

**CABLE ADVISORY COMMITTEE (CAC)  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII**

**MINUTES OF MEETING**

Date: September 17, 2012

Time: 2:00 p.m. – 3:55 p.m.

Place: Queen Lili'uokalani Conference Room  
Department of Commerce and Consumer Affairs  
335 Merchant Street  
Honolulu, Hawaii

**CAC MEMBERS** Present: CAC members Mahina Martin, Austin Vali, Beth Tokioka, and Gerald Silva.

**OTHERS:** Kealii Lopez, Director; Jo Ann Uchida Takeuchi, Deputy Director; Donn Yabusaki, CATV Administrator; Laureen Wong, Staff Attorney CATV; and Todd Ogasawara, CATV Staff.

**AGENDA:** The agenda for this meeting was filed with the Office of the Lieutenant Governor.

- I. CALL TO ORDER --The meeting was called to order at 2 p.m.
- II. INTRODUCTION OF NEW CATV STAFF MEMBER-- Todd Ogasawara, CATV Staff (Broadband)
- III. MINUTES OF APRIL 4, 2012 MEETING – There were no questions about the minutes, which were then accepted by the CAC.
- IV. UPDATE ON PENDING MATTERS
  - A. Decision & Order No. 346 Oahu Cable Franchise – Deputy Director's Final Order Regarding Arbitrator's Decision Filed on July 27, 2012 on Oceanic's Capital Fund Payments to 'Ōlelo:  
Director Lopez reported that Oceanic and 'Ōlelo participated in an arbitration regarding Oceanic's payment of capital funds to 'Ōlelo pursuant to D&O 346. Director Lopez noted that she had recused herself from the arbitration process because of her past employment with 'Ōlelo as its President and CEO. On July 27, 2012, Deputy Director Takeuchi issued a final decision adopting the Senior Hearings Officer's arbitration decision. Ms. Wong reported that TWE is to pay 'Ōlelo, capital fund payments of approximately \$1.5 million for 2012; \$800,000 for 2013, and \$500,000 for

2014, less estimated Hawaiian Telcom capital fund payments. Ms. Wong noted that the Arbitrator decided that some items were outside the scope of capital funding such as expenses for Internet streaming video, use of interest from capital reserve funds and investment income. Mr. Silva stated that the Arbitrator did a good job and that TWE had concerns which were answered in the Arbitrator's decision. He asked when Hawaiian Telcom (HT) would start paying access fees. Ms. Wong responded that HT is currently paying monthly access operating fees. Director Lopez asked for an overview of HT's capital and operating fees payments at the next CAC meeting.

- B. 'Ōlelo's Application for Designation as an Access Organization:  
Mr. Yabusaki acknowledged receiving 'Ōlelo's Application for Designation as a PEG access organization. He informed members that he had recused himself from the proceedings to avoid any perception of conflict of interest because he was previously employed by 'Ōlelo. Ms. Wong reported that a public hearing on 'Ōlelo's application was held on March 29, 2012 and that more than 100 written comments were received by DCCA. Almost every comment supported the designation of 'Ōlelo as the PEG Access Organization for Oahu. In its written testimony, Oceanic raised questions about 'Ōlelo's funding, lack of transparency, and accounting practices.

Mr. Silva noted that the subject of viewership had come up with respect to the PEG channels. He suggested that if viewership of PEG channels was a concern, then it should be discussed in the context of viewership for all cable channels. He also asked how viewership was measured. Was it by day part or some other type of measurement? He also noted that franchise fees are referred to as "public funds." This may be confusing because public funds are normally those that are appropriated by a legislative body and expended by the executive branch. It may be less confusing to simply refer to franchise fees as "franchise fees." He also suggested that 'Ōlelo determine whether the U.S. Federal government is interested in providing governmental access programming on 'Ōlelo's PEG access channels.

Director Lopez reported that staff had met with 'Ōlelo to discuss its application. Director Lopez indicated that there were still many things that needed to be worked out. She suggested that for the next meeting CAC members could tour 'Ōlelo's facilities.

