

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

**MINUTES OF MEETING**

Date: January 19, 2006, Thursday  
Time: 10:30 a.m. – 12:30 p.m.  
Place: Queen Lili'uokalani Conference Room  
Department of Commerce & Consumer Affairs  
335 Merchant Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813

**CAC MEMBERS** Present: Gay Porter, Keith Rollman, Dave DeLeon  
Excused: Sam Aiona, Jenny Fujita

**OTHERS:** Mark Recktenwald, Director; Clyde Sonobe, CATV Administrator;  
Laureen Wong, Staff Attorney CATV; and Glen Chock, CATV Staff.

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

- I. CALL TO ORDER --The meeting was called to order at 10:45 a.m.
- II. MINUTES OF THE OCTOBER 13, 2005 MEETING -- Minutes of the October 13, 2005 meeting were duly posted, and there being no questions or comments were accepted.
- III. UPDATE ON PENDING MATTERS
  - A. Olelo 6<sup>th</sup> Channel – Order Regarding TWE's Motion for Reconsideration of D&O 320

Mr. Sonobe reported that D&O 326 confirmed the Director's previous order D&O 320. TWE is to provide a 6<sup>th</sup> analog access channel for Olelo's use for a one-year period. TWE has indicated that it will make available the 6<sup>th</sup> access channel for Olelo's use by February 9, 2006. After 9 months, Olelo will provide the Department with data on channel utilization and viewership. DCCA will then decide if the 6<sup>th</sup> access channel will become permanent.

Director Recktenwald stated that the initial order D&O 320 was dated June 8, 2005. After TWE submitted its Motion for Reconsideration, the Department allowed TWE and Olelo time to negotiate a resolution of their disputed issues. Mr. Sonobe summarized TWE's proposed alternative: a digital channel for Olelo's direct feed to TWE; 3 digital channels for video-on-demand programming, 200 hours of program storage, TWE services to convert Olelo's programming from analog to digital, free digital boxes to analog subscribers who request one, free transport of programming to TWE's server, and a statewide digital channel for Legislative programming during the session. Olelo considered TWE's offer but felt that an analog channel was more valuable. Director Recktenwald explained that not everyone received digital programming. Mr. Sonobe stated that about one-half of subscribers still receive only analog programming. Director Recktenwald stated that Olelo made the case that another analog channel was justified. After one year, DCCA would appreciate input by the CAC on the value of a 6<sup>th</sup> channel. He would welcome comments and thoughts of CAC members on this issue. Mr. Rollman stated that after 9 months, the CAC would be able to review the situation.

B. PEG Contracts – Public comment meetings regarding Request for Proposals (RFP) under the State Procurement Code

Mr. Sonobe reported that in August 2005, DCCA requested an opinion from the Office of the Attorney General as to whether the State Procurement Code applied to PEG contracts. In October 2005 the Office of the Attorney General informed the Department that the PEG access contracts were subject to the State Procurement Code. The DCCA met with SPO and the AG's Office as to how to proceed. SPO concurred that it was reasonable to extend the PEG access contracts to 6/30/06. The DCCA submitted a temporary Request for Exemption from Chapter 103D, HRS to the State Procurement Office (SPO) which was disapproved. SPO is presently reviewing the DCCA's Form 16 Report of Finding and Corrective Actions. The Department will hold public comment meetings in each county seeking public input on whether the Department should proceed with a RFP or seek an exemption from the competitive bid process from SPO. The different meeting dates and times were published in local newspapers in each county and copied to each PEG, TWE, and other interested parties. The newspaper announcements are also available as handouts at today's meeting.

Director Recktenwald explained that under the State Procurement law, the DCCA could seek an exemption for the PEG access contracts if competitive procurement is not practicable or not advantageous to the State. The DCCA could also proceed with an RFP and develop criteria for

bidder qualifications, expectations, and scope of services. This process is different than the present contract process. The DCCA would like to know about the public's satisfaction with the current process and the public's observation as to what requirements a RFP should contain if the DCCA decides to issue one. After the series of public meetings, the DCCA will have a CAC meeting in March to report back to the CAC members. The DCCA would like for CAC members to share their thoughts on the RFP process and PEG access services. In the end, whether an exemption is granted is up to the SPO. Director Recktenwald emphasized that the DCCA is committed to make this an inclusive process and is seeking public comment on PEG access services and whether the PEG access contracts should be bid by competitive means or should the DCCA seek an exemption.

