

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 133

REVIEW OF APPLICATIONS BY THE CABLE TELEVISION DIVISION

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-133-1 Definitions. As used in this chapter:

"Applicant" means the person making applications or proposals.

"Application" means a request or proposal for the issuance, transfer, or renewal of a cable franchise, a change in ownership of a cable operator, an extension of an existing service area, or an increase in rates.

"Associated equipment" means all equipment in a subscriber's home that is used to receive the basic service tier, regardless of whether such equipment is additionally used to receive other tiers of regulated programming service and unregulated service, or both. Such equipment shall include, but is not limited to:

- (1) Converter boxes;
- (2) Remote control units;
- (3) Connections for additional television receivers; and
- (4) Other cable home wiring.

"Basic service tier" or "basic cable service" means the tier of cable service that, at a minimum, includes all signals of television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is

ultimately received by the cable system), any public, educational, and governmental programming, and any additional video programming signals or service added to the basic tier by the cable operator.

"Cable franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement, or otherwise, which authorizes the construction or operation of a cable system.

"Cable operator" means any person or group of persons:

- (1) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or
- (2) Who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"Cable service" means:

- (1) The one-way transmission to subscribers of video programming or other programming service; and
- (2) Subscriber interaction, if any, which is required for the selection of video programming or other programming service.

"Cable programming service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

- (1) Video programming carried on the basic service tier;
- (2) Video programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - (i) Consists of commonly-identified video programming; and
 - (ii) Is not bundled with any regulated tier of service.

"Cable system" means any facility within the State consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless that facility or facilities uses any public right-of-way; or

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- (3) A facility of a public utility subject in whole or in part to the provisions of chapter 269, HRS, except to the extent that those facilities provide video programming directly to subscribers.

"Cost of service showing" means a rate filing by a cable operator based on costs and made in accordance with any applicable state and federal statutes and rules.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Division" means the cable television division of the department.

"FCC" means the Federal Communications Commission.

"Franchise expiration" or "permit expiration" means the date of the expiration of the term of the franchise or permit, as provided under the franchise or permit.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental agency. [Eff 7/28/88; am and comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-2 New cable franchise. No person shall construct, operate, or acquire a cable system, or extend an existing cable system outside its designated service area without first obtaining a cable franchise to do so. A cable franchise may be obtained by applying to the director. No cable franchise shall be issued except upon the director's approval of the written application and submission of the fee of \$1,000. The term of a new cable franchise shall be fifteen years. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-3 Transfer of cable franchise. No cable franchise, including the rights, privileges, and obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any cable system, whether by change in ownership or otherwise, without the approval of the director. One seeking to obtain a cable franchise through a transfer shall apply to the director, in the form of a written application that has been co-signed by the transferor. No cable franchise shall be transferred except upon the director's approval of the written application. A transfer of a cable franchise shall authorize the new cable operator to provide service for the remainder of the term of the existing franchise. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440-8, 440G-10.1, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-4 Renewal of cable franchise. Any cable franchise issued pursuant to chapter 440G, HRS, may be renewed by the director upon approval of a cable operator's written application therefor. The period of renewal shall be not less than five nor more than twenty years each, and no cable franchise shall be renewed except upon approval of the written application, accompanied by a fee of \$1,000. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

SUBCHAPTER 2

PROCEDURES FOR NEW AND TRANSFER APPLICATIONS

§16-133-9 Written application. (a) The application shall be in writing and shall fully disclose the facts required to determine whether a cable franchise should be issued or transferred. Included shall be facts as to:

- (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 or transfer 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.

(b) The application shall be in a form designated by the director. No application shall be accepted for filing unless all requested information has been submitted. [Eff 7/28/88; am and comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-10 Filing of application. (a) Within thirty days of receipt of an application and applicable fee, the director shall review the application and notify the applicant in writing that it is acceptable for filing or inform the applicant that it fails to provide certain information. The applicant shall be given at least fifteen days to submit the required information. If the director finds the application to be complete, the director shall issue notice of acceptance for filing. If no additional information is received or if the application is still not complete, the applicant's submittals shall be returned, with a statement indicating that the application as submitted is not acceptable for filing.

