNE MINAMI, Director of the Department of Regulatory Agencies, hereby certify that the attached "Order Adopting Hearing Officer's Proposed Decision and Order as the Director's Final Order" is a true and correct copy of the original on file in the Department of Regulatory Agencies.



Wayne Minami
Director of Regulatory Agencies

DATED: May 2, 1978
Honolulu, Hawaii





1206 71
161 Island
Island

Red Hill

Salt Lake

Keehi Lagoon

HONOLULU INTERNATIONAL AIRPORT

FORT KAMEHAMEHA MILITARY RESERVATION

NAVAL RES

ALIAMANU MILITARY RES

NAVAL RESERVATION

Hickam Villages

NAVAL RESERVATION

2
7/1/78

1
6/1/78

4
11/1/78

NIMITZ

HWY

PHAPAKA STREET

OLENA STREET

MOLELE STREET

WAIWAI DRIVE

MOLELE PI

MOLELE PI

MOLELE PI

MOLELE PI

MOLELE PI

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