

Department of Commerce and Consumer Affairs  
State of Hawaii

**HCR 358 TASK FORCE MEETING**

Date: Wednesday, October 22, 2008  
Time: 8:00 a.m. – 10:30 a.m.  
Place: The following State of Hawaii Video Conference Centers:

Big Island:  
Hilo State Office Building  
75 Aupuni Street, Basement  
Hilo, HI 96720

Kauai:  
Lihue State Office Building  
3060 Eiwa Street, Basement  
Lihue, HI 96766

Maui:  
Wailuku Judiciary Building  
2145 Main Street, Room 120  
Wailuku, HI 96793

Oahu:  
Kalanimoku Building  
1151 Punchbowl Street, Room B10  
Honolulu, HI 96813

Members of the public may attend the meeting at any of the specified above locations and for their convenience are asked to take note of the meeting chronology set forth in the Agenda. No food or drinks (including water) are allowed in the video conference centers.

**AGENDA**

1. Call to Order (Chair)
2. Approve Agenda (All)
3. Accept Minutes from October 9, 2008 Meeting (All)
4. Public Testimony (Public)
5. Old Business (All)
6. Presentation, Discussion, and Voting re Alternatives to Procurement Code (All)
7. Selection Process of the Board of Directors of PEG Access Organizations (All)
8. Discussion of First Amendment Rights of PEG Access Organizations (All)
9. The Report to the Legislature (All)
10. New Business (All)
11. Preparation for Next Meeting (All)
  - a. **Date – November 5, 2008, 8 a.m. – 11:30 a.m.**
  - b. Agenda
  - c. Approve Agenda
12. Adjournment

*Depending upon time considerations, each speaker may be limited to a specific time for public comment. Written comments may be emailed to [cabletv@dcca.hawaii.gov](mailto:cabletv@dcca.hawaii.gov) or mailed to DCCA-CATV, P.O. Box 541, Honolulu, HI 96806, Attn: HCR 358 Task Force or faxed to 808-586-2625. Persons with special needs for this meeting may call CATV at (808) 586-2620 at least seven (7) days prior to the meeting to discuss accommodation arrangements.*

**HCR 358 TASK FORCE**  
**FINAL ACCEPTED MINUTES OF MEETING**

Date: October 22, 2008  
Time: 8:00 a.m.  
Place: The following State of Hawaii Video Conference Centers:

Big Island:  
Hilo State Office Building  
75 Aupuni Street, Basement  
Hilo, HI 96720

Kauai:  
Lihue State Office Building  
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Oahu:  
Kalanimoku Building  
1151 Punchbowl Street, Room B10  
Honolulu, HI 96813

The Agenda for this meeting was filed with the Office of the Lieutenant Governor.

- I. Call to Order (Chair) (Meeting Rules)
  - A. Roll
    - i. Present
      1. Eric Knutzen
      2. Jay April
      3. Roy Amemiya
      4. Gilbert Benevides
      5. Shelley Pellegrino
      6. Gregg Hirata
      7. Gerald Tekase
      8. David Lassner
      9. MaBel Fujiuchi
    - ii. Excused
      1. Clyde Sonobe
      2. Geri Ann Hong
    - iii. Absent
      1. Keith Rollman
  - B. Approve Agenda
    1. Approved as transmitted
- II. Accept Minutes from October 9, 2008 Meeting (Task Force)
  - A. Accepted (Unanimous)
- III. Public Testimony (Public)
  - A. Rules
  - B. Rep. Abercrombie (read by Keali'i Lopez) **See attached written testimony**
  - C. Lance Collins
    - i. Look at how DCCA collects PEG fees; currently DCCA re-defines definition of revenue to exclude sources of revenue which makes PEG funding base much smaller; collects 5 % and gives PEG only 3 %. Problem is that instead of getting all, PEGs only get a small portion. Others who get money end up working against each other.

There would be more funds available for PEGs if DCCA would not exclude sources of revenue. Member April question – what does the statute say about separating funds by PEG? Believes Rep. Abercrombie hits it on the head, statewide and separating PEG is not correct. Believes that if cable company was required to follow law and pay and provide facilities then there would be enough money.

D. Keali'i Lopez

- i. Encourages review of alternatives and consider getting a recommendation to continue to push for exemption. Consider, if there is no other alternative than current Procurement Code as it relates to exemption. Believes that legislation that exempts PEG access contracts from the Procurement Code is best; if Chief Procurement Officer does not exempt then legislature can. Begin process within the Code then it is exempted. Member April suggests: The Task Force determines that based on testimony received and its analysis of the regulatory and legislative record it is the recommendation of the Task Force that the PEGS not be subject to the Procurement Code. The Task Force recommendation that if it is held that PEGS are found by law to be subject of the Procurement Code that they be exempt form Procurement Code as they are not advantageous to the State and/or they are sole source within each County. Per Chair: To be considered later in the discussion.

IV. Old Business (Task Force)

- A. Member April – **See written statement of Member April noting his thoughts.**
- B. Member Lassner – Does not find Member April's statement helpful; opposes a motion on the subject; suggests that the Task Force focus on the work of the Task Force.
- C. Chair – Not a motion, just Member April's testimony

V. Presentation, Discussion, and Voting re Alternatives to Procurement Code (Task Force)

- A. Alternatives to Procurement (see attached written synopsis of each Alternative)
  - i. Board of Convener and Public Hearing Process with periodic DCCA oversight (Member April)
    1. Typical throughout the Country; usually in place when PEG established
    2. Believes that Cable Franchise Renewal Process as suggested by Member Amemiya is the best fit for Hawaii
  - ii. Pattern after Cable Franchise Renewal Process (Member Amemiya)
    1. Member April believes that this fits all of the criteria, is open and transparent and provides for DCCA oversight.
    2. Familiar process and works; do not want to re-invent the process, can be included in rules, easier to explain to Legislature

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3. Term – Suggestions - Seven (7) year term; Member April - 15 years with a report card periodic review; Chair Knutzen - 20 years with scrutiny every five (5) years; coterminous with the Cable TV franchise (problem cited – both are new therefore a deterioration in quality therefore better not to be concurrent); Member Amemiya – Not less than 5 years or more than 20 years so DCCA can have some flexibility and public testimony can be taken; Member Lassner cites distinctions between grant, renewal, and code processes and believes that the franchise renewal process is like a RFP; Chair Knutzen – indicates that he sees other issues.
4. Competition – Chair asks whether there would be competition or not. Not intended, discussions with current providers. Chair asks, what happens if there is non-performance by a PEG? Member April – can revoke access like you can with a franchise operator, public has input. Lassner agrees that there would be consequences, state contracts are reviewed annually.
5. Member April – does not see as a contract rather like a permit or agreement; Member Lassner sees them as contracts.
6. Suggestions for additions
  - a. Term
    - i. Suggestions
      1. Term >5 years <20 years
      2. 20 years, coterminous with franchise
        - a. Problem noted – if franchise is out, PEG not able to take advantage of franchise rules
    - b. Review period (short term check up) including fines which includes public input
    - c. Details to be adopted and refined
    - d. Agreement between PEG Access organization and whom?
      - i. Member April – between PEG and cable operator
      - ii. Member Lassner – big departure for Hawaii
7. Pros and Cons noted by members
  - a. Pros
    - i. Open and transparent with public hearings possible
    - ii. Within DCCA oversight
    - iii. Process has worked over a number of years
    - iv. Easier to explain to the Legislature
    - v. DCCA is familiar with the process
    - vi. Renewal terms of no less than 5 or more than 20 years

