

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

MINUTES OF MEETING

Date: October 28, 2008  
Time: 10:00 a.m. -- 11:30 a.m.  
Place: Queen Liliuokalani Conference Room  
King Kalakaua Building, 1<sup>st</sup> Floor  
335 Merchant Street  
Honolulu, Hawaii 96813

CAC Members: Present: Clayton Yugawa and John Gibo  
Excused: Jenny Fujita, Dave DeLeon, and Keith Rollman

Others: Lawrence Reifurth, Director; Clyde Sonobe, CATV  
Administrator; Laureen Wong, Staff Attorney CATV, and  
Glen Chock, Program Specialist.

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 10:15 a.m.
- II. Minutes of the August 22, 2008 meeting – There were no questions about the minutes of last meeting, which were then accepted.
- III. Update on Pending Matters
  - A. House Concurrent Resolution 358 Task Force (TF) – Mr. Sonobe stated that HCR 358 was adopted by the 2008 Legislature. HCR 358 calls for a TF comprised of twelve members of the community (i.e., representatives from County governments, PEG access organizations, DCCA, CAC, University of Hawaii, Department of Education) to look at alternatives to the Procurement Code for PEG access services contracts, selection of PEG access board members and protection of 1<sup>st</sup> Amendment rights. Mr. Rollman is the CAC member on the TF. He had planned to attend today's meeting but was unexpectedly detained and unable to come. Consequently, Director Reifurth asked CATV staff to provide an update on the TF activities. Ms. Wong reported that since the last CAC meeting, the TF met every couple of weeks via video conferencing. At the October 22, 2008 TF meeting, after the presentation and discussion of proposed alternatives to Procurement Code submitted by different TF members, there was general consensus on the proposal drafted by Olelo and offered by Roy Amemiya. The proposal is patterned after the cable franchise

renewal process. Under this proposal, current access providers would be able to renew their designation without competition. Some of the pros cited by TF members were: open and transparent procedure with public hearings possible; within DCCA oversight and DCCA is familiar with franchise renewal process; easier to explain to the Legislature; process has worked over a number of years; and renewal terms of no less than 5 years or more than 20 years. At the last meeting of the TF, Jay April of Akaku suggested that DCCA use a rulemaking process similar to the cable franchise renewal rules in determining the designation of PEG access organizations provided that the process is public and interested persons can intervene. There was discussion on each neighbor island having a particular voice perhaps through CAC members. Since there were many questions, TF members wanted further details and clarification on Mr. Amemiya's alternative before taking a vote on the matter. There was discussion on the selection process for the different access organizations boards of directors. TF members suggested that when access organizations submit their applications for renewal, they state how their boards are selected and the public can then react to the procedures. Mr. Gibo asked if the ownership of PEG assets had been discussed with TF members and asked if the incumbent PEGs would be willing to go along with the RFP process if the asset issue was resolved. Mr. Yugawa was interested in seeing a more detailed TF proposal. Mr. Gibo asked to see a draft copy of the TF report. Director Reifurth suggested that CAC members contact Mr. Rollman and let him know their thoughts on the Task Force proposal. Mr. Yugawa asked what is best for the public in this situation and that competition for the access services contracts is important. Director Reifurth stated that under the TF proposal, the incumbent access operator comes in for a renewal without competition. Mr. Gibo and Mr. Yugawa expressed their support for competition.

1. Kealii Lopez of Olelo commented that benchmarks for the performance of access organizations could be developed and PEGs could be held accountable to these benchmarks. This would be the preferred approach for Olelo. Ms. Lopez stated that under the proposal before the Task Force, there would be only one access provider in each county and there would be no competition. The incumbent access organization would seek renewal. Olelo is working to fill out details of the proposal and have Task Force members provide comments. The proposal can then be forwarded to CAC members by TF member Rollman.
2. J Robertson of Hoike commented that TF members have expended significant effort on reviewing alternatives to the Code. The majority of the alternate proposals involve access organizations as sole source exemptions under the Code. He reported that TF wanted to complete the report by December 20, 2008.

