

CHAPTER 440G
CABLE TELEVISION SYSTEMS

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Cross References

Telecommunications and cable industry reporting, see chapter 440J.

" **§440G-1 Short title.** This chapter shall be known as the Hawaii Cable Communications Systems Law. [L 1970, c 112, pt of §1; am L 1987, c 301, §1]

" **§440G-2 REPEALED.** L 1987, c 301, §2.

" **§440G-3 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Access organization" means any nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section 440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization.

"Applicant" means a person who initiates an application or proposal.

"Application" means an unsolicited filing.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"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 system" means any facility within this 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 (3) a facility of a public utility subject in whole or in part to the provisions of chapter 269, except to the extent that those facilities provide video programming directly to subscribers.

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

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

"Facility" includes all real property, antenna, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, and other personal property used by a cable operator in providing service to its subscribers.

"Franchise area" or "service area" means the geographic area for which a cable operator has been issued a cable franchise.

"Institution of higher education" means an academic college or university accredited by the Western Association of Schools and Colleges.

"Other programming service" means information that a cable operator makes available to all subscribers generally.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental agency.

"Proposal" means a filing solicited by the director.

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

"Public place" includes any property, building, structure, or water to which the public has a right of access and use.

"Public utilities commission" means the public utilities commission of this State.

"School" means an academic and noncollege type regular or special education institution of learning established and maintained by the department of education or licensed and supervised by that department.

"Service area" means the geographic area for which a cable operator has been issued a cable franchise.

"Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §3; am L 1991, c 294, §1; am L 2014, c 93, §2]

Note

Definition of "service area" changed to "'franchise area' or 'service area'". L 2014, c 93, §2.

" **§440G-4 Issuance of cable franchises and regulation of cable operators by director of commerce and consumer affairs.** The director shall be empowered to issue cable franchises and otherwise administer and enforce this chapter. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §4]

" **§440G-5 Cable franchise required.** 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 as provided in this chapter. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §5]

" **§440G-6 Application or proposal for cable franchise; fee; certain requirements.** (a) No cable franchise shall be issued except upon written application or proposal therefor to the director, accompanied by a fee of \$1,000.

(b) An application for issuance of a cable franchise shall be made in a form prescribed by the director. The application shall set forth the facts as required by the director to determine in accordance with section 440G-8(b) whether a cable franchise should be issued, including 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 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.

(c) A proposal for issuance of a cable franchise shall be accepted for filing in accordance with section 440G-7 only when made in response to the written request of the director for the submission of proposals. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §6]

" **§440G-7 Cable franchise application or proposal procedure; public hearing; notice.** An application or proposal for a cable franchise shall be [processed] as follows:

- (1) After the application or proposal and required fee are received by the director and within a time frame established by rule, the director shall notify an applicant in writing of the acceptance or nonacceptance for filing of an application or proposal for issuance of a cable franchise required by this chapter;
- (2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the director shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county and to any telephone or other utility and cable company in the county in which the proposed service area is located. The director shall also give public notice of the application and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing;
- (3) After holding a public hearing, the director shall approve the application or proposal in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. If the director does not take final action after the issuance of a notice of acceptance for filing and within a time frame established by rule, the application or proposal shall be deemed denied; and
- (4) The time limit for final action may be extended, on the director's approval of the applicant's request and justification in writing for an extension of time to the director at least two weeks in advance of the requested effective date of the extension, or by mutual agreement. [L 1970, c 112, pt of §1; am L 1987, c 301, §7; am L 1998, c 2, §101]

" **§440G-8 Issuance of cable franchise authority; criteria; content.** (a) The director is empowered to issue a cable franchise to construct or operate facilities for a cable system upon the terms and conditions provided in this chapter.

(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.

(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.

(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. 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 and shall authorize the cable operator to provide service for a term of fifteen years. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §8]

" **§440G-8.1 Requirement for adequate service; terms and conditions of service.** (a) Every cable operator shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, franchise requirements, and its filed schedule of terms and conditions of service.