- iii. Framework "Granting" Process (Member Benevides)
  - 1. Do not know yet if Procurement applies or not; take into consideration that 103(D) applies; if it does, can be exempted through the granting process
  - 2. Believes this is one way to untangle this situation and give the Legislature an option
  - 3. Member Fujiuchi asks how granting process differs from the Code? She sees it as a process within the Code so that it is not really an alternative; Member Benevides – differs from Code as it is within the law as you use a process under 103(D)
  - 4. Member Amemiya asks if all would fill out a grant application for DCCA review? Member Benevides says that not sure if DCCA could use this to disburse cable access funds. Sees this as a Grant where recipient is called out therefore this is a direct award. Also sees the possibility of competition as the request for applications is posted so others could also put in an application for funding. Member Lassner cites HRS 42(F) and does not believe that the award of State Funds works in this process; believes that Task Force should identify a process that it thinks will work; also Legislature did not specifically exempt PEG.
  - 5. Pros and Cons noted by members
    - a. Pros
      - i. Starts with Code then moves away
      - ii. Even if AG's opinion holds subject to 103D, lets you take it outside the Code as a grant.
      - iii. Could permit more transparency
      - iv. Stimulates competition
    - b. Cons
      - i. Once grant exhausted, might need to start the process over again
      - ii. Stimulates competition
      - iii. Creates another bureaucracy
- iv. Structural Review (Member Lassner)
  - 1. Believes that there are other models, does not see much support for the option with the Task Force. Indicates that the County is currently requesting funds.
- v. Use DCCA Rules (Member Hong)
  - 1. Task Force does not view this as an "alternative".
- vi. Motion
  - 1. Member April proposes a motion - Task Force recommends that the DCCA use a rulemaking process similar to cable franchise renewal in determining designation of PEG access organizations provided that the process is public and interested parties can intervene. (providing a particular voice on each of the Islands perhaps through the Cable Advisory

Committee (County appoints representatives with one at large) per Keali'i Lopez).

- a. Question – what is entailed in intervention? Lance Collins – allows interested parties the opportunity to have their thoughts considered; decision maker gets a fuller record to make decision; allows somebody an opportunity to distinguish themselves from the general public who is actually part of the process (e.g. get notice). Chair Knutzen – believes that localism is important to consider so that all can be heard.
  - b. Member Lassner, Member Hirata – think we should decide later; Chair Knutzen raises need to write the Report.
  - c. Member April indicates his willingness to table the Motion
  - d. Member Fujiuchi – willing to vote as supports the Motion
2. Vote – 6 no, 2 yes
3. Next –
- a. Member Amemiya to prepare draft and transmit to Task Force including asking DCCA for legal consideration of the concept and Ch 440G (cable franchise statute) for comparison purposes (**see attached**)

VI. Selection Process of the Board of Directors of PEG access organizations (Task Force) (Chair to request a description (e.g. Bylaws, etc.) of the PEG Board Selection Process undertaken by each PEG organization for discussion at the October 22, 2008 Meeting)

- A. 'Olelo - See Attached
  - i. Current By-laws – 15 members, 3 Oceanic, 1 elected, 11 Self Appointed; DCCA does not appoint directors to Board
  - ii. Pre-RFP – DCCA appoints 5 Board members, one (1) elected
  - iii. Differs – The Board Appointment Process is part of the Franchise Agreement
- B. Akaku – See Attached
- C. Kauai – Member Fujiuchi (not official report) one cable appointee, other five come from nominations; meet elements of PEG; invite organization and they invite who they send to you.
- D. Who should have control over who sits on Board?
  - i. Member April – combination of elected and self appointed; caution re self dealing, certified producers elect their representatives, majority are self nominated
  - ii. Chair – Majority elected or appointed? Not clear who elects.
    1. Suggests:
      - a. Up to PEGs?

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2. Application of Renewal – tells what is done or proposed and public can react.

- VII. Discussion of First Amendment Rights of PEG Access Organizations (Task Force)
- VIII. The Report to the Legislature
- IX. New Business
- X. Preparation for Next Meeting (Task Force)
  - Date - November 5, 2008, **8 am – 11:30 am**
  - Agenda
    - Call to Order (Chair)
    - Approve Agenda (All)
    - Accept Minutes of October 22, 2008 Meeting (All)
    - Public Testimony
    - Old Business (All)
    - Re-consider the Issue that DCCA use Rulemaking Similar to Cable Franchise Renewal (All)
    - Selection Process of Board of Directors of PEG Access Organizations (All)
    - Discussion of 1<sup>st</sup> Amendment Rights of PEG Access Organizations (All)
    - Report to Legislature
    - New Business
    - Preparation for Next Meeting
      - December Meeting to Be Set
    - Adjournment
- XI. Adjournment at 10:30 a.m.



**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

**Testimony of Congressman Neil Abercrombie to the HCR 358  
Task Force Regarding Subjecting PEG Access Providers to the  
State Procurement Code**

October 22, 2008

Dear Members of the HCR 358 Task Force,

Thank you for listening to my concerns about the recent decision to apply the State Procurement Code to public, educational, and government (PEG) television access providers made by the Attorney General and the State Procurement Office (SPO). I apologize for being unable to attend today's meeting in person; I am currently in Texas, visiting Hawaii soldiers who will be deploying for the Middle East. However, I appreciate the opportunity to share my views.

I speak to you today as a former member of the State Legislature, who was active and involved in the passage of the law that established PEG access in Hawaii in the late 1980's. The intent of the law was not to subject PEG access to procurement. The intent was to establish means for the public to share their ideas, using a media that would be otherwise cost-prohibitive for the people. For nearly 20 years, the PEG providers have done just that. They are a valuable resource for our communities and subjecting these organizations to procurement politicizes and commercializes the process. Because of PEG access's importance to democracy and exchange of ideas, the process should be above that. Access providers should be focusing on serving the community, and not on meeting political tests to ensure their survival. Providers would have to divert scarce staff time and resources to develop their bid. We must ensure that PEG access is the top priority for the providers, and requiring procurement could change that focus.

Requiring procurement not only ignores the intent of the law, it is impractical. How does an organization place a bid for a DCCA PEG access contract? How would a bid be able to prove it is better at providing access? While this may be the Task Force's goal, it would seem that this has perplexed many involved.

ORIGINATED FROM:

WASHINGTON OFFICE: 1582 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515 (202) 225-2726 / 225-4580 FAX  
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Homepage: <http://www.house.gov/abercrombie/> E-mail: [neil.abercrombie@mail.house.gov](mailto:neil.abercrombie@mail.house.gov)

I would also like to highlight the fact that the PEG access providers are already held accountable to DCCA for their performance. DCCA appoints board members, and negotiates the operating contracts with PEG providers. If a PEG provider is failing to meet its contract, DCCA has the option to not renew. DCCA has recently proposed its own rules applying the Procurement Code when selecting the PEG access providers. DCCA's actions are premature, as this Task Force is reviewing the options for this process. The Department should let the Task Force complete its work.

