

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

MINUTES OF MEETING

Date: June 17, 2004
Time: 12:30 p.m.
Place: Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

Present:

Sam Aiona, Member
Jenny Fujita, Member
D. Mele Carroll, Member
Gerry Silva, Member
Mark Recktenwald, Director
Clyde Sonobe, Cable Television Administrator
Laureen Wong, Staff Attorney CATV
Glen Chock, CATV Staff
Garrett Kashimoto, DCCA

AGENDA:

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawaii Revised Statutes §92-7(b).

Call to Order:

The meeting was called to order at 12:32 p.m.

Welcome:

Mark Recktenwald welcomed CAC members and public in attendance. Director Recktenwald gave a brief overview and history of the CAC, Cable Television Division of the Department of Commerce and Consumer Affairs (CATV) and Plan for Public, Education and Government ("PEG") Access dated January 2004.

Introduction:

CAC members introduced themselves, and Clyde Sonobe introduced the CATV staff. Mr. Sonobe gave a brief overview of the CATV duties and responsibilities which include regulation of the basic service tier, Time Warner Entertainment (TWE), payments of franchise fees, designation of PEG access entities, and verification and approval of the cable operator's calculations to set the maximum permitted rate (MPR) pursuant to federal regulation. CATV also facilitates resolution of complaints between TWE and PEGs and provides information and education to the public. The DCCA supports the INET

which provides telecommunication and information services for state and county offices and the University of Hawaii.

MISSION OF THE
CAC:

Director Recktenwald stated the CAC was created by statute and that he anticipated consulting the CAC on policy and strategic issues regarding cable television as opposed to day-to-day matters. Director Recktenwald indicated that the CAC meetings were subject to the Sunshine Law, but that he hoped that they would be informal and encouraged the CAC members to provide dialog on agenda items.

For future meetings, Director Recktenwald suggested that although quarterly meetings were anticipated, initially he suggested meetings every other month. After the first couple of meetings on Oahu, the CAC meetings would rotate locations and take place on different neighbor islands. These meetings would include tours of the different PEGs facilities, briefings and/or presentations by the PEG access entities CEOs and also by TWE.

CAC member Gerry Silva expressed interest in hearing more about underserved areas and conducting site visits. CAC member Mele Carroll requested that after the initial CAC meeting on Maui, subsequent meetings (when it was Maui's turn) be held on Molokai and Lanai.

The August meeting will be held on Oahu and Olelo and TWE representatives will be invited to the meeting. CAC members attending the Alliance for Community Media conference in Tampa, Florida will brief the committee at the next meeting.

Current Cable &
PEG Issues:

A. 2004 Statewide PEG Plan

Director Recktenwald summarized the main provisions of the PEG Plan including the election of a PEG board member, compliance with the state's Sunshine Law and Uniform Information Practices Act, third party reviews of the PEGs, and optional county oversight of the PEGs. Based on the Plan, DCCA proposed legislation in the 2004 session to utilize fees paid to DCCA to provide increased funding to underserved areas and to provide increased access to communities. Director Recktenwald stated that it was envisioned that the CAC would play a major role in distributing these funds. However, the Legislature did not pass enabling

legislation allowing the Director to spend DCCA funds for that purpose. In an informal opinion, the Attorney General's office indicated that the Director was not able to utilize Department funds for that purpose absent authorizing legislation. The DCCA will consider other ways to address concerns about underserved areas. CAC member Silva was interested in any PEG plans for a possible decrease in access funding.

B. Election of a PEG board member

Mr. Sonobe provided an overview of the PEG board member election process being conducted by each of the PEG access entities. DCCA has sent out letters clarifying the eligibility of voters and candidates. Director Recktenwald indicated that the DCCA was considering the issue of whether persons under the age of 18 years should be eligible to vote or be a candidate for board election should be left up to each PEG.

C. Financial and operational review of all PEGs

Mr. Sonobe stated that the Department is in the process of finalizing the contract with the financial consultant who will be conducting a financial and operational review of all PEGs. The financial consultant who is a certified public accountant was selected through the state procurement process. He will review all the PEG access entities during the next fiscal year. Each PEG will be then periodically reviewed in subsequent years.

D. New Contracts for PEGs

The DCCA will be negotiating new contracts with the PEG access entities. The present contracts with the PEGs will be extended while negotiations continue. The negotiations will include provisions on enhanced reporting requirements and presentation of annual reports to the Director. Although the PEG organizations are not state agencies, the DCCA is requesting compliance with the Sunshine Law and will include this in the new contracts. The PEG contracts will no longer be automatically renewed and the reporting schedule was being adjusted. CAC member Fujita asked about how the reports were evaluated and whether there were

any criteria to analyze the data. Mr. Sonobe indicated that there were certain benchmarks used to measure PEG performance.