- B. Oceanic Time Warner Oahu Franchise Renewal Process – Mr. Sonobe reported that the community needs meetings were completed, and the period to submit public comment was open until September 30, 2008. DCCA's consultant completed the financial review of the cable operator and was working on finalizing the draft report by the end of this year. The Oahu franchise expires at the end of 2009.
- C. Status of Proposed Amendments to Hawaii Administrative Rules regarding selection of access organizations – Mr. Sonobe stated that Maui Judge Joel August strongly urged DCCA comply with rulemaking specifying the method and criteria used to designate and select access organizations. Mr. Sonobe stated that since SPO determined that the PEG access services contracts must be awarded pursuant to the Code, DCCA included a reference to the Code in the proposed rule. Mr. Sonobe reported that public hearings were held on the following islands: Oahu, Maui, Molokai, and Kauai, and Big Island (Hilo and Kona). Director Reifurth stated that although DCCA was sensitive to the work of the TF, SPO had previously denied DCCA's request for further exemption because of the TF activities and conditioned the last exemption granted on DCCA going forward with the rulemaking activities. If the Legislature provides a different structure for access services contracts, then DCCA may have to change the proposed rule, but at this point, DCCA has no option but to go forward with rulemaking. Mr. Yugawa commented that the rulemaking process involved a lot of work, and Mr. Gibo commented that all the effort put into the rulemaking may end up as a waste of money.
- D. Hawaiian Telcom Services Company, Inc. (HTSC) Application for Cable Franchise (island of Oahu) – 21<sup>st</sup> extension of time to 12/31/08. Mr. Sonobe reported that HTSC's Application for a franchise remains open. DCCA continues discussions with HTSC and is sensitive to HTSC's needs. Mr. Gibo asked what is going to happen if HTSC asks for another extension of time at the end of the year. Mr. Sonobe stated that DCCA would consider the situation at that time, and if HTSC does not ask for another extension, then its application would be closed. Mr. Yugawa asked if DCCA was concerned about the length of time it has taken for HTSC to complete its application for a new franchise. Mr. Sonobe indicated that DCCA wants to encourage competition in the provision of video programming. Mr. Yugawa asked what the holdup was, and Mr. Sonobe stated that the delay was due to HTSC's internal situation.

#### IV. New Business

- A. DTV Transition for State of Hawaii – New transition date is January 15, 2009. Mr. Sonobe reported that the conversion data to digital programming for broadcast stations has been moved up to January 15, 2009. FCC has designated a team of 4 persons to provide local

assistance to the State in the transition, and they are working with the Lt. Governor's office and the Hawaii Association of Broadcasters. Mr. Sonobe stated that only persons viewing over-the-air TV broadcasts on an analog TV set through a rooftop antenna or "rabbit ears" antenna will be impacted by the digital transition. Since most residents have cable service, he did not anticipate a disruption to most television viewers.

V. Public Comment

- A. Kealii Lopez – reported the results of an informal survey initiated by Olelo sent to Alliance of Community Media (ACM) member listserve on the structure of PEGs and whether the access organization competes or bids for the contract to provide PEG services. She indicated that most of those participating in survey were associated with organizations incorporating P-E-G sectors and who did not compete for their contracts. Regarding the low attendance at the public hearings on DCCA's proposed rule, Ms. Lopez expressed that people are fatigued after 2 years of the process. She requested that DCCA hold off on decision making on the proposed rule until after the TF completes its report. Mr. Gibo requested a copy of the transcript for the hearing when Judge August strongly suggested that DCCA promulgate rules for the designation and selection of access organizations. Ms. Lopez stated that the Honolulu City Council passed a resolution that called for the City to no longer pay fees for government access services and, instead, those services would be provided without charge by the access organization. She asked that the CAC come up with a position on this question. Ms. Lopez offered to provide a copy of the video tape of the CAC meeting to Mr. Rollman for his review and information for a TF report.
- B. J Robertson asked that community television should be part of HTSC franchise and that there should be no channel slamming. If the County government requires Hoike to provide government access services without payment, then Hoike would require that the County purchase its own equipment. Hoike presently has a contract with the Mayor's office and broadcasts County Council meetings and Mayor's program. Each program has to have captions which are very costly.

VI. Announcements – none

VII. Adjournment – The meeting was adjourned at 11:40 a.m.

Taken and recorded by:



Dated: December 1, 2008