As you all know very well, PEG access is a vital community service. The people of Hawaii must have access to the media to ensure a vibrant, involved democracy. Subjecting access providers to the Procurement Code will likely have the opposite affect of constraining access.

Mahalo for your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Neil Abercrombie". The signature is written in a cursive, flowing style.

Neil Abercrombie  
Member of Congress

**From:** Jay April (jay@akaku.org)  
**Sent:** Tuesday, October 21, 2008 9:59 PM  
**To:** David Franzel  
**Cc:** keo@keoinc.org; gtakase3@hotmail.com; roy.amemiya@centralpacificbank.com; gbenevides@co.hawaii.hi.us; eknutzen@kauai.gov; shelley.pellegrino@co.maui.hi.us; 'Hirata, Gregg'; Geri\_Ann\_Hong@notes.k12.hi.us; david@hawaii.edu; krollman@honolulu.gov; Clyde.Sonobe@dcca.hawaii.gov; Glen.WY.Chock@dcca.hawaii.gov; Laureen.K.Wong@dcca.hawaii.gov; Patti.K.Kodama@dcca.hawaii.gov  
**Subject:** Re: HCR 358 Task Force Statement For The Record Under Old Business

Aloha Chairman Knudsen and Task Force Members:

The following statement is for the record under old business for the HCR 358 Task Force meeting of October 22, 2008

For the Record, I would like to point out the following facts and observations regarding the lack of cooperation on the part of several state agencies with the work of the HCR 358 Task Force.

1. The DCCA has not cooperated with the official HCR358 Task Force request to post a link on it's website to a VIDEO REPORT TO THE HCR358 task force as directed by the Task Force and the Chair.
2. The DCCA has declined to honor the motion passed by the HCR 358 Task Force in a 7-1 vote to suspend decision making on it's (DCCA) Designation of PEG Access Organizations using the State Procurement Code until the Task Force has delivered it's written report to the legislature.
3. The State Procurement Office has not sufficiently cooperated with the HCR358 Task Force by refusing to answer questions or evading direct answers to questions posed to it in writing by the task force and declining to appear in person before the Task Force for a question and answer session.

**From:** Jay April [mailto:jay@akaku.org]

**Sent:** Tuesday, October 21, 2008 9:12 PM

**To:** David Franzel

**Subject:** Re: HCR 358 Task Force potential alternative to procurement (Cable Franchise Renewal)

FOR DISCUSSION:

**A BOARD OF CONVENER (BOC) PROCESS FOR PEG ACCESS ORGANIZATIONS**

Franchise centric convener process at arms length from state.  
Based on a model for creating or revitalizing a Community Media Center.

**STEP 1 : Facilitator chosen by DCCA and PEG Provider BOD**

**STEP 2: Appointments:**

**1. CAC Representative from Franchise**

**1. EDU**

**2. PEG BOD**

**2 PRODUCERS (ELECTED)**

**1 COUNTY COUNCIL**

**4 AT LARGE (SELF SELECTED BY BOC))**

**STEP 3. Retain Qualified PEG Access Consultant**

**STEP 4. Provider Evaluation**

**Access Report Card based on Benchmarks**

**STEP 5. Recommendations**

**OPTIONS:**

**a. Accreditation for Provider for term**

**b. Enter Public Hearings Rule Process**

**STEP 6. Final Recommendations**

## **Alternative Two: Create Procurement Process Similar to Cable Franchise Renewal**

### Description

This proposed alternative involves Department of Commerce and Consumer Affairs (DCCA) approaching PEG contract renewal using a method generally similar to that which is currently used to renew cable franchises with cable operators. The cable franchise process is a good model because it allows for community/customer input and transparency, includes relevant audits and is also familiar to the DCCA and PEG access providers so that the creation of rules and the subsequent process can be carried out with relative ease.

Unlike cable companies, the existing PEG access providers were created for the specific purpose of providing PEG access services, on an exclusive basis, in each of the counties. Therefore, DCCA would engage in contract renewals with all four existing county PEG providers using this proposed method.

To increase transparency, it is proposed that the Cable Advisory Committee be included as part of the process.

### Applicable Laws

Hawaii cable television is regulated at the State level by the DCCA. Hawaii Revised Statutes Chapter 440G ("Cable Television Systems") sets forth the requirements for the DCCA in its regulation and oversight of cable television, including standards and procedures for issuance and renewal of a cable franchise. The DCCA's regulations, Title 16 of the Hawaii Administrative Rules (H.A.R.), contain additional details about the cable franchise process, including standards for approval of the franchise.

### Cable Franchise Renewal Process

- 1) The cable operator notifies the DCCA of its intent to renew its franchise prior to its current franchise expiring.
- 2) Once notice is received, the DCCA is required to engage in certain oversight activities that are used in negotiating a renewed franchise. These activities, which can be conducted with the assistance of outside industry experts, include:
  - a. A community needs assessment
  - b. An engineering audit
  - c. Customer satisfaction surveys
  - d. A franchise compliance audit.
- 3) In addition to these data gathering efforts, the DCCA holds a public hearing to obtain input regarding the cable operator's request for a renewal.
- 4) Based on all of this input, the DCCA determines whether, and on what terms, to renew the franchise and then negotiates with the cable operator accordingly. The Director of the DCCA has the final approval for renewing a cable operator's franchise.
- 5) A franchise decision is issued. For cable franchises, a typical contract is executed for between 15-20 years.

### Applying Franchise Renewal Process to PEG Access

- 1) The PEG access operator notifies the DCCA of its intent to renew its contract prior to its current contract expiring.
- 2) Once notice is received, the DCCA is required to engage in certain oversight activities that are used in negotiating a renewed agreement. These activities, which can be conducted with the assistance of outside industry experts, include:
  - a. A community needs assessment
  - b. A technical audit
  - c. Customer satisfaction surveys
  - d. A contract compliance audit.

- 3) In addition to these data gathering efforts, the DCCA holds a public hearing to obtain input regarding the PEG access operator's request for a renewal.
- 4) Based on all of this input, the DCCA determines whether, and on what terms, to renew the agreement and then negotiates with the PEG access operator accordingly. In making its determination, the DCCA shall take into consideration, among other things:
  - i. the public need for the services,
  - ii. the ability of the operator to provide PEG access services,
  - iii. the suitability of the operator,
  - iv. the financial responsibility of the operator,
  - v. the technical and operational ability of the operator to perform efficiently the desired services,
  - vi. any objections arising from the public hearing, the cable advisory committee, or elsewhere,
  - vii. any other matters as the director deems appropriate in the circumstances.

The Director of the DCCA has the final approval for renewing a PEG access operator's contract.

- 5) An agreement is entered into.

## **Alternative 5: Modification of DCCA Rules**

Thank you to the task force members for the sharing of expertise and pertinent documents to provide us with a context in which to offer alternatives to the public procurement code process to oversee access organizations.