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(b) The date of the notice shall be deemed the filing date of the application. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-11 Time. (a) The computing of any period of time shall be in accordance with section 16-201-14, Hawaii Administrative Rules.

(b) The time limits set by this chapter may be waived or extended by mutual written agreement between the director and the applicant. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-12 Requests for additional information or documentation. To facilitate the review of the application, the director may informally and at anytime during the application process request the applicant to submit additional information or supporting documentation to clarify or supplement the information already contained in the application. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-13 Investigations, examinations, and audits. In addition to requesting supporting documentation or clarifying information from the applicant, the director may initiate or require any investigation, examination, and audit to be performed as deemed appropriate. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-14 Public hearing. Within thirty days after the issuance of a notice of acceptance for filing, the director shall hold a public hearing in accordance with section 440G-7(2), HRS, to afford the public the opportunity to submit oral or written data, views, or arguments. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-15 Presumptive disqualifiers of approval of application. (a) The following factors shall give rise to a rebuttable presumption that an applicant fails to meet the character criterion of section 440G-8(b), HRS, for issuance or transfer of a cable franchise:

- (1) During the ten-year period immediately preceding filing of the application, criminal, civil, or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings, excluding routine or customary audits, inspections, and investigations that terminated in any agreements, undertakings, consents or orders, resolutions, ordinances, or revocation, suspension or alteration of a cable franchise involving the applicant or affiliates of the applicant by any federal or state court, any department, agency, or commission of the United States government, any state or municipality, any cable franchising authority, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:
 - (A) Unfair or deceptive trade practices, perjury, fraud, dishonesty, organized crime or racketeering;
 - (B) Violation of applicable federal, state, or local cable communications laws or rules;
 - (C) Violation of cable franchise provisions; or
 - (D) Violation of the rules, regulations, codes of conduct, or ethics of a self-regulatory trade or professional organization;
 - (2) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the applicant or affiliates of the applicant, of:
 - (A) Any application relating to the issuance of a cable franchise;
 - (B) Any application relating to a change in ownership of a cable operator;
 - (C) Any application relating to the transfer of a cable franchise; or
 - (D) Any application relating to the renewal of a cable franchise;
 - (3) Felony conviction of the applicant, an affiliate of the applicant, or a management official of the applicant or affiliate of the applicant;
 - (4) Knowingly making any written or oral statement in connection with an application or other filing that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application or other filing; or
 - (5) Failure to provide information required by law or rule to be submitted or information requested by the director.
- (b) The following factors shall give rise to a rebuttable presumption that an applicant fails to meet the financial responsibility criterion of section 440G-8(b), HRS:

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- (1) The inability to obtain a bond in connection with the construction or operation of a cable system;
 - (2) Failure to demonstrate adequate cash flow to support proposed debt and operating expenses;
 - (3) Liability or proposed liability for amounts of debt which, in the opinion of the director or division, creates excessive risks of default or pressure on the applicant to be acquired, or significantly impairs the ability of the applicant to borrow needed additional funds; or
 - (4) Transactions between affiliates which in the director's or division's opinion are detrimental to the cable operator.
- (c) The following factors shall give rise to a rebuttal presumption that an applicant fails to meet the reasonable cost criterion of section 440G-8(b), HRS:
- (1) Failure to demonstrate adequate cash flow to meet debt service and operating expenses;
 - (2) Failure to demonstrate adequate funding proposed or necessary for capital or operational expenditures;
 - (3) Liabilities which, in the opinion of the director, create excessive risks of default, significantly impair the ability of the applicant to make further necessary borrowings, or otherwise create unwarranted upward pressure on rates; or
 - (4) Transactions between affiliates which in the director's opinion are detrimental to the cable operator. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-16 Approval or denial. (a) After holding a public hearing, the director shall approve the application in whole or in part, with or without conditions or modifications, or shall deny the application, with reasons for denial sent in writing to the applicant. The director has the discretion to require the cable operator to attend a show cause hearing after the public hearing but prior to making the decision on the application. Any application not approved within one hundred and twenty days after the issuance of a notice of acceptance for filing shall be deemed denied unless the time limit for final action has been extended pursuant to HRS section 440G-7(4).

