

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

MINUTES OF MEETING

Date: July 12, 2007

Time: 10:00 a.m. – 12:00 p.m.

Place: Queen Liliuokalani Conference Room
Department of Commerce and Consumer Affairs
Honolulu, Hawaii

CAC MEMBERS Present: CAC members Sam Aiona, Jenny Fujita, Keith Rollman and Dave DeLeon
Excused: Clayton Yugawa

OTHERS: Lawrence Reifurth, Director; Clyde Sonobe, CATV Administrator; Lauren Wong, Staff Attorney CATV; and Glen Chock, 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 10:01 a.m.
- II. Introduction of New DCCA Director – Lawrence M. Reifurth
- III. Minutes of January 10, 2007 Meeting --There were no questions about the minutes, which were then accepted.
- IV. Update on Pending Matters
 - A. RFP for PEG Access Services Contracts – RFI #2 issued on March 16, 2007; public comments submitted to SPO by April 13, 2007; DCCA & SPO revising draft RFP.

Mr. Sonobe stated that the DCCA and SPO were considering the public comments submitted, and SPO's goal is to issue the RFP sometime at the end of July 2007.
 - B. Hawaiian Telcom Services Company, Inc. Application for Cable Franchise (island of Oahu) – Extension Request granted to July 31, 2007.

Mr. Sonobe reported that HTSC's 9th extension request for additional time (until July 31, 2007) was granted by DCCA. Mr. Aiona asked how long more would it take for the application process and suggested HTSC should come back later when it was ready and re-submit its application. Mr. Sonobe stated that the DCCA was doing its best to accommodate HTSC, and it was up to HTSC as to whether it would withdraw its application. Mr. Sonobe indicated that there were

several outstanding issues such as customer service problems and other technical problems that needed to be addressed. DCCA would like to see a competitive offering for video programming and has allowed HTSC flexibility to proceed with its application. Mr. Aiona asked whether the DCCA could deny a request to extend time since the HTSC's application has been going on for months, and although competition generally was a good idea, whether HTSC's application was starting to waste too much of DCCA's time and resources. Mr. Sonobe indicated that at some point in time, HTSC could withdraw its application, or the DCCA could deny another request to extend.

- C. Olelo 6th Access Channel -- Olelo updated information previously submitted in November 17, 2006 report; TWE submitted comments.

Mr. Sonobe reported that Olelo was granted temporary use of the 6th Access Channel in D&O 320. Olelo was asked to submit further reports, which it did, and the use of a 6th Access Channel was extended to August 11, 2007. Oceanic Time Warner submitted comments which will be posted on the DCCA's webpage. The DCCA will be making a decision shortly regarding whether the 6th Access Channel should be made permanent or not. Mr. DeLeon requested that copies of Olelo's report and Oceanic's comments be provided to all CAC members and that he would be providing written comments on the reports.

V. New Business

- A. Franchise Fee Reviews for all Time Warner Franchise areas – Consultant to visit TWE in July 2007.

Mr. Sonobe reported that the DCCA's consultant will be conducting another franchise fee review of Oceanic franchise fees for Oahu and the neighbor island franchise fee areas. DCCA's consultant will be visiting Oceanic next week to review the calculation, collection and payment of franchise fees of Oceanic. The Department is committed to do these reviews every 2 years.

- B. PEG Programming Policies – Discussion on current practices.

Director Reifurth invited each PEG organization to discuss the "first-come, nondiscriminatory" access principle in general, how it operates in Hawaii and how it is implemented in other jurisdictions. DCCA has an administrative rule which requires a cable operator to maintain a noncommercial public access channel available on a "first-come, nondiscriminatory" basis. This rule was adopted prior to the PEGs being in existence and operating the public access channels. Director Reifurth questioned whether the rule as it now stands makes sense since the cable operator is the franchisee and not the PEG organizations and also whether the principle of nondiscriminatory access with regard to PEG programming makes sense and how it can make sense.

J Robertson stated that Hoike's practices are nondiscriminatory, and first-come, first-serve access is applied to use of Hoike's equipment and training facilities. Hoike considers variables as time sensitivity, length of a program and the

program schedule for that day. Hoike maintains equal treatment of the community and subject matter and is committed to air all programs, Hoike does have different levels of priority: 1) Hoike producers or Hawaii certified producers; 2) island resident; 3) material submitted within the state; and 4) material from global community of national interest. Mr. Robertson brought up that at Alliance for Community Media (ACM) meetings, concerns have been raised about some producers who attempt to dominate programming schedules and demand that their programs be shown on a first-come basis. Hoike has series and one shot programs, but the volume of requests is not great so Hoike is able to schedule air time usually in the order of when a tape is submitted. Nondiscriminatory access still very important to producers and Hoike does not prescreen programs. Hoike guarantees one showing, and 4 repeat times depending upon space on the channel. Repeat programming depends on a program's length, the need to fill in time slots and whether the program is time sensitive. Ms. Fujita asked how Hoike determined viewers' needs. Mr. Robertson expressed that Hoike has an intimate knowledge of the community and its producers. Hoike is up on current activities and community interests since it was easy to know what's on a small island. Director Reifurth asked for the number of hours of new local programming. Mr. Robertson volunteered to provide quarterly statistics on new local programming.