The alternative that I am submitting is simple. Based on the readings and testimonies that have been shared I feel that an alternative to the procurement process would be a strengthening and modification of the current DCCA draft rules. This would provide the framework for accountability, benchmarks and oversight. For access organizations, it would provide a road map for implementation.

According to the Judge August's ruling DCCA was advised that there was a need for Chapter 91 rulemaking process which they are currently doing.

In several discussions and testimonies shared with the Task Force members, we were told that the Legislature has delegated to the Department of Commerce and Consumer Affairs the authority to designate access organizations.

The cable subscriber fees are not public funds.

So if the DCCA has the authority to designate, and subchapter 16 (b) was modified to read something like "the director has discretionary rights in applying provisions of chapter 103 D, would the procurement issue be "moot"?

We could then move forward with a blending of alternatives 1,2,3,4 as shared in our Task force meeting October 9.2008.

## David Franzel

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**From:** David Franzel (davidfranzel@hawaii.rr.com)  
**Sent:** Friday, October 17, 2008 11:10 AM  
**To:** 'Jay April'; 'keo@keoinc.org'; 'gtakase3@hotmail.com';  
'roy.amekiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov';  
'shelley.pellegrino@co.maui.hi.us'; 'Hirata, Gregg'; 'Gen\_Ann\_Hong@notes.k12.hi.us';  
'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'  
**Cc:** 'Glen.WY.Chock@dcca.hawaii.gov'; 'Patti.K.Kodama@dcca.hawaii.gov';  
'Laureen.K.Wong@dcca.hawaii.gov'  
**Subject:** FW: Reviewing the Structures of PEG in Hawaii

Task Force,

For your review.

David.

-----Original Message-----

**From:** David Lassner (mailto:david@hawaii.edu)  
**Sent:** Friday, October 17, 2008 7:06 AM  
**To:** David Franzel  
**Cc:** David Lassner  
**Subject:** Reviewing the Structures of PEG in Hawaii

Reviewing the Structures of PEG in Hawaii

Questions over the structure of PEG in Hawaii have typically centered on two dimensions: geographic (island, county, state) and sectoral (P, E and G). Asking whether the 20-yr status quo is optimal for Hawaii should be a natural part of any discussion of how PEG entities and their boards are selected. And as we consider these questions, it should be noted that there are interactions between the dimensions as well.

The following comments are intended to challenge the assumptions that county-based PEG is somehow a natural state of affairs, or necessarily optimal for Hawaii, and that sectoral separation would be less efficient or unfair.

### Geographic Considerations

Hawaii was historically unique in franchising cable tv at the statewide level. However, in recent years, with the realization that cable tv can be a competitive service, this model has become more common. At the time Hawaii adopted our county-based approach to PEG there were 8-10 different cable companies operating with no physical connectivity between them. Today we have one cable company operating (essentially) all cable franchises in Hawaii, mostly interconnected by fiber optic cables that did not exist at the time the franchises and PEG entities were implemented. The following comments are offered regarding both greater centralization and greater decentralization, simply to point out that there's nothing sacred in the current county-based approach.

Establishment of a single statewide PEG organization with a Board composed of members from all islands could:

- \* Reduce administrative overhead associated with the cost of multiple Boards, multiple CEOs, multiple financial systems, multiple HR systems, multiple attorneys filing duplicative actions, multiple web sites, etc. With the same financial allocations to PEG this reduction in administrative overhead would result in more resources for PEG programming and access activities.
- \* Provide a unified voice for the importance of PEG in Hawaii as we enter a critical period of franchise renewals.
- \* Operate multiple PEG Access Centers throughout the state and provide more equitable access to underserved areas that are not home to a current PEG entity such as Molokai, Lanai, Hana and West Hawaii.
- \* More readily share public access programming between communities on different islands

matters and issues of interest to everyone in Hawaii -- without losing the ability and responsibility to also support local programming and services appropriate for local communities.

Alternatively, if one believes that "localism" is the most critical factor, one could argue that establishing separate PEG entities for Molokai, Lanai and West Hawaii (maybe not exactly the right set -- pick your own) would provide greater local control for communities that are isolated from the home of the centralized PEG entity that serves them from another location in their County. E.g., my experience is that the people of Lanai and Molokai often feel the same way about Maui that Maui does about Oahu. Similarly, many people in West Hawaii aren't convinced that they are treated fairly by county-based entities in East Hawaii.

#### Sectoral Considerations

Accredited education in Hawaii has long been on record in Hawaii as recommending that "E" programming be separated with direct allocation of channel capacity and funding. In fact, Education believes this would be more efficient, not less. First, from a channel perspective,

accredited education already programs two channels on every island.

Accredited education has the capability to operate its own head-ends and believes that signal quality would be enhanced without mediation through PEG entities. There are few, if any, economies of scale between PEG entities and Education relating to E programming.

In terms of programming funds, in two counties there are negotiated agreements that allocate fixed levels of funding for accredited education. At various times in their histories, PEG entities have not believed it is their responsibility to support accredited education with PEG resources for E programming. These negotiated agreements are the result of community interest in achieving a balanced allocation of PEG resources, including to E. Advocates of P often argue that PEG funds are more necessary to their P mission and that accredited education should fund E programming from other sources. Clear structural separation outside the PEG entities would eliminate this conflict, allow clear delineation of core missions and actually make it easier to collaborate since conflict over core mission and resources would have been externally removed.

In short, direct allocation of channel and programming resources to E in Hawaii would be more efficient and encourage greater collaboration. There are many dedicated educational access channels around the country operated by colleges, universities and school districts.

#### Geographic and Sectoral Interactions

Hawaii's challenges and opportunities are not the same as those of many communities to which we are often compared and held out as a model by P activists. One of our major sources of G programming, the Legislature, is a statewide entity. Public higher education is created in Hawaii's constitution as a single statewide organization, our public K12 educational system is also statewide, and there is a statewide association for all accredited private education (HAIS). Unlike P programming, these programming sources are already shared statewide to leverage economies of scale and uneven funding between counties.

It is easy to imagine approach in which structural separation and geographic considerations interact to maximize efficiencies and service throughout the state such as:

Access to Legislative programming and statewide government (G) programming is managed as a matter of statewide interest and concern and shared with all islands.

Educational (E) programming and resources are separated with a statewide allocation with programming available on all islands.

County Governmental (G) access -- Councils and county government -- are managed at the county level.

Public (P) access is managed at any of state, county or island levels.

**ALTERNATIVE 3. MODIFICATION OF DCCA RULES**

Thank you to the task force members for the sharing of expertise and pertinent documents to provide us with a context in which to offer alternatives to the public procurement code process to oversee access organizations.

The alternative that I am submitting is simple. Based on the readings and testimonies that have been shared I feel that an alternative to the procurement process would be a strengthening and modification of the current DCCA draft rules. This would provide the framework for accountability, benchmarks and oversight. For access organizations, it would provide a road map for implementation.

According to the Judge August's ruling DCCA was advised that there was a need for Chapter 91 rulemaking process which they are currently doing.