(b) In determining whether a cable franchise shall be issued or transferred, the director shall take into consideration, among other things, the contents of the application, the public need for the proposed service, the ability of the applicant to offer safe, adequate, undisrupted, and reliable service at a reasonable cost to the subscribers, the ability to provide similar or better quality service in comparison to any existing cable franchise in the same area, the

citizenship and character 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, long and short term plans and resource allocations, any objections arising from the public hearing or elsewhere, and any other matters as the director deems appropriate in the circumstances.

(c) In determining the area which is to be serviced by the applicant, the director shall take into account the geography and topography of the proposed service area, and the present, planned, and potential expansion in facilities or cable services of the applicant's proposed cable system and existing cable systems. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-17 Terms, limitations, and conditions. In issuing or transferring a cable franchise under this chapter, the director is not restricted to approving or disapproving the application in its entirety 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. The cable franchise shall be nonexclusive, shall include a description of the service area in which the cable system is to be constructed, extended, or operated and the approximate date on which the service is to commence. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-18 Request for reconsideration. Within ten days of issuance of the decision, any applicant may request the director to reconsider the application. The request shall be in writing, shall specify the reasons why the director should reconsider the decision, and set forth any relevant and substantial information that for good cause was not previously set forth in the application or supplemental information, together with an explanation of why the information was not previously presented. The request may also state specifically what points of fact or law the director may have overlooked or misunderstood, together with brief arguments on the points raised. Only one request for reconsideration may be filed by the applicant. The director shall make a determination on the request and issue a decision affirming or amending the initial decision. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

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§16-133-19 Contested case hearing. The applicant may petition the director for a contested case review hearing within sixty days following the decision. The director may transfer the petition together with the documents concerning the application to a hearings officer for further proceedings pursuant to sections 16-201-26 to 16-201-47. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

§16-133-20 Construction. To the extent not inconsistent with the procedures described in this chapter, the procedures described in chapter 16-201, Hawaii Administrative Rules shall apply. Should any provision of this chapter be invalidated, all other provisions shall remain in full force and effect. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-12) (Imp: HRS §§26-9, 91-2, 440G-12)

SUBCHAPTER 3

SPECIAL PROCEDURE FOR RENEWAL APPLICATIONS

§16-133-26 General. To the extent not inconsistent with the provisions of this subchapter, all of the provisions stated in subchapter 2, with the exception of sections 16-133-10, 16-133-11(a), and 16-133-14, together with the sections in this subchapter shall apply to all renewal applications. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-6) (Imp: HRS §§26-9, 91-2, 440G-6)

- §16-133-27 Initiating the renewal process: ascertainment proceeding.
- (a) Upon receipt of the cable operator's written notice of intent to apply, or upon the director's own initiative, renewal procedures shall commence during the six-month period which begins with the thirty-sixth month before the franchise expiration.
- (b) The director shall begin by conducting a proceeding which affords the public in the franchise area appropriate notice and participation to:
- (1) Identify future cable-related community needs and interests; and
 - (2) Review the performance of the cable operator under the currently existing franchise term.
- (c) This proceeding may include subscriber and institutional surveys, requests for written comments, or any other activities which the director believes

are necessary to identify future cable-related needs and interests and to review the past performance of a cable franchise. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-7)

§16-133-28 Written application. (a) The director shall give the cable operator written notice of the completion of the ascertainment proceeding. Within twenty-eight calendar days after the completion of the ascertainment proceeding, the cable operator seeking renewal shall submit a written application for renewal with the director.

