

NEIL ABERCROMBIE
GOVERNOR

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March 7, 2012

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Dear Messrs. Kang and Amemiya:

Re: Time Warner Entertainment Company, L.P.'s Request for Intervention in DCCA's Public Hearing on Ōlelo's Application for Designation as a PEG Access Organization

The Department of Commerce and Consumer Affairs ("DCCA") received Time Warner Entertainment Company, L.P.'s ("TWE") March 1, 2012 letter requesting that DCCA order 'Ōlelo Community Media's ("Ōlelo") to produce certain information by March 12, 2012. According to its letter, TWE, through its Hawaii Division, Oceanic Time Warner Cable ("Oceanic"), represented that: (1) 'Ōlelo's February 3, 2012 responses ("Ōlelo's response") to Oceanic's January 27, 2012 requests for information and production of documents ("Oceanic's Information Request") are incomplete and deficient; and (2) 'Ōlelo refused to provide basic information in response to Oceanic's requests for production of documents that are highly relevant and material to the criteria that must be applied in evaluating 'Ōlelo's October 25, 2011 Application to Provide Public Access Services ("Application").

On March 8, 2012, 'Ōlelo submitted a response to Oceanic's March 1, 2012 letter. 'Ōlelo argued that Oceanic misunderstood 'Ōlelo's earlier responses or incorrectly portrayed 'Ōlelo's interest in maintaining certain documents as confidential, as lacking in transparency.

After review and consideration of the submissions by Oceanic and 'Ōlelo on this matter, the DCCA determines that some of the information and documents requested by Oceanic may be relevant to DCCA (and Oceanic and the public) in reviewing 'Ōlelo's finances, assets, and operations in the PEG designation process.

Accordingly, pursuant to HRS section 440G-8.3(b) and DCCA's September 2, 2011 "Guidelines to Designate PEG Access Organizations Pursuant to Act 19 (SLH 2011)", DCCA addresses the requests for additional information and documents in Oceanic's March 1, 2012 letter as follows:

1. Information regarding 'Ölelo's tenants (Request for Information Nos. 13, 14, 15, and 16) -

DCCA believes that the requested information may be relevant because it pertains to Olelo's use of the funds provided by Oceanic to Olelo. In these information requests, it is alleged that Olelo may be using some of these funds for the benefit of its tenants in Olelo's building as opposed to purely PEG purposes. Because the requested information may demonstrate how Olelo uses its funds for PEG versus non-PEG purposes, DCCA orders Olelo to provide the information identified in Request for Information Nos. 13, 14, 15, and 16 to DCCA and Oceanic.

2. Information and documents relating to arbitration proceeding involving 'Ölelo regarding 'Ölelo's PEG capital funding requests for 2012 to 2014 (Request for Information Nos. 18, 19 and 20; Request for Documents No. 2, 4)

DCCA is not a party to the arbitration proceeding and is not aware of the evidence and documents Oceanic and Olelo have submitted during the arbitration. In addition, DCCA does not know which types of information were discoverable and conversely, subject to confidentiality. Because the discovery phase has ended, the arbitration hearing has been concluded, and the parties are awaiting the arbitrator's decision, DCCA declines to address issues that may relate to and/or intrude upon the arbitration process.

3. Documents relating to Olelo's budgets and finances (Request for Documents Nos. 3, 4, 5, 6, 8, and 10)

'Ölelo claims that these budgets and/or transaction registers are confidential due to their proprietary, and/or competitively sensitive nature; however, Olelo does not sufficiently justify why this information is confidential, proprietary, or competitively sensitive. As Oceanic notes there are no other "competitors" to 'Ölelo for designation as a PEG access organization on Oahu. 'Ölelo has not demonstrated how the requested budget information will cause competitive harm. DCCA agrees that 'Ölelo's detailed operating budgets and budgets to actual results are relevant to 'Ölelo's past spending on services and how it intends to manage operating funds in the future if designated as an Oahu PEG access organization. Thus, DCCA orders Olelo to provide the information identified in Request for Documents Nos. 3, 4, 5, 6, and 8 to DCCA and Oceanic.

Brian Kang, Esq.
Terry E. Thomason, Esq.
March 8, 2012
Page 3

With respect to Request for Documents No. 8, (all purchasing transaction registers or similar documents describing all actual operating and capital expenditures from 2005 to the present), DCCA believes that this request may involve potentially thousands of entries and would be overly burdensome for 'Ölelo to respond to.

With respect to Request for Documents No. 10 (all documents from 2005 to the present that relate or refer to any plans or efforts by Ölelo to raise funds from sources other than Oceanic or the State of Hawaii), DCCA believes that the request information may be relevant because in a 2011 'Ölelo audit, auditors Merina & Co. ("Merina"), determined that 'Ölelo's use of its resources to pay for services had exceeded the available operating funds and that this practice could not continue for much longer. Merina recommended that either 'Ölelo's spending had to be brought in line with its available resources, or its funding had to be increased. If 'Ölelo's funding by the cable operators is capped and not increased, then 'Ölelo's plans or efforts to raise outside funds are relevant if it is going to maintain the services described in its Application. Accordingly, DCCA orders Ölelo to provide the information identified in Request for Documents No. 10 to DCCA and Oceanic.

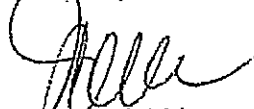
4. Documents relating to viewership of Ölelo's channels from 2005 to 2010 (Request for Documents No. 9)

'Ölelo claims that its records are incomplete and may be inaccurate because Oceanic has not provided it with viewership information on a consistent basis. Nevertheless, despite the possible incomplete nature of these records, believes that the requested information pertains to the usage of Ölelo's PEG services by the public. Thus, DCCA orders 'Ölelo to provide the information identified in Request for Documents No. 9 to DCCA and Oceanic.

As you know, the public hearing on 'Ölelo's Application is scheduled for March 29, 2012, at 6:00 p.m., at Washington Middle School. To ensure that DCCA, Oceanic, and the public have sufficient time to review the information and documents above, DCCA orders Ölelo to provide the information and documents above by March 14, 2012.

If you have any questions on the above, please do not hesitate to contact Lauren Wong, CATV Staff Attorney at (808) 586-2620.

Sincerely,



JoAnn Uchida
Acting Deputy Director

c: Donn Yabusaki, CATV
Department of the Attorney General