- C. Oceanic Time Warner Cable's Renewal of East Hawai'i and West Hawai'i Cable Franchises – Extended to October 23, 2012:  
Mr. Yabusaki reported that there had been a delay in finalizing the franchise orders for the Big Island franchise renewal due the capital fund arbitration. Mr. Yabusaki and staff were continuing to meet with Oceanic

to work out the terms of the renewal. Mr. Yabusaki noted that the extension to October 23, 2012 was mutually agreed to by Oceanic and DCCA. Director Lopez indicated her concerns about extending the current franchise negotiations and asked about the selection of October 23, 2012 rather than the end of the year.

- D. TWE Digital Migration of Education Channels:  
Director Lopez provided an overview of the proposed move by Oceanic of two Education channels from analog to digital-only format and that Oceanic would be providing a digital converter box without cost to analog subscribers upon request. Director Lopez indicated that DCCA had not received any complaints from analog subscribers about not getting boxes. CAC member Martin asked for clarification about the box distribution process and whether subscribers could request more than one free digital set top box. Director Lopez stated that a subscriber could request a reasonable number of boxes, i.e., one or two boxes. She noted that it is not known how many cable boxes have been handed out by Oceanic. Director Lopez asked that Oceanic provide an update about its box distribution program at the next CAC meeting.
- E. Assignment/Transfer of Time Warner Entertainment Company LP's Hawaii Franchises to Oceanic Time Warner Cable LCC:  
Mr. Yabusaki provided a summary of TWE's internal reorganization which would result in the transfer of the Hawaii cable franchises to a new entity, Oceanic Time Warner Cable LLC, a subsidiary of Time Warner Cable. He noted that this is seen as a pro forma event, a name change, by the FCC. However, state law does not treat this situation the same, and DCCA has to treat this situation as if an entirely new owner is involved. As a result, CATV held public hearings in every franchise area of the State during the last week in August. DCCA has not received any testimony opposing the transfer. CATV Staff Attorney Wong is preparing a decision and order on the transfer.
- F. TWE's Petitions for Effective Competition for Oahu and the Big Island:  
Mr. Yabusaki provided an overview of the situation. He noted that TWE's petitions to the FCC would reduce or remove the DCCA's regulatory authority in some areas such as the basic service rate and where the cable company has to provide service. DCCA requested that the FCC deny TWE's petitions. The FCC had not yet made a decision on these petitions as of the September 17, 2012 CAC meeting.

V. New Business

A. Designation of PEG Access Organizations

1. Performance Audit of PEGs:  
Ms. Wong reported that Merina & Co., DCCA's financial consultant, completed three performance audits ('Ōlelo, Na Leo, and Hoike), and is still working on Akaku's audit. Mr. Silva asked how the auditor was selected. Mr. Yabusaki stated that DCCA selected the auditor through the State's procurement process. For these audits, DCCA is covering the costs. Pursuant to Act 19, DCCA is required to conduct financial and management audits of each designated PEG access organization.
2. PEG Supplemental Contracts to 12/31/2012 and payment of balance of 2012 fees:  
Director Lopez noted that the supplemental contract for each PEG access organization has been extended until the end of the year.
3. Applications by PEG Access Organizations:  
Director Lopez reported that DCCA is developing performance standards for PEG access services. The former RFP for PEG services (2010) included a broad scope of services, and DCCA is working with the PEG access organizations to fine tune the scope of services. Ms. Martin asked about the length of the PEG contracts and stated that the contracts should be longer than one year. Mr. Silva expressed that the PEG contract terms should be the same as the renewed franchise terms. Director Lopez indicated that because cable operators are required to invest a huge amount of capital for infrastructure, this justifies a longer time frame for a franchise. Director Lopez stated that the PEG access services and processes are unique for each PEG, and once contracts are in place, the renewal of each contract is not that difficult. Ms. Martin stated that if the PEG contracts are annual contracts, this would not help with the stability of the PEGs. Ms. Tokioka stated that the PEGs contract should be longer than one year, but should not be too long. Director Lopez indicated that there needs to be a balance of stability, periodic reviews and accountability for PEG contracts.