(b) The application shall fully disclose the facts required under section 16-133-9. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-6) (Imp: HRS §§26-9, 91-2, 440G-6)

§16-133-29 Filing of application. Within forty-two calendar days after the completion of the ascertainment proceeding, the director shall notify the applicant in writing of the acceptance or nonacceptance for filing of the application. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-7) (Imp: HRS §§26-9, 91-2, 440G-7)

§16-133-30 Public notice. Following acceptance of any application for filing, the director shall provide prompt and appropriate public notice of the application. Within forty-two calendar days after the issuance of a notice of acceptance for filing, the director may, in the director's discretion, hold a hearing on the application to afford the public the opportunity to submit oral or written data, views, or arguments. [Eff 7/28/88; am and comp 4/22/94] (Auth: HRS §§26-9, 91-2, 440G-7) (Imp: HRS §§26-9, 91-2, 440G-7)

§16-133-31 Approval or denial. Within four months after the completion of the ascertainment proceeding, the director shall either approve the application in whole or in part, with or without conditions or modifications, or make a preliminary assessment stating that the franchise should not be renewed. Any reasons for such assessment shall be sent in writing to the applicant. The applicant may challenge the decision or assessment through the procedures described in sections 16-133-18 and 16-133-19 of this chapter. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-7)

§16-133-32 Alternative renewal procedures. Nothing in this chapter shall preclude a cable operator from submitting an application for renewal at any time. Likewise, nothing shall preclude the director from granting or denying such an application, after affording the public adequate notice and opportunity for comment. [Eff 7/28/88; comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-12)

SUBCHAPTER 4

REGULATION OF RATES

§16-133-40 General. (a) After certification by the FCC and upon these rules becoming effective, the director shall regulate such service and equipment rates as permitted under applicable state and federal law. The director shall regulate the rates in conformance with any applicable FCC rules governing cable rate regulation.

(b) In the absence of demonstration to the contrary, cable systems are presumed not to be subject to effective competition. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-41 Initiation of review of basic cable service and equipment rates. A cable operator shall file its schedule of rates for the basic service tier and associated equipment with the director within thirty days after receiving written notice from the director that the State has been certified by the FCC and thereafter shall file its schedule of rates at least thirty days prior to the effective date of a proposed increase in such rates. The filing shall include appropriate completed FCC forms and any other information the director deems necessary to review and evaluate the filing. The director may require submission of data or forms on electronic media in a format prescribed by the director. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-42 Public notice of filings for initial rates and proposed rate increases. (a) Upon receipt from a cable operator of a filing for an initial rate schedule or proposed rate increase for the basic service tier and the associated equipment, the director shall provide public notice of the filing and shall afford all interested persons an opportunity to submit comments, data, views, or arguments, in writing. Public notice of a filing shall be published at least once in each of two successive weeks in a newspaper of general circulation in the

county in which the cable operator provides service. The first published notice shall appear at least fifteen days prior to the date the proposed existing or proposed increases in rates become effective.

(b) The director may hold a public hearing on the filing to afford interested persons the opportunity to provide oral testimony in addition to written comments, data, views, or arguments. Notice of the public hearing shall be published at least once in each of two successive weeks in a newspaper of general circulation in the county in which the cable operator provides service. The first published notice shall appear at least fifteen days prior to the date of the public hearing. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-43 Notification of proposed increase. A cable operator shall provide written notice to its subscribers of any proposed increase in the rate to be charged for the basic service tier or associated equipment at least thirty days before the proposed increase is effective. The notice shall include a statement that written comments on the proposed rates should be submitted to the division. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-44 Review of basic cable rate and associated equipment filings.
 (a) After a cable operator has filed for review its existing rates for the basic service tier and associated equipment costs, or a proposed increase in the rates, the existing rates will remain in effect. The proposed rates will become effective thirty days after the date of filing; provided, however, that the director may extend this thirty-day deadline for an additional time by issuing a brief written order as described in subsection (b) within thirty days of the filing stating that the director needs additional time to review the filing.

(b) If the director is unable to determine, based upon the material submitted by the cable operator, that the existing or proposed rates comply with applicable FCC rules, the director may extend the thirty-day deadline in section (a) to request or consider additional information from the cable operator, or both, or to consider the comments from interested persons as follows:

- (1) For an additional ninety days in cases not involving cost-of-service showings; or
- (2) For an additional one hundred fifty days in cases involving cost-of-service showings.

(c) If the director has extended the thirty-day deadline as permitted in subsection (b), and has taken no action within the additional time period, then the

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filed rates will go into effect at the end of the additional time period, subject to refunds if the director subsequently issues a written decision disapproving any portion of the rate filing, provided, however, that to order refunds, the director shall have issued a brief written order to the cable operator by the end of the additional time period directing the cable operator to keep an accurate account of all amounts received by reason of the rates in issue and on whose behalf the amounts were paid. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-45 Written decision. (a) The director shall issue a written decision setting forth the director's reasons whenever:

- (1) A filing for an initial rate for the basic service tier or associated equipment is disapproved in whole or in part;
- (2) A filing for a proposed rate increase is disapproved in whole or in part; or
- (3) A filing for a proposed rate increase is approved in whole or in part over the objections of interested persons. The director is not required to issue a written decision that approves an unopposed existing or proposed rate increase for the basic service tier or associated equipment.

(b) The director shall provide public notice of any written decision required in subsection (a). Public notice of a decision shall be published at least once in each of two successive weeks in a newspaper of general circulation in the county in which the cable operator provides service. The text of the decision is not required to be included in the notice. However, the notice shall include a statement that the text of the decision is available upon request and at cost from the director and the cable operator. The last published notice shall appear at least three days prior to the date the filing becomes effective. The director may require the cable operator to cablecast notice of the director's decision over its cable system. The director may specify the frequency of, and a range of times and dates for the cablecasts. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-46 Burden of proof. A cable operator has the burden of proving that its existing or proposed increased rates for basic cable service and associated equipment comply with applicable FCC rules. The cable operator must submit to the director either the appropriate FCC form or a cost-of-service showing as prescribed by the director to justify the proposed rate. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-47 Proprietary information. The director may require the production of proprietary information to make a rate determination and shall apply procedures analogous to those set forth in 47 C.F.R. §0.459 regarding requests for confidentiality. Once filed with the division, the disclosure of such information is subject to chapter 92F, HRS. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-48 Rate reduction. The director may order a cable operator to reduce its service or associated equipment rates where necessary to bring rates into compliance with applicable federal rules. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-49 Rate prescription. The director may prescribe a reasonable rate for the basic service tier or associated equipment after determining that a proposed rate is unreasonable. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-50 Refunds. (a) The director may order a cable operator to refund to subscribers that portion of previously paid rates determined to exceed applicable federal standards for service and associated equipment rates, unless the cable operator has submitted a cost-of-service showing which justifies the rate charged as reasonable. Before ordering a cable operator to refund previously paid rates to subscribers, the director shall notify the cable operator of the director's intent to order a refund and provide the cable operator fifteen days to comment on the proposed order. After considering the cable operator's comments, if any, and within a reasonable time after the deadline for the cable operator's comments has passed, the director shall issue a written final order regarding refunds.

(b) A cable operator's liability for refunds is limited to a one-year period, except that a cable operator that fails to comply with a valid rate order issued by the director shall be liable for refunds commencing from the effective date of the order until such time as it complies with the order.

(c) The refund period is limited to the period prescribed by applicable federal law or rules.