DCCA changed the timing of when the annual reports of the PEG organizations are to be submitted. In the past the reports were submitted after the new contracts were negotiated. Now, the reports will be submitted before the expiration of the contract, so that the Department can consider them while negotiating the new contracts.

E. Legislative Update

Director Recktenwald summarized the bills introduced in the past session allowing the DCCA to use funds from the DCCA's compliance resolution fund to enhance PEG service in underserved areas. These bills did not pass this session.

F. Financial Review of TWE

Mr. Sonobe indicated that the review of franchise fees calculations, collections and payment was completed for Oahu for the period 1995 through 2002. The review uncovered an over collection of approximately \$ 483,000 which was collected over time. Additionally, TWE made overpayments to Olelo and PBS, and these amounts were paid back to TWE. The Department is planning to refund surplus funds collected back to subscribers. Presently, this same type of review is being done for Time Warner's operations on the neighbor islands. Mr. Sonobe stated that the review of Time Warner focused on the franchise fee process and was not a full financial audit of the cable operator. The DCCA is open to further evaluation and financial review of Time Warner.

G. Franchise Extensions for Kauai, Kohala and Maui

Mr. Sonobe presented to the CAC an overview of the requirements for the upgrade of the systems and how it relates to the franchise terms and extensions. He reviewed the special situations of Kohala, Maui and Kauai. Director Recktenwald reviewed the process. The Department issued a proposed finding of fact for

each area and will shortly issue decisions and orders regarding the franchise extensions.

H. Capital Payment Schedules

Mr. Sonobe explained that capital payments were a separate source of payments for equipment and furniture that TWE made to PEGs and were not considered operating expenses. Subscribers were not assessed fees to cover the cable operator's capital payments. The cable operator presents its capital payment plans and payment schedules to the Department for review after negotiation with each PEG. TWE recently completed negotiations for new capital payment agreements and schedules with the PEGs except Akaku. CAC member Carroll asked what would happen if the negotiations were not successful. Mr. Sonobe responded that the Department would work with the parties.

PUBLIC COMMENTS

Sean McLaughlin stated that the oversight of Time Warner Cable was previously lacking and that the CAC should focus its attention on TWE rather than on the PEGs. He stated that the upcoming financial review of TWE should be broadened and that in the future the search for consultants should be expanded to include national experts.

Jeff Garland stated that most jurisdictions collect the full 5% for access fees. Mr. Garland stated that the number of PEG access channels should be 10% of all channels and not be limited to just 5 channels. He also expressed concern regarding Olelo's election plan to elect a board director and the lack of notice of the proposed plan which he believed violated the Sunshine Law. Mr. Garland expressed interest in reviewing and having input in the contract negotiations between DCCA and the different PEGs. Director Recktenwald indicated that the contracts were still in draft form and that the negotiations and contract preparation were an administrative/executive function not subject to public input. Mr. Garland suggested that after the PEGs present their annual report to the DCCA that the Department prepare a written report regarding the annual review. He suggested that the annual reports of each PEG be put online.

Cheryl Kaster stated her concern that the ASAC committee does not do what it was meant to do which is to improve communications between Olelo and the producers. Ms. Kaster also indicated that the PEG board election process was supposed to elect a producer to each PEG board. She also stated concerns that Olelo was becoming a production company as opposed to devoting resources towards encouraging others to produce programs. Ms. Kaster expressed further concerns that while the new reporting requirements were good, would DCCA know what to look for since it was not intimately involved in production or programming?

J. Robertson welcomed CAC members and invited them to visit the Hoike office on Kauai.

Kealii Lopez expressed a concern that there were other speakers whose opinions were based upon a lack of information or that their opinions were flawed. She hoped that CAC members would maintain a fair perspective when dealing with the issues. Ms. Lopez stated that the increased reporting requirements were good but would require more work for the PEGs. Last year 3000 hours of programming were created by clients as opposed to 50 hours created by Olelo. Ms. Lopez indicated that there were 2700 voters eligible to vote in the board election. Olelo spends a good deal of time on the concerns of 3-5 clients. She invited all to attend Olelo's Producers' Forum to be held on July 15, 2004 and to provide their input.

Wendy Arbeit expressed her concern that the public was too often left out of the process. She wanted the public to be included in the tour of Olelo. She encouraged the CAC to invite the public to participate and asked that people remember that it was public funds that allow Olelo to exist.

Adjournment

The meeting was adjourned at 2:32 p.m. The next meeting will be scheduled in early August 2004. DCCA will look into holding the meeting at Olelo's offices in Honolulu after a tour of Olelo's facilities.

Taken and Recorded by:

Laureen K.K. Wong

Laureen K.K. Wong

Dated: 7/15/04