- B. PBS Hawaii Contracts – approval of sole source:  
Mr. Yabusaki noted that DCCA received approval from the State Procurement Office for the sole source solicitation of PBS Hawaii services. DCCA then renewed its contract with PBS Hawaii. Leslie Wilcox, PBS Hawaii CEO and President, gave a presentation on her organization. PBS Hawaii is the only licensee for programming by the national PBS and is

working to team up education and the media. She reported that PBS Hawaii's strategic plan calls for forming communities throughout the State. One example is Hiki No, a statewide student education network that is the largest student run news network in the nation. Ms. Martin complimented Ms. Wilcox on PBS Hawaii's leadership and on Hiki No for developing students' skills for digital storytelling. Director Lopez reported that PBS Hawaii receives a portion of the cable operators' franchise fees.

- C. KLEI TV filed a request to the FCC that TWE and Hawaiian Telcom carry its Kona broadcast station on their respective cable systems: Mr. Yabusaki presented an overview of this request by KLEI to the FCC. KLEI, a broadcast station in Kona, asked the FCC to require Oceanic (statewide) and Hawaiian Telcom (Oahu only) to carry its signal on their respective systems. Both cable operators filed petitions seeking to be excused from carrying KLEI. DCCA filed a comment with the FCC supporting KLEI's request for carriage. Mr. Vali asked why it is desirable for a Kona station to be broadcasted on Oahu. Mr. Yabusaki stated that DCCA wants to ensure as much diversity as possible, given to ongoing consolidation of media voices. DCCA also does not want to close the door on future applicants and is not judging KLEI's programming content. Mr. Vali did not agree that TWE had to carry KLEI statewide since KLEI has no presence on Oahu. Ms. Martin asked if a PEG will lose a channel if KLEI is granted carriage. Mr. Yabusaki said that would not happen. The period for comment to the FCC is closed and DCCA is awaiting a decision.
- D. Oceanic Time Warner Cable's Renewal of Maui and Lahaina Cable Franchises – Community Needs Assessment: Mr. Yabusaki reported that the CATV staff held public comment meetings at the end of August at Kaunakakai, Lahaina, and Wailuku. Mr. Yabusaki informed the CAC that the hearings were well-attended. Director Lopez noted that the timeframe to complete this renewal process is sometime in early to mid-2013. CAC member Martin noted that the needs of rural areas must be taken into consideration and that opportunities should be given to students in those areas.
- E. TWE's Proposed Move of PEG Access Channel 52: Ms. Wong reported that on October 18, 2012, TWE proposes to move analog PEG Access Channel 52 to another analog channel position close to the other PEG Access channels (i.e., either Channel 54 or 55). In December TWE will also be moving analog Channel 52 on Maui. TWE has informed Hoike, Na Leo and 'Ōlelo of the move. Ms. Martin suggested that TWE meet with Akaku as early as possible on this issue to avoid problems. Mr. Yabusaki noted that the FCC "viewability rule" that spells out the analog carriage of stations, sunsets on December 12, 2012. After this date, there is no obligation to have an analog tier. Director

Lopez suggested that Oceanic may be invited to the next CAC meeting to explain its plans to convert to full digital format in light of the sunset of the viewability rule.

VI. Public Comment

- A. Director Lopez acknowledged the receipt of written testimony from Jay April, President and CEO of Akaku.
- B. Suki Halevi, Director of Development at Akaku provided a history of PEG access and noted that the 1999 franchise agreement on Maui is about to expire. She provided a history and overview of Akaku as Maui's PEG. She stated that the heart of her request is to treat public access the same as other broadcast stations.
- C. Roy Amemiya, President and CEO of 'Ölelo, noted that funds are needed by 'Ölelo to replace aging equipment and that the amounts awarded through the capital fund arbitration were less than requested by 'Ölelo. He noted that 'Ölelo has not received viewership numbers from the cable operators. He highlighted that 'Ölelo produced 13 hours of live programming during the APEC conference. He noted that the analog channel change from 52 to 55 presents a branding problem. He said that the channel change date scheduled for October 18 was news to him. Ms. Martin asked how 'Ölelo was dealing with the budget deficits. Mr. Amemiya responded that 'Ölelo has been running at a loss for a number of years, and it has been cutting staff and other activities like other businesses attempting to reduce costs.
- D. Ben White noted his frustration with the KITV/Hearst contractual dispute with Oceanic and the resulting situation where KITV's programming was not available to viewers on Oceanic cable system for several days.

VII. Announcements – None

VIII. Adjournment --The meeting was adjourned at 3:55pm.

Taken and recorded by:



Todd Ogasawara

Date: