

September 2, 2011

**DCCA’S GUIDELINES TO DESIGNATE PEG ACCESS ORGANIZATIONS
PURSUANT TO ACT 19 (SLH 2011)**

In April 2011, the Legislature passed Act 19 (SLH 2011) (“**Act 19**”) and authorized the Department of Commerce and Consumer Affairs (“**DCCA**”) to designate public, educational, and governmental (“**PEG**”) access organizations to oversee the development, operation, supervision, management, production, and broadcasting of programs of PEG access facilities and equipment; provided that such designation is exempt from the State’s Procurement Code (“**Code**”) in HRS chapter 103D. Act 19 became effective on July 1, 2011 and will be repealed on June 30, 2014.

The following Guidelines to Designate PEG Access Organizations (“**Guidelines**”) have been established to implement the new requirements of Act 19.

PEG Access Services

DCCA seeks to negotiate PEG access services contracts with PEG access providers to, at a minimum, provide the following in the City and County of Honolulu, Hawaii County, Kauai County, and Maui County:

- Oversee and assist in the development, operation, supervision, management, production, and broadcasting/cablecasting of programs on the PEG access channels provided by cable operators;
- Provide PEG access services to the public, educational institutions, and governmental entities;
- Acquire, operate, and maintain PEG access facilities and equipment;
- Maintain accurate records of the PEG access services provided and use of the funds provided by cable operators; and
- Provide reports, financial statements, and other information requested by DCCA (a designated PEG access organization is subject to annual management and financial audits).

Compensation

The current PEG access organizations are paid three per cent (3%) of a cable operator(s)’ gross revenue from a franchise area as Access Operating

Fees (“**AOFs**”); except that the AOFs fees for the Oahu PEG access organization is currently capped via a formula. The PEG access organizations also currently receive annual capital contributions from cable operators which is approximately \$3 per subscriber in each franchise area or at a pre-determined amount. Final compensation is subject to negotiation.

If a service is not required under these Guidelines or the resulting Contract, a designated PEG access organization may assess a reasonable charge to the public, educational institutions, or governmental entities requesting or using such a service.

Filing an Application

A written application for designation shall, at a minimum, contain the following information:

- Proof that the applicant is a nonprofit organization;
- Description of the organizational structure;
- Description of the specific PEG access services the applicant is proposing to provide to the public, educational institutions, and governmental entities;
- Any additional services, if any, the organization proposes to provide the State and public;
- The organization’s short-term and long-term plans for PEG access services in a designated franchise area;
- The financial capability of the organization;
- The management, technical and operational ability and experience of the organization, and its existing or proposed staff, to provide the PEG access services;
- The organization’s prior experience, if any, in providing PEG access services, and/or any other broadcast or cablecast and telecommunications experience;
- The amount of funding required by the organization to provide the PEG access services;
- The ability of the organization to provide reports, audits, and other information to the Director;
- Whether the organization agrees to expand the marketplace of ideas, and is committed to allowing members of the public to express their First Amendment free speech rights;
- Support for educational entities as currently provided to Hawai‘i Educational Network Consortium (“**HENC**”) on Oahu and Maui Community College (“**MCC**”) and the Department of Education – Maui District (“**MDOE**”), collectively referred to as Maui Educational Network Consortium (“**MENC**”);

- The organization's prior dealings and relationships with the State, if any; and
- At least three (3) references that DCCA may contact.

Ownership of PEG Access Facilities and Equipment

An applicant shall agree to transfer to DCCA or its designee all PEG access facilities and equipment purchased with the AOFs and/or capital contributions during the term of the resulting Contract, and all unspent AOFs and capital contributions provided during the term of the resulting Contract, upon termination of the Contract.

The incumbent PEG access organization shall specify its position on the ownership issue of the PEG access facilities and equipment purchased with the AOFs and/or capital contributions prior to the resulting Contract, and all unspent AOFs and capital contributions provided prior to the resulting Contract (i.e., specify what happens to these assets and unspent funds if its current PEG access services contract is terminated); and how it intends to resolve this PEG assets ownership issue with DCCA.

Public Hearing

Upon receipt of a completed application and acceptance for filing, DCCA shall hold a public hearing on each island within a local franchise area to afford the public the opportunity to submit oral or written input and comments on the application and/or applicant, and allows interested parties to intervene.

Upon a timely request, and at the discretion of DCCA, any interested person may be permitted to intervene in the public hearing, if that person has a substantial interest in the outcome of the designation of the applicant as a PEG access organization; provided that no intervention shall be permitted if the intervention unduly delays the public hearing or has been filed to harass, hinder, or prejudice the rights of an applicant as determined solely by DCCA. A person that is permitted to intervene shall only be allowed to intervene during the public hearing. The permitted intervening party shall be allowed to submit written questions about an application to the applicant prior to the public hearing, and reasonably request supporting and clarifying documentation on an application from the applicant.

Cable Advisory Committee

Prior to designating a PEG access organization, the Director shall submit the completed application(s) and comments received at the public hearing or elsewhere to members of the Cable Advisory Committee ("**CAC**") for advice.

Designation by DCCA

After receiving the CAC's advice on any application, the Director shall determine whether to designate a PEG access organization. In making this determination, the Director shall consider the factors or criteria in section 1 of Act 19 and HAR section 16-131-70(c).

The Director shall ensure that the terms and conditions required for the operation of a designated PEG access organization are fair to the public, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable access in the franchise service area. In this regard, the Director shall consider the size and particular circumstance of the franchise service area, public input received during the designation process, and the resources available to compensate the PEG access organization.

Subsequent Contract

Upon selection by the Director, the applicant shall be required to enter into a contract with DCCA for the provision of PEG access services. The term of the initial contract shall be five (5) years with the option to extend additional terms subject to renewal proceedings.

Modification of Guidelines

The Director may modify or change these Guidelines at any time.