(b) The director shall require each cable operator to submit a schedule of all terms and conditions of service in the form and with the notice that the director may prescribe.

(c) The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the geographic, topographic, and economic characteristics of the

service area and the economics of providing cable service to subscribers in the service area. [L 1987, c 301, pt of §9]

" **§440G-8.2 Cable system installation, construction, operation, removal; general provisions.** (a) A cable franchise shall be construed to authorize the construction or operation of a cable system within the service area above, below, on, in, or along any highway or other public place and through easements which have been dedicated for compatible purposes.

(b) The technical specifications, general routes of the distribution system, and the schedule for construction of the cable system shall be subject to the director's approval.

(c) In installing, operating, and maintaining facilities, the cable operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes authorized by the director.

(d) The cable operator shall indemnify and hold the State and the county harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its cable system, notwithstanding any negligence on the part of the State or county, their employees or agents. Upon receipt of notice in writing from the State or county, the cable operator shall, at its own expense, defend any action or proceeding against the State or county in which it is claimed that personal injury or property damage was caused by activities of the cable operator in the installation, operation, or maintenance of its cable system.

(e) The cable operator shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area; provided that service is actually being delivered within a reasonable distance from the school or institution of higher education which may request service.

(f) The cable operator shall designate three or more channels for public, educational, or governmental use.

(g) Upon termination of the period of the cable permit or of any renewal thereof, by passage of time or otherwise, the cable operator shall remove its facilities from the highways and other public places in, on, over, under, or along which they are installed if so ordered by the director and shall restore the areas to their original or other acceptable condition, or otherwise dispose of same. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the cable operator shall be liable for the cost of its removal.

- (h) The use of public highways within the meaning of section 264-1 and other public places shall be subject to:
- (1) All applicable state statutes and all applicable rules and orders of the public utilities commission governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;
 - (2) For county highways, all applicable public welfare rules adopted by the governing body of the county in which the county highways are situated;
 - (3) For state or federal-aid highways, all public welfare rules adopted by the director of transportation; and
 - (4) For the relocation of cable facilities, the provisions of section 264-33 concerning the allocation of expenses for the relocation of utility facilities.
- (i) In the use of easements dedicated to compatible purposes, the cable operator shall ensure:
- (1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a cable system;
 - (2) That the cost of the installation, construction, operation, or removal of facilities is borne by the cable operator or subscribers, or a combination of both; and
 - (3) That the owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of facilities by the cable operator. [L 1987, c 301, pt of §9]

" **§440G-8.3 Designation of access organizations for public, educational, or governmental access channels.** *[Repeal of section on June 30, 2014, by L 2011, c 19, §4 deleted by L 2014, c 93, §4.]* (a) The director may designate access organizations in each franchise area to oversee the development, operation, supervision, management, production, and broadcasting of programs of public, educational, or governmental access facilities obtained under section 440G-8; provided that the designation shall be exempt from chapter 103D.

(b) No access organization shall be designated except upon written application or proposal to the director, and following a public hearing on each island within the local franchise area that provides opportunity for public input and allows interested parties to intervene.

(c) In determining whether to make a designation, the director shall consider:

- (1) The content of the application or proposal;
- (2) The public need for the proposed service;
- (3) The ability and experience of the applicant to offer public, educational, or government programming broadcast services;
- (4) The suitability of the applicant;
- (5) The financial responsibility of the applicant;
- (6) The technical and operational ability of the applicant to perform efficiently the services for which the designation is requested;
- (7) Any objections arising from the public hearing, the cable advisory committee, or elsewhere; and
- (8) Any other matters that the director deems appropriate under the circumstances.

(d) The director may require an applicant to provide information on its process for selecting members of its board of directors; provided that the director shall have no authority to require that an applicant amend its selection process as a condition of designation.

(e) An applicant shall provide information regarding its past performance and any proposed practices for ensuring that the public, educational, or governmental access facilities support the diversity of viewpoints and uphold the public's right of free speech.