Mr. DeLeon asked how the DCCA got started on the RFP issue. Director Recktenwald stated that during contract negotiations with the PEGs, the question of an RFP arose, but it was initially viewed as a voluntarily option that might be pursued depending upon the course of the negotiations with the PEGs. After much discussion, the question then arose as to whether competitive procurement was something that the DCCA had to do. The Department relies upon the advice and counsel of the Office of the Attorney General and came to the conclusion to seek a formal opinion from the Attorney General. The DCCA requested an opinion in August 2005 and received a response from the Attorney General's office in October 2005.

C. Akaku Board – Status of Mediation among Board members

Mr. Sonobe reported that mediation between the different factions of the Akaku Board is scheduled for the latter part of January. Jay April (a member of the Akaku Board) volunteered that the date of mediation was January 31, 2006. Mr. Sonobe stated that the parties agreed to the selection of a mediator and one of the issues in dispute is board governance. The DCCA is looking forward to the results of the mediation.

Mr. Sonobe stated that the Department has long encouraged the people of Maui County to decide PEG access issues for themselves. Director Recktenwald referred to the dispute between Akaku and the E-partners, Maui Community College (MCC) and Maui Department of Education (MDOE). Mr. Sonobe described an agreement between Akaku and the E-partners in April 2005 under which the E-partners were given a number of board seats and a portion of the access funding (25% plus 8% for the first 3 years). This contract was subsequently called into question.

Mr. Sonobe stated that the access operating fee payments to the PEGs is due on 1/31/06. The Department is considering how these fees should be paid on that date. Director Recktenwald explained that under existing D&Os, the PEGs receive one payment for access operating fees for the entire year from Time Warner in January. Referring back to the previous agenda item (III.B), Director Recktenwald noted that the PEG contracts have been extended for half of a year (until 6/30/06). There is much uncertainty regarding these contracts since there is a real possibility that the PEG access contracts would be placed out for competitive bid. The Department determined that in light of this situation, Time Warner should only provide six months of access operating payments by January 31<sup>st</sup>.

Mr. DeLeon raised concern as to what would happen if an agency counted on a whole year's payment. He suggested that the DCCA give notice to the PEGs as soon as possible.

Director Recktenwald expressed the Department's interest in comments and any problems which may arise. It is the DCCA's understanding that the PEGs have sufficient funds to weather this payment schedule. The Department did not want to front all the access operating fees now if the PEG contracts with the existing access organizations no longer exist after 6/30/06. He emphasized that the PEGs were on notice that the State Procurement Code applied to the PEG contracts.

Mr. DeLeon asked if the PEGs had been advised of the half-payment. Director Recktenwald indicated that the DCCA had not yet issued notices. The Department was still grappling with the situation on Maui, and funding for the E-partners still needed to be considered and addressed. Ms. Porter expressed that 1/31/06 was coming up and that the DCCA needed to notify the PEGs as soon as possible. Director Recktenwald stated that the Department had wanted Akaku and the E-partners to resolve their disputed issues themselves and accordingly had put off making a decision until now.

#### IV. New Matters

##### A. 2006 Legislative Session

Mr. Sonobe reported that there were no cable bills introduced by the Cable Television Division this session. The DCCA will monitor non-administration bills relating to cable television and respond where appropriate. CAC members will be kept advised.

B. PBS Hawaii – Presentation by Mike McCartney

Mr. McCartney presented a DVD on the history of PBS Hawaii, which is celebrating its 40<sup>th</sup> anniversary. An affiliate of the national Public Broadcasting Service, PBS HI is a private nonprofit corporation with a FCC broadcast license. When it first began as Hawaii Public Television, it was under DCCA as Hawaii Public Broadcasting Authority (HPBA), and later pursuant to Act 63, Session Laws 1999, it was transferred to a private non-profit status. PBS HI has 30 full time employee and also has part-time student help. PBS HI ranks #5 in viewership among broadcast stations in Hawaii and has more viewers than all cable channels. Local programs are shown every night at 7:30 p.m. The station is converting to digital on Oahu by April 2006 and by February 2009 for rest of state. PBS HI hopes to renegotiate a long term lease with the UH for its facilities, and the UH Board of Regents was meeting to discuss an extension of the lease. Mr. McCartney expressed the station's appreciation for the receipt of franchise fees, which make up approximately 33.7% of its annual income (approximately \$2.1 million). Contributions from the public and supporters total 35.2% (\$2.2 million); corporate grants total 8%, federal funds from PBS total 14%, 5% comes from production revenue and 3% from miscellaneous.