(d) The cable operator, in its discretion, may implement a refund in the following manner:

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- (1) By returning overcharges to those subscribers who actually paid the overcharges, either through direct payment or as a specifically identified credit to those subscribers' bills; or
 - (2) By means of a prospective percentage reduction in the rates for the basic service tier or associated equipment to cover the cumulative overcharge. This shall be reflected as a specifically identified, one-time credit on prospective bills to the class of subscribers that currently subscribe to the cable system.
- (e) Refunds shall include interest computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-51 Notification of basic service tier availability. In addition to the requirements of section 16-131-61, at the time of initial installation the cable operator shall provide written notice to the subscriber of the availability of the basic service tier. The notice shall include the following information:

- (1) That the basic service tier is available, and must be purchased to receive any other video cable service;
- (2) The cost per month for the basic service tier and any associated equipment necessary to receive service; and
- (3) A list of all the programming services included in the basic service tier. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-52 Change in regulatory status. (a) A cable operator that becomes subject to effective competition may petition the director for change in its regulatory status. The cable operator bears the burden of proving the existence of effective competition.

(b) Within fifteen days of receiving a petition for change of regulatory status, the director shall publish notice of the petition and shall afford all interested persons an opportunity to submit written comments on the proposed change in regulatory status. Notice shall be published at least once in each of two successive weeks in a newspaper of general circulation in the county in which the cable operator provides service. The notice shall state that comments with respect to the change in regulatory status must be served on the cable operator and on the director within fifteen days of the first published notice. Service may be completed by sending the comments by first class mail to the local office of the cable operator and to the division. The cable operator may respond to the

comments, if any, within seven days after the deadline for filing comments by submitting its written response to the director.

(c) The director shall decide on the cable operator's petition for change of regulatory status within thirty days of the deadline for the cable operator's response to comments in subsection (b). The director shall notify the FCC within ten days of a decision by the director that effective competition exists. Unless the FCC receives opposition to the change in status, the director's decision will become final thirty days after its adoption.

(d) The director will cease regulating the cable operator's rates for basic cable service and for the associated equipment after the director's decision that effective competition exists becomes final.

(e) The director and the cable operator may submit a joint statement that effective competition exists. The joint statement must stipulate which of the three tests for effective competition as defined in 47 U.S.C. §543(l) has been met and explain how the test has been satisfied. The joint statement will become a final decision within thirty days of filing with the FCC, unless challenged by an interested party.

(f) Cable operators denied a change in status by the director may seek review of that decision at the FCC by filing a petition for revocation of certification. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

§16-133-53 Appeals. (a) Appeals of the director's decisions on rates for the basic service tier or associated equipment involving whether or not the director has acted consistently with 47 U.S.C §543 and 47 U.S.C §544 or 47 C.F.R. §§76.922 and 76.923 may be made to the FCC.

(b) Any participant in a ratemaking proceeding before the director may file an appeal of the director's decision with the FCC within thirty days of of the director's decision. [Eff and comp 4/22/94] (Auth: HRS §440G-12) (Imp: HRS §440G-11)

Amendments to and compilation of Chapter 16-133, Title 16, Hawaii Administrative Rules, on the Summary Page dated March 15, 1994, were adopted on March 15, 1994, following a public hearing held on February 15, 1994, after public notices was given in the Honolulu Advertiser, Honolulu Star-Bulletin, The Hawaii Tribune-Herald, West Hawaii Today, Maui News, and the Garden Island on January 13, 1994.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Clifford K. Higa
CLIFFORD K. HIGA
Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date 3/24/94

/s/ Diane Erickson
Deputy Attorney General

APPROVED: Date 4/12/94

/s/ John Waihee
JOHN WAIHEE
Governor
State of Hawaii

April 12, 1994
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-133
Hawaii Administrative Rules

March 15, 1994

SUMMARY

1. §16-133-1 is amended.
2. Subchapter 4, entitled "Regulation of Rates," is adopted.
3. Chapter 133 is compiled.