(f) The director shall ensure that the terms and conditions required of the operation of an access organization designated under subsection (a) are fair to the public, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable access in the service area.

(g) Any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefor shall first be submitted to the cable advisory committee for advice under section 440G-13. [L 2011, c 19, §1; am L 2014, c 93, §3]

" **§440G-9 Complaints; violations; revocation, alteration, or suspension of cable franchise; penalties.** (a) Subscriber complaints regarding the operation of a cable system may be made orally or in writing to the director. The director shall resolve complaints informally when possible.

(b) Any cable franchise issued hereunder after hearing in accordance with chapter 91 may be revoked, altered, or suspended by the director as the director deems necessary on any of the following grounds:

- (1) For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with department;
- (2) For failure to maintain signal quality under the standards prescribed by the director;
- (3) For any sale, lease, assignment, or other transfer of its cable franchise without consent of the director;
- (4) Except when commercially impracticable, for unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area;
- (5) For violation of the terms of its cable franchise;
- (6) For failure to comply with this chapter or any rules or orders prescribed by the director;
- (7) For violation of its filed schedule of terms and conditions of service; and
- (8) For engaging in any unfair or deceptive act or practice as prohibited by section 480-2.

(c) In lieu of or in addition to the relief provided by subsection (b), the director may fine a cable operator, for each violation of subsection (b)(1) through (8), an amount not less than \$50 nor more than \$25,000 for each violation. Each day's continuance of a violation may be treated as a separate violation pursuant to rules adopted by the director. Any penalty assessed under this section shall be in addition to any other costs, expenses, or payments for which the cable operator is responsible under other provisions of this chapter. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §10]

" **§440G-10 Renewal of cable franchise.** 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 be not 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. [L 1970, c 112, pt of §1; am L 1987, c 301, §11]

" **§440G-10.1 Transfer of cable franchise.** (a) 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, except upon

written application to and approval by the director. The form of the application shall be prescribed by the director.

(b) Sections 440G-7 and 440G-8 shall apply to the transfer of cable franchises. [L 1987, c 301, §12]

" **§440G-11 Rate, filed with director; approval.** (a) The director shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the director may prescribe.

(b) To the extent permitted by federal law, the director shall regulate rates to ensure that they are fair both to the public and to the cable operator. [L 1970, c 112, pt of §1; am L 1987, c 301, §13]

" **§440G-11.5 Other duties of the director; broadband services.** (a) In conjunction with broadband services, the director shall:

- (1) Promote and encourage use of telework alternatives for public and private employees, including appropriate policy and legislative initiatives;
- (2) Advise and assist state agencies, and upon request of the counties, advise and assist the counties, in planning, developing, and administering programs, projects, plans, policies, and other activities to promote telecommuting by employees of state and county agencies;
- (3) Support the efforts of both public and private entities in Hawaii to enhance or facilitate the deployment of, and access to, competitively priced, advanced electronic communications services, including broadband and its products and services and internet access services of general application throughout Hawaii;
- (4) Make recommendations to establish affordable, accessible broadband services to unserved and underserved areas of Hawaii and monitor advancements in communications that will facilitate this goal;
- (5) Advocate for, and facilitate the development and deployment of, expanded broadband applications, programs, and services, including telework, telehealth, and e-learning, that will bolster the usage of and demand for broadband level telecommunications;
- (6) Serve as a broadband information and applications clearinghouse for the State and a coordination point for federal American Recovery and Reinvestment Act of 2009 broadband-related services and programs; and

(7) Promote, advocate, and facilitate the implementation of the findings and recommendations of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007.

[(b)] The director shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, on the department's efforts to use broadband and its products and services to develop and expand telework initiatives, including telework participation levels and trends of both private and public sector employees in Hawaii.

[(c)] The department of commerce and consumer affairs shall report annually to the legislature, no later than twenty days prior to the convening of each regular session, on the receipt and expenditure of federal moneys from the American Recovery and Reinvestment Act of 2009, and moneys from other federal appropriation measures or applicable federal acts, for the purposes of purchasing broadband facilities, services, or equipment or for entering into contracts for broadband-related projects by all state agencies for all state agencies approval.