V. Public Comments

A. Jay April – handout, Timeline and DVD titled “Akaku Watch”

Mr. April stated that Akaku was in crisis. He stated that there had been a hostile takeover by an alliance with E-partners. In 2005 a legislative bill was introduced that would split PEG funding into thirds. He further stated that the issue of educational access had never been defined by the state, and there are different views on funding educational programming vs. educational access. He asked: Does educational access consist of the use of equipment by students and teachers, or is it the production of programs by MCC and MDOE? All funds expended by MCC/MDOE should be subject to an independent audit. Mr. April reported that the parties are attempting to resolve their dispute through mediation. He stated that the state allocation of franchise fees should all go to fund PEG access, especially underserved areas. The DVD has examples of what people are saying when they come to Akaku.

B. Kealii Lopez

Ms. Lopez stated that Olelo worked in good faith with TWE to attempt to find an alternative to a 6<sup>th</sup> analog channel. Ms. Lopez stated that Olelo

had not requested another channel in many years and delayed its request for a 6<sup>th</sup> channel by 2 years. She stated that TWE was generous in its offer of digital channel alternatives but in the end, Olelo was not able to overcome the challenges raised by TWE's offer. Ms. Lopez stated that only 50% of subscribers have digital service, and video-on-demand (VOD) is not available to all digital subscribers. There were additional problems with encoding and server storage. CAC needs to look at 6<sup>th</sup> analog channel after one year trial period.

Ms. Lopez brought up another matter – Olelo receiving only 6 months of PEG access operating fees. Ms. Lopez remarked that this was disconcerting to Olelo although it could absorb the impact of a 6 months payment. Ms. Lopez stated that this state may be viewed as a role model for some in that the PEGs were lucky to receive benefits and available resources and that they have earmarked 3% of gross revenues. In many communities, the franchise fees go into general funds and local governments then fund access centers but at lower levels. Ms. Lopez stated that some people worry that this may be where PEGs may be headed in this state.

C. DeGray Vanderbilt -- Handout

Mr. Vanderbilt stated his concern that there were no public comment meetings on the RFP and PEG contracts scheduled for Molokai. He asked that DCCA go over to Molokai where PEG access interest is very high. He was concerned about the sustainability of Akaku and expressed his hope that mediation would work. Mr. Vanderbilt stated that the agreement between Akaku and E-partners was not discussed with the Board, only with leadership. He disputed that there was a valid enforceable agreement with the E-partners. He stated that if there was mediation with the E-partners, then if Education was looking at funds and if there was accountability, then he felt that an agreement could be reached.

D. Sean McLaughlin

Mr. McLaughlin stated that the CAC should consider uncensored and unedited taping of meetings as opposed to written minutes. He stated his general concerns regarding franchise fee amounts, accountability by PBS HI; and discriminatory programming. Mr. McLaughlin stated that the FCC was having rulemaking on competitive entrants to cable operators. He asked if cable system carried emergency alerts (EAS) from the counties. He raised this before at December 2004 CAC meeting.

Director Recktenwald clarified that a question about EAS arose on Maui County. TWE confirmed that it was able to carry a crawl across the screen. Maui County could take this offer up but has not done so.

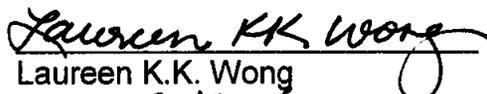
Mr. McLaughlin stated that there were opaque communications between cable operator and DCCA. Mr. McLaughlin also stated that HENC and PBS HI receive more money than some PEG access organizations although both have discriminatory programming. Director Recktenwald stated that HENC previously gave a presentation to CAC and objected to Mr. McLaughlin's claim of non-transparency. Director Recktenwald stated that the HENC contract was reached between Olelo and HENC and incorporated into a D&O; it was not initiated by DCCA. Mr. McLaughlin stated that DCCA should look at TWE and not spend so much time on the PEGs.

Director Recktenwald stated that at PEG Plan public comment meetings, Mr. McLaughlin had asked for the CAC to be re-established, and DCCA did so. Mr. McLaughlin asked if a CAC meeting could be held on Molokai. Director Recktenwald stated that because the RFP public comment meetings were on a tight schedule, the next CAC meeting would be in March. DCCA would consider holding a CAC meeting on Molokai in the future.

VI. Announcements -- None

VII. Adjournment --The meeting was adjourned at 12:30 p.m.

Taken and recorded by:

  
Laureen K.K. Wong  
Dated: 2-17-06