In several discussions and testimonies shared with the Task Force members, we were told that the Legislature has delegated to the Department of Commerce and Consumer Affairs the authority to designate access organizations.

The cable subscriber fees are not public funds.

So if the DCCA has the authority to designate, and subchapter 16 (b) was modified to read something like "the director has discretionary rights in applying provisions of chapter 103 D, would the procurement issue be "moot"?

We could then move forward with a blending of alternatives 1,2,3,4 as shared in our Task force meeting October 9.2008.

## BYLAWS

### Article One – Name and Offices

Section 1.1 Name. The trade name of the corporation shall be Akaku: Maui Community Television.

Section 1.2 Corporate Office. The principal office of the corporation shall be located within the County of Maui, State of Hawai'i at 333 Dairy Road, Kahului. The corporation may from time to time establish such other offices as the Board of Directors may designate or as the affairs of the corporation may require.

Section 1.3 Purpose. The purpose for which this corporation is formed is to empower the community's voices through access to media. The corporation shall hold and may exercise all such powers as may be conferred upon a nonprofit corporation and by the laws of the State of Hawai'i and as may be necessary for the administration of the affairs and attainment of the purposes of the corporation, provided however that in no event shall the corporation engage in activities not permitted to be carried on by a corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or the Hawai'i Nonprofit Corporation Act.

### Article Two – Membership

Section 2.1 The corporation shall have no members.

### Article Three – Board of Directors

Section 3.1 General Powers. The business and affairs of the Corporation shall be conducted under the direction of, and the control and disposal of, the Corporation's properties and funds shall be vested in its Board of Directors, except as otherwise provided in the Hawai'i Nonprofit Corporation Act, the corporation's Articles of Incorporation or these Bylaws.

Section 3.2 Number, Term and Qualification. The Board of Directors shall consist of not less than nine (9) directors and no more than fifteen (15) directors. The number of Directors shall be set from time to time by resolution of the board. The directors shall be appointed to serve a term of three (3) years and until their successors are elected and qualified or until their resignation or removal. The directors shall be serve terms staggered in roughly equal number as possible. The board of directors shall be generally reflective of the community and access user groups to the extent possible. A majority of the Board shall be subscribers to cable service.

Section 3.3 Attendance. If a director is absent from three (3) consecutive meetings, unless excused, his or her office shall become vacant for the remainder of the term. The minutes must note such excusals and the reasons thereof.

#### Section 3.4 Appointment and Election of Directors

Section 3.4.1 Producer Elected Directors. In September of every third year, the producers certified to produce cablecasts shall cast ballots to elect two (2) members to the Board of Directors. The Board shall certify a list of independent producers eligible to vote no later than the July before the

election. Any producer may nominate himself or another producer. The vote shall be done in secret and in plurality. The candidate with the most votes shall win except that if the number of producers who vote is less than 20% of the producers eligible to vote, the returns of the election shall be nullified and the resulting vacancy shall be filled pursuant to subsection (d). The ballots shall be tabulated and certified by the staff who shall report back the results no later than October 7. Balloting by mail shall not be infringed.

Section 3.4.2 Education Appointed Directors. In September of every third year, the Chair of the Board of Directors shall send an official correspondence seeking an official declaration from the official representatives of the Department of Education and the University of Hawai'i naming their two (2) members to the Board of Directors. The declaration shall be signed on official letterhead and shall be returned no later than October 7.

Section 3.4.3 Government Nominated Directors. In September of every third year, the Chair of the Board of Directors shall send an official correspondence seeking nominations from the Mayor of the County of Maui and the several members of the Council of the County of Maui for two (2) government positions. There shall be no additional qualifications for these directors. The nominations shall be presented to the Board who shall elect by plurality vote the directors for the two directorships. In the event that the number of nominations is the same or less than the number of vacancies, every nomination shall be automatically elected upon nomination.

Section 3.4.4 Public At-Large Directors. In September of every year when necessary, the members of the Board of Directors who have not been appointed by any other means shall constitute a special nomination committee which shall nominate persons to fill any vacancy caused by the lapse of the term of any member of the Board not appointed in subsections (a) through (c). The nominations shall be presented to the Board who shall elect by plurality vote the remainder of directors. In the event that the number of nominations is the same or less than the number of vacancies, every nomination shall be automatically elected upon nomination. This special nomination committee shall also be activated for purposes of subsection (e).

Section 3.4.5 Vacancy Appointment of Directors. Whenever a vacancy occurs for whatever reason and there remains an unexpired term of office for appointments under subsections (a), (b) or (d), the vacancy shall be filled in the manner described in subsection (d). Whenever a vacancy occurs for whatever reason and there remains an unexpired term of office for appointments under subsection (c), the vacancy shall be filled in the manner described in subsection (c).

Section 3.5 Resignation and Vacancies. Any director may resign at any time by giving written notice to the board Chair, President or Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and, if not specified therein, it shall take effect upon receipt and the acceptance of such resignation shall not be necessary to make it effective. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor and until his or her successor is elected and qualified or until his or her earlier death, resignation or removal.

Section 3.6 Regular Meetings. A regular annual meeting of the Board of Directors shall be held on the last Friday in the month of October, or upon two-thirds affirmative vote of the Board, at another time before the end of October, for the purpose of adopting the annual report, seating new directors, electing officers and for the transaction of such other business as may properly come before the meeting. There shall be no less than six (6) regular meetings, including any annual

meeting, of the Board of Directors in each year, and the Board of Directors shall provided by resolution the time and place for the holding of such additional regular meetings. Notice of regular meetings stating the purpose, place, day and hour of the meeting shall be given to each director at his or her last known business or home address at least six (6) days notice delivered personally or by first class mail, or by electronic mail. Any reports or documents to be considered at such meetings shall be delivered or available for review no later than the giving of notice.

Section 3.7 Special Meetings. The Board Chair may call a special meeting of the Board of Directors whenever he or she deems it necessary, and shall call a special meeting whenever requested to do so in writing by three or more directors or the President. The Board Chair shall fix the place and time for holding any special meeting of the Board of Directors. Notice of a special meeting stating the purpose, place, day and hour of the meeting shall be given to each director at his or her last known business or home address at least three (3) days notice delivered personally or by first class mail, or by electronic mail. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail, postage pre-paid. If sent by electronic means, such notice shall be deemed to be given when the electronic means prints or acknowledges that the transmission was successfully executed.

Section 3.8 Quorum and Voting. A majority of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Each director shall be entitled to one (1) vote and a vote of a majority of the directors present in person at a meeting at which quorum is present shall be the act of the Board of Directors unless a greater number is specifically required by these bylaws, by the Articles of Incorporation, or by state law. A meeting at which a quorum has previously been established may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. A director may not vote or act by proxy at any meeting of directors.

Section 3.9. Compensation. Directors shall not receive compensation for their services as such, although the reasonable expenses of Directors for attendance at Board meetings may be paid or reimbursed by the corporation. Directors may not become an employee of the corporation or transact any business on behalf of the corporation with any business entity of which he/she is an officer, agent or member, or in which he/she has a financial interest during his/her term of office.