Jay April stated that when the PEGs were first organized, the principle of first-come, first-served was important, but the paradigm has changed. Two channels are dedicated to education, and Maui Community College and Maui DOE operate these channels. On Channel 52, the paradigm applied has been first-come, first-served, nondiscriminatory access. Akaku does not accept programming from anyone not a resident of Maui County although Maui residents can represent programming from others. If a program is time sensitive, it is expedited. Akaku uses block programming and groups similar types of programs together (as sports, arts and entertainment, and religious blocks). Programs are given 5 air dates over a 5 to 6 week period. Akaku does not preview nor censor any program. Channel 53 is the community, public affairs and government channel and covers the Council, Mayor, boards and commissions, and other public and civic affairs programming. Channel 54 shows programming on demand on this channel. If someone complains about a violation of commercial guidelines, the producer is given a chance to explain and remedy the situation.

Kealii Lopez stated that Olelo has received complaints about its program not following the first-come, nondiscriminatory access rule from just one person. It is a valid concern and Olelo believes that all programmers should be treated fairly. Priority is given to Oahu producers, those in-state, and then out-of-state producers. Olelo does not have a priority for programs created outside of its facility. Because of scarce prime time hours when there is the broadest audience, producers complain when they are not able to air the programs during prime time. Ms. Lopez indicated that programs in reality receive 2 airing in prime time plus repeat programming during non-prime time hours. There is no policy on repeat programming although a program's length plays a role in repeated showings. For example, for a half-hour show, it is easier to find time in the schedule as opposed to a longer program. Olelo does not exercise any editorial

control over programs. Olelo's block programming assumes that producers want people to watch their work. Olelo airs programming by categories as arts, sports, cultural, and inspirational.

Juergen Denecke reported that when a program is submitted to Na Leo, staff will talk with the producer as to when to show the program. Most producers believe that most viewers will watch access channels during prime time, but Mr. Denecke disagrees believing that most viewers will watch commercial stations during prime time hours. Na Leo has lots of time on its channels and is able to air programs on a first-come, first-served basis with the exception of time sensitive programming which can be shown first. Na Leo has 20 to 30 hours of new programming per week and airs all tapes submitted. Ms. Fujita suggested that Na Leo provide 2 weeks prior notice of its programming schedule on a channel scroll. Mr. Denecke informed the CAC that Na Leo was working on putting up its own website.

In response to Mr. Aiona's question on the airing of programs, Ms. Lopez stated that Olelo also airs all programs submitted so long as they meet technical requirements. Director Reifurth asked about the importance of prime time hours. Ms. Lopez explained that the prime time hours are very competitive for all stations because people are at home and tend to watch television then. Prime time is still the best bet since more cable boxes are tuned to cable stations. Mr. Robertson stated that if a program is professionally produced, people will watch it irrespective of the time shown. Mr. April expressed that Akaku provided an alternative form of television, encouraged diversity, and was entirely local. He did not have any hard figures on viewership.

Mr. Rollman stated that people were changing the way they watch television. Video on demand was becoming more popular and the actual time a program is aired may no longer matter as much as the predictability of being able to find a program. Ms. Lopez indicated that for now, TV viewership was important but that the next generation, video on demand would be important. Mr. Denecke emphasized that for neighbor island residents, it was important to have information on local and Hawaiian issues.

VI. Public Comment

- A. Kealii Lopez -- Olelo provided list of Olelo's minimum level of services for RFP. However, Olelo has been in deficit spending for 3 years. The RFP also will require additional services of the PEGs as audits, community assessments, reporting and marketing and promotion. Because of the cap on Olelo's access fees, Olelo ended up with a \$1.3 million deficit this year. Under the RFP, if the cable operator is required to make monthly payments instead of yearly payments, Olelo would stand to lose interest payments of \$300,000. These are clearly unintended consequences of the RFP, and Olelo is requesting the RFP contract requirements be adjusted to take into account these issues. Ms. Lopez expressed her concern over the state's "overarching" control of the PEGs which she found disconcerting. Ms. Lopez then brought up the 6th access analog channel which she believes is equivalent to 6-10 digital channels. She asked

what would happen when television broadcast goes digital – would Oceanic Time Warner have to maintain the analog channels? In an expanding market, viewership is harder to capture when there are more channels to watch. Ms. Lopez explained that Olelo airs programs multiple times like other cable channels to get people to watch. Unlike commercial cable channels, Olelo cannot advertise and must come up with other ways to promote programs. Since the 5th channel had been granted to Olelo in 1996, there was an increase in Olelo's programming of 76%.

- B. Jay April –The RFP process was flawed and broken and would weaken the autonomy of the PEGs and impose a greater administrative burden on them. He also expressed that the RFP would harm the PEG access constituency and electronic democracy. Mr. April stated that the PEG access organizations are sole source entities on each island. He stated that the access organizations had not seen the AG opinion and were still waiting for written decisions on the petitions Akaku filed before the Procurement Policy Board. He felt that the RFP process was a waste of time and money and was damaging to the State, audiences and even the agencies involved. Mr. April asked that the CAC take a step back and assess how to fashion a telecommunications future in Hawaii to benefit all of us.

Mr. DeLeon stated that he agreed with Mr. April and indicated that he also did not believe that the RFP process was appropriate here.

Ms. Fujita asked what happens if no one bids on an RFP. Director Reifurth stated that DCCA expected responses to the RFP. Mr. Sonobe stated that he would check with SPO on what happens and let CAC members know.

- VII. Announcements – Ron Boyer has been appointed the new Deputy Director for DCCA and he starts July 16, 2007.
- VIII. Adjournment --The meeting was adjourned at 11:35 a.m.

Taken and recorded by:

Laureen KK Wong

Dated: August 10, 2007