[(d)] Pursuant to [section] 440G-12(d), the director may appoint and employ engineers, accountants, attorneys, and professional, clerical, stenographic, or other assistants, as required, with or without regard to chapter 76. [L 2010, c 199, §§2, 5; am L 2014, c 159, §6]

Note

The following notes supersede the notes at this section on page 127 of the main volume:

Telework promotion; broadband assistance advisory council; establishment; purpose. L 2010, c 199, §3; L 2011, c 151, §5; L 2016, c 23, §2.

Installation or development relating to broadband service or broadband technology infrastructure; exemption from certain permitting requirements (beginning January 1, 2012); use of utility poles to install new telecommunications cables, upgrade or replacement not required. L 2011, c 151, §2; L 2013, c 264, §3 (applicable to permit applications filed after December 31, 2013); L 2016, c 193.

Revision Note

Subsection (c) is codified to this section pursuant to §23G-15.

" **§440G-12 Other duties of director; suit to enforce chapter.** (a) The director has the power and jurisdiction to supervise and regulate every cable operator within this State so far as may be necessary to carry out the purposes of this chapter, and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

(b) The director may adopt, pursuant to chapter 91, rules necessary to carry out this chapter.

(c) The director or the director's designated representatives may from time to time visit the places of business and other premises and examine the records and facilities of all cable operators to ascertain if all laws, rules, cable franchise provisions, and orders of the director have been complied with, and shall have the power to examine all officers, agents, and employees of cable operators, and all other persons, under oath, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering this chapter.

(d) The director may appoint, without regard to chapter 76, an administrator and one or more attorneys for purposes of enforcing this chapter. The director shall define their powers and duties and fix their compensation. The director may also appoint professional, clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter subject to chapter 76.

(e) The director shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce this chapter or the rules and orders adopted thereunder, or to otherwise accomplish the purposes of this chapter.

(f) The director or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith. [L 1970, c 112, pt of §1; am L 1971, c 138, §1; gen ch 1985; am L 1987, c 301, §14; am L 1996, c 184, §1; am L 2000, c 253, §150; am L 2006, c 300, §15]

" **§440G-13 Cable advisory committee.** [*Repeal and reenactment on June 30, 2014, by L 2011, c 19, §4 deleted by L 2014, c 93, §4.*] (a) There is established the cable advisory committee. The committee shall consist of five members appointed by the governor as provided in section 26-34.

The committee shall advise:

- (1) The director, cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director, any cable operator, or any access organization; and
- (2) The director on any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefor, as provided in section 440G-8.3.

(b) The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §15; am L 2011, c 19, §2]

" **§440G-14 Reports.** Each cable operator shall file with the director reports of its financial, technical, and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the director and shall be kept on file open to the public. [L 1970, c 112, pt of §1; am L 1987, c 301, §16]

" **§440G-15 Annual fees.** (a) Each cable operator shall pay an annual fee to be determined by the director. The fees so collected under this section shall be deposited into the compliance resolution fund established under section 26-9(o).

(b) The director shall adjust the fees assessed under this section, as necessary from time to time, pursuant to rules adopted in accordance with chapter 91. [L 1987, c 301, §17; am L 1991, c 87, §1; am L 1993, c 280, §23; am L 1999, c 129, §17]

" **[§440G-16 Rules.]** The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. [L 1987, c 301, §20]

" **[§440G-17] Criminal and civil liability.** Nothing in this chapter shall be deemed to affect the criminal and civil liability of cable programmers, cable operators, or access organizations pursuant to the federal, state, or local laws regarding libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that no access organization shall incur any such liability arising from, based on, or related to any program not created by the access organization, which is broadcast on any channel obtained under section 440G-8, or under similar arrangements. [L 1991, c 294, §2]

Cross References

Cable television service fraud, see §§708-8200 and 708-8201.