Section 3.10 Meetings by telephone or teleconference. Members of the Board of Directors or any committee may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 3.11 Audio-visual recording of meetings. Whenever there is a conflict between the written recording of a meeting of the Board of Directors or one of its committees and the audio-visual recording, the audio-visual recording shall be considered correct.

Section 3.12. Limitations on Directors. Members of the Board of Directors shall not dictate the appointment or removal of any employee hired by the President or his subordinates. No director shall give orders to any employee of the corporation either publicly or privately. Communication between employees and directors shall be transmitted for approval through the President.

Section 3.13 Parliamentary Law. The will of the majority of the members of the Board of Directors,

or its committees, shall be determined and revealed in an orderly manner. The most current edition of Robert's Rules of Order shall govern over all questions of order and procedure when not inconsistent with these Bylaws, the Articles of Incorporation or state law.

#### **Article IV – Officers**

**Section 4.1 Number and Qualifications.** The officers of the corporation shall consist of a President, a Chairperson, one or more Vice-Chairpersons, a Secretary and a Treasurer. The officers shall be members of the Board of Directors except that the President shall not be a voting member of the Board of Directors and, instead, shall be an ex-officio, non-voting member of the Board of Directors.

**Section 4.2 Election and Term of Office.** Except for the President, the officers of the corporation shall be elected, for a term commencing on election, by the corporation's directors at the annual meeting of the Board of Directors. Each officer shall hold office for a term of one (1) year or until his or her successor shall have been duly elected and shall have qualified, or until his or her earlier death, resignation or removal.

**Section 4.3 Compensation.** The compensation of the President shall be fixed from time to time by the Board of Directors. No other officer shall receive compensation or director or indirect personal gain for services rendered as officers, but shall be reimbursed for all reasonable expenses incurred while performing their duties.

**Section 4.4 Removal.** Any officer may be removed by the Board of Directors with or without cause, whenever in its judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Notice of such proposed removals shall comply with state law.

**Section 4.5 Vacancies.** Any officer may resign at any time, subject to any rights or obligations under any existing contracts between the officer and the corporation, by giving written notice to the board Chair or the President or the Secretary. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in any office, however occurring, may be filled for the unexpired portion of the term by action of the Board of Directors.

**Section 4.6 Authority and Duties of Officers.** The Officers of the corporation shall have the authority and shall exercise the powers and perform the duties specified by the President, the Board of Directors, or these Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

**Section 4.6.1 President.** The Board of Directors shall elect a President who, as Chief Executive Officer under its supervision and direction, shall carry on the general affairs of the corporation. The President shall be a non-voting, ex-officio member of the Board of Directors and shall be a non-voting, ex-officio member of all committees except the Audit Committee, Nomination Committee and Executive Committee. It shall be his or her duty to approve the expenditure of the monies appropriated by the Board of Directors in accordance with the budget approved by the Board of Directors. The President shall make an annual report and periodic reports to the Board of Directors concerning the programs of the corporation. He or she shall comply with all orders from the Board

of Directors. All employees and non-director agents of the corporation shall report and be responsible to the President. He or she shall perform such other duties as may be determined from time to time by the Board of Directors.

Section 4.6.2 Chairperson. The Board of Directors shall elect, from among those who are, or are to be, Directors of the Corporation, a Board Chairperson who shall, when present, preside at all regular and special meetings of the Board of Directors and of the members of the Corporation, shall present at the annual meeting of the corporation a report on the activities of the corporation during the preceding year, and shall generally perform all other duties incident to the office, required by the Bylaws or from time to time assigned to him or her by the Board of Directors.

Section 4.6.3 Vice-Chairpersons. If one or more shall be elected by the Board of Directors from among those who are, or are to be, directors of the corporation, the Vice-Chairperson(s) of the Board shall assist the Board Chairperson, as requested, in the performance of his or her duties and shall have such other functions as these Bylaws may provide or as the Board of Directors or Board Chair may assign from time to time. In addition to the foregoing, the Vice Chairperson shall possess and perform the duties incumbent upon the Board Chair during his or her absence or disability. In the event there is more than one Vice-Chairperson, the Board of Directors shall designate one to possess the powers and perform the duties incumbent upon the Board Chair during his or her absence or disability.

Section 4.6.4 Secretary. The Board of Directors shall elect a Secretary who shall attend the meetings of the Directors, and shall record the proceedings of the corporation and of the board of directors and of all committees of the Board, at their respective meetings. He or she shall provide for notification of the members and the directors of the corporation of their respective meetings in accordance with these Bylaws, shall be the custodian of the corporate records and seal, shall furnish certifications of Board actions, Bylaws, and organizational documents, and shall perform such other duties as may be required by these Bylaws or as may be assigned by the Board of Directors or the President.

Section 4.6.5 Treasurer. The Board of Directors shall elect a Treasurer who shall be the financial officer of the Corporation and shall receive and deposit in a bank or banks approved by the Board of Directors all the monies of the Corporation and keep an accurate account thereof. He or she shall make disbursements subject to such regulations as may be determined from time to time by the Board of Directors, and shall make reports of the finances of the Corporation annually and whenever requested by the Board of Directors or the Executive Director. He or she shall perform such other duties as may be required by these Bylaws or as may be assigned by the Board of Directors or the President. At the end of his or her term of office, the Treasurer shall deliver to his or her successor all books, monies and other property of the Corporation then in his or her possession. The Board of Directors may require the Treasurer to give such security as it may direct for the faithful performance of his or her duties.

## Article V – Committees of the Board

Section 5.1 Designation of Committees. The Board of Directors may designate one or more standing or special committees to direct the business of the corporation. Each such committee may exercise the authority granted to it by the resolution creating it.

Section 5.2 Limitation on Committee Powers. No committee shall have the authority of the Board of Directors to amend, alter, or repeal these Bylaws; to elect, appoint, or remember any member of any such committee or any officer or director of the corporation; to amend or restate the articles of incorporation; to adopt a plan of merger or consolidation with another corporation, to authorize the voluntary dissolution of the corporation or to revoke proceedings therefor; to amend, alter or repeal any resolution of the Board of Directors, or as otherwise may be prohibited by law. All committees are to report promptly to the Board and only take such actions as are specifically designated in these Bylaws or in the resolution establishing such committees setting forth its duties and responsibilities. Each committee shall consist of two (2) or more directors. The Board may appoint other such persons who are not directors to committees to serve as ex-officio, non-voting members. Members of a committee shall serve until the next annual meeting of the corporation.

Section 5.3 Committee Chairs. The Board Chair, with the approval of the Board of Directors, shall appoint all committee chairs for the ensuing year at or within a reasonable time after the annual meeting of the Board of Directors. Committee Chairs shall be current directors. When the Board of Directors establishes a new committee by resolution, the Board Chair, with the approval of the Board of Directors, shall similarly appoint its chair.

Section 5.4 Committee Meetings. Meeting of the committees of the Board of Directors may be called by the respective chairs thereof or by a quorum of members of the committee. At all meetings of any committee, a majority of the members of the committee shall constitute quorum for the transaction of business, and the act of a majority of the members of the committee present at any meeting thereof at which there is a quorum shall be the act of the committee, except as may be otherwise specifically provided for by these Bylaws.

Section 5.5 Executive Committee.

Section 5.5.1 Composition, Powers and Functions. There shall be an Executive Committee of the Board of Directors that shall be composed of the officers of the corporation. The President shall be a voting member of the Executive Committee. During the intervals between meetings of the Board of Directors, the Executive Committee shall, subject to section 5.2 hereof, possess and may exercise all the powers and functions of the Board of Directors in the management and direction of the affairs of the Corporation in all cases in which specific direction shall not have been given by the Board of Directors.

Section 5.5.2 Reports and Rules. All actions of the Executive Committee shall be reported to the Board of Directors at its next meeting succeeding such action. Regular minutes of the proceedings of the Executive Committee shall be kept. A majority of the members of the Executive Committee in office at the time shall be necessary to constitute a quorum and in every case an affirmative vote of the members of the committee present at a meeting shall be necessary for the taking of any action. The Executive Committee shall fix and establish its own rules of procedure and shall meet as provided by such rules and shall also meet at the call of its Chair or any other two (2) members of the committee.

Section 5.5.3 Other Duties. The Executive Committee shall review the corporation's compliance with its conflict of interest policy and code of ethical conduct and shall receive, on behalf of the board, all appeals and complaints by the corporation's employees as permitted by the corporation's employment policies. The Executive Committee shall also review and evaluate the performance and

determine the annual salary and other benefits, direct or indirect, of the senior management of the corporation.

Section 5.6 Audit Committee. The Board of Directors shall designate, at or within a reasonable time after the annual meeting of the Board of Directors, an Audit Committee composed of four (4) members who are not officers and not members of the Finance Committee that are financially literate, which shall recommend an independent auditor, review independent audits, review annual financial statements, review financial statements, plan external audits, evaluate internal accounting controls, evaluate accounting principles and practices, consider other financial matters and perform such other functions as may be assigned to it by law or the Board of Directors.

Section 5.7 Finance Committee. The Board of Directors shall designate, at or within a reasonable time after the annual meeting of the Board of Directors, an Audit Committee composed of three (3) members who are not members of the Audit Committee that are financially literate, which shall develop an investment policy that considers the corporation's short-term, mid-term and long term financial needs and its tolerance of risk; oversee the President's management of all investment subsidiaries; approve expenditures over \$5,000 related to investment subsidiaries; review investment financial statements and reports; determine adequate procedures and controls of investment subsidiaries; review financial performance of investments; approve annual budgets of investment subsidiaries; be responsible for all capital assets and other existing financial resources of the corporation and executive fiscal matters; and consider other investment related matters and perform such other functions as may be assigned to it by law or the Board of Directors.

Section 5.8 Planning and Policy Committee. The Board of Directors shall designate, at or within a reasonable time after the annual meeting of the Board of Directors, a Planning and Policy Committee composed of three (3) members one of whom shall be a Vice-Chairperson of the Board and one shall be a director elected by the producers, which shall review all policies and resolutions set by the board except those reviewed by another committee pursuant to the Bylaws, review the Bylaws, prepare the process of strategic planning, administer subcommittees established to investigate particular issues, and perform such other functions as may be assigned to it by law or the Board of Directors.

#### Article VI – Indemnification

Section 6.1 Except to the extent expressly prohibited by the Hawai'i Nonprofit Corporation Act, the corporation shall indemnify any person made, or threatened to be made, a party to an action by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was, or he or she is the executor, administrator, heir, or successor of a person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of any corporation of any type or kind, domestic or foreign, of any partnership, joint venture, trust, employee benefit plan or other enterprise, against amounts paid in settlement and reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with the defense or settlement of such action, or in connection with an appeal therein, if such director or officer acted, in good faith, for a purpose which he reasonably believed to be in, or in the case of service for any corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise, not opposed to, the best interest of the corporation, except that no indemnification under this paragraph shall be made in respect to (1) a threatened action, or a pending action that is settled or otherwise disposed of, (2) any claim, issue, or matter as to which

such person shall have been judged to be liable to the corporation, unless and only to the extent that the court in which the action was brought, or if no action was brought, any court of competent jurisdiction, determines upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such portion of the settlement amount and expenses as the court deems proper.

Section 6.2 No indemnification shall be made under this Bylaw if a judgment or other final adjudication adverse to such person establishes that his or her acts were committed in bad faith or were the result of active or deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, and provided further that no such indemnification shall be required with respect to any settlement or other nonadjudicated position of any threatened or pending action or proceeding unless the corporation has given its consent to such settlement or disposition.

Section 6.3 The corporation shall advance and promptly reimburse, upon request of any person entitled to indemnification hereunder, all expenses, including attorneys' fees actually and reasonably incurred in defending any action or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by or on behalf of such person to repay such amount if such person is ultimately found not to be entitled to indemnification, or, where indemnification is granted, to the extent the expenses so advanced or reimbursed exceed the amount to which such person is entitled.

## **Article VII – Conflict of Interest**

Section 7.1 Conflict Defined. A conflict of interest exists when the interest or activities of any director, officer, or staff member may be seen as competing with the interests or activities of the corporation, or the director, officer or staff member derives a financial or other material gain as a result of a direct or indirect relationship. Benefits conferred to certified producers as a group shall not be considered "financial or other material gain" to producer elected directors for purposes of this article.

Section 7.2 Disclosure Required. Any possible conflict of interest shall be disclosed to the Board of Directors by the person concerned, if that person is a director or an officer of the corporation, or to the President if the person is not a director or officer of the corporation.

Section 7.3 Abstinance from Vote. When any conflict of interest relates to a matter requiring action by the Board of Directors, the interested person shall call it to the attention of Executive Committee and such person shall not vote on the matter, provided however, that any director disclosing a conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof.

Section 7.4 Absence from Discussion. Unless requested to remain present during the meeting, the person having the conflict shall retire from the room in which the Board or its committee is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration. However, that person shall provide the Board or Committee with any and all relevant information.

Section 7.5 Minutes. The minutes of the meeting of the Board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is doubt as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board of Directors or its committee, excluding the interested person.

Section 7.6 Annual Review. A copy of this conflict of interest Bylaw shall be furnished to each director, officer, and senior staff member who is presently serving the corporation, or who may hereafter become associated with the corporation. This policy shall be reviewed annually for the information and guidance of directors, officers and staff members. Any new director, officer or staff member shall be advised of this Bylaw upon undertaking the duties of such office.

## **Article VIII – Miscellany**

Section 8.1 Books and Minutes. The Corporation shall keep correct and complete books and records of account and financial statements and shall also keep minutes of the proceedings of its Board of Directors and Committees. All books and records of the corporation may be inspected by public at-large and producer elected directors, for any proper purpose so certified at any reasonable time. Books and records of the corporation may be inspected by other directors for any proper purpose so certified at any reasonable time with the approval of the President.

Section 8.2 Fiscal Year and Audit. The fiscal year of the corporation shall be July 1 through June 30, inclusive. After the close of each fiscal year of the Corporation, financial transactions of the corporation for the preceding fiscal year shall be reviewed by certified public accountants, as directed by the Board of Directors, and a report of the review shall be made to the Board of Directors by the following annual meeting of the Board of Directors.

Section 8.3 Conveyances and Encumbrances. Property of the corporation may be assigned, conveyed or encumbered by such officers of the corporation as may be authorized to do so by resolution of the Board of Directors, and such authorized persons shall have power to execute and delivery any and all instruments of assignment, conveyance and encumbrance; however, the sale, exchange, lease or other disposition of all or substantially all of the property and assets of the Corporation shall be authorized only in the manner prescribed by state law. Contracts of transactions involving a value exceeding five thousand dollars (\$5,000) shall not be valid until signed by two such authorized persons.

Section 8.4 Designated Contributions. The officers of the corporation may accept on its behalf, in accordance with policies and procedures set by the Board of Directors, any designated contribution, grant, bequest, or devise consistent with its general tax-exempt purposes, as set forth in the corporation's articles of incorporation. As so limited, donor designated contributions will be accepted for special funds, purposes or uses. Further, the corporation shall retain sufficient control over all donated funds (including designated contributions) to assure that such funds will be used in a manner consistent with the restrictions contained in the grant and the Corporation's exempt purposes.

Section 8.5 Loans to Directors and Officers Prohibited. No loans or advances, other than customary travel advances, shall be made by the corporation to any of its directors or officers.

Section 8.6 No Private Inurement. The Corporation is not organized for profit and is to be operated exclusive for one or more purposes specified in Section 501(c)(3) of the Internal Revenue Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, and in the promotion of social welfare in accordance with the purposes stated in the Corporation's Article of Incorporation. The net earnings of the corporation shall be devoted exclusively to charitable and education purposes and shall not inure to the benefit of any private individual. No director or person from whom the corporation may receive any property or funds shall receive or shall be entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Corporation be paid as salary or compensation to or distributed to or inure to the benefit of any member of the Board of Directors; provided, however that any director may, from time to time, be reimbursed for his or her actual and reasonable expenses incurred in connection with the administration of the affairs of the organization.

Section 8.7 References to the Internal Revenue Code. All references in these Bylaws to provisions of the Internal Revenue Code are to the provisions of the Internal Revenue Code of 1986, as amended, and shall include the corresponding provisions of any subsequent federal tax laws.

Section 8.8 Amendments. These Bylaws may be amended, repealed, or modified and new Bylaws adopted, by the affirmative vote of two-thirds of the Board of Directors. Any notice of a meeting at which these Bylaws are to be amended, repealed, or modified shall include notice of such proposed action.

Section 8.9 Activities Not Permitted. Notwithstanding any other provision or the Articles of Incorporation of these Bylaws, the corporation shall not engage in any activities that are not permitted (1) by a nonprofit corporation exempt from federal corporate tax under section 501(c)(3) of the Internal Revenue Code or (2) by a nonprofit Corporation contributions to which are tax deductible under Section 170(c)(2) of the Internal Revenue Code.

Section 8.10 Severability. The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event, these Bylaws shall be construed in all respects as if such invalid provisions were omitted.

#### CERTIFICATION

The undersigned certifies that she is the Secretary of Maui County Community Television, Inc., a Hawai'i nonprofit corporation, and that, as such she is authorized to execute this certificate on behalf of the said corporation, and further certifies that the foregoing bylaws, consisting of ten (10) pages, including this page, constitute the Bylaws of the corporation as of this date, duly adopted by the directors of the Corporation at their May 2, 2008 meeting.



ELLEN PELISSERO  
SECRETARY  
BOARD OF DIRECTORS  
MAUI COUNTY COMMUNITY TELEVISION

**‘Ōlelo Community Television**  
**Bylaws Excerpt**  
**Board of Directors Appointment Process**

Last Amended November 2, 2006

**Section 6.9**    Appointments, Election, and Vacancies

**Section 6.9a**    Appointed Directors by President of Oceanic

No later than one-hundred and fifty (150) calendar days prior to the end of the calendar year, the Chair shall appoint a Nominating Committee of at least three (3) members of the Board. The Nominating Committee shall develop a slate of individuals it recommends to fill Director vacancies. The Nominating Committee shall forward the slate of Directors to the Board no later than fourteen (14) calendar days prior to the Board's first regularly scheduled meeting of the fourth quarter of the calendar year. The Board shall review the slate of Directors and forward its approved slate of Directors to the President of Oceanic. The Board shall recommend no less than two (2) members more than the number of vacancies to be appointed by Oceanic.

The Board's recommended slate of Directors shall be advisory and the President of Oceanic shall not be required to appoint Directors from the Board's recommended slate of Directors. The President of Oceanic shall consult with the Board prior to appointing any individual not appearing on the Board's recommended slate of Directors.

If an appointed Director does not complete the Director's term, the Board shall recommend a replacement Director to the President of Oceanic, who shall appoint the recommended Director or consult with the Board prior to appointing any other individual.

**Section 6.9b**    Appointed Directors by Board

The Nominating Committee under Section 6.9a shall also develop a slate of individuals it recommends to be appointed by the Board as Directors. The Nominating Committee shall forward the slate of Directors to the Board no later than fourteen (14) calendar days prior to the Board's first regularly scheduled meeting of the fourth quarter of the calendar year. The Board shall review the slate of Directors and upon a majority vote of the Board, confirm in total, adopt only in part and/or reject the recommendations of the Nominating Committee.

Should the Board fail to appoint all of the available Director vacancies by rejecting or adopting only in part, the Nominating Committee's slate of Directors, the Nominating Committee shall develop another slate of Directors for the Board's subsequent approval at the next regularly scheduled meeting.

If an appointed Director does not complete the Director's term, the Board shall have the authority to appoint a replacement Director to complete that Director's term. The Board

can appoint the replacement Director with or without having to first go through the Nominating Committee.

**Section 6.9c** Elected Director

The Board shall authorize the Corporation to administer an election among the Corporation's public, educational, and government users to fill one (1) and only one position, which position was formerly held by an appointee of the Director of the DCCA (the "Elected Director"). Only one (1) Elected Director may sit on the Board at a given time.

The election for the Elected Director shall be completed and the results of the election forwarded to the Board within a reasonable time prior to the Board's first meeting of the calendar year. The Elected Director's term shall be set in accordance with section 6.8.

If at any time during the first year of the Elected Director's term the Elected Director terminates the position, or is removed for cause pursuant to section 6.10, the vacancy shall be filled by the individual who has received the first, second, or third highest vote total in the original election, in descending order, until the vacancy is filled, provided that if for any reason the vacancy is not filled by one of these three individuals, the vacancy shall be filled in the manner prescribed for filling such a vacancy after the first year of the term the Elected Director.

If at any time after the first year of the term the Elected Director terminates the position or is removed for cause pursuant to section 6.10, the Board shall direct the Corporation to conduct an election to fill the position, provided that if the vacancy occurs during the final six (6) months of the Elected Director's term, the Board may at its discretion allow the position to remain vacant pending completion of the term.

**Section 6.9d.** Effective Date of Appointment, Election and Reappointment

Appointed Directors and the Elected Director shall be seated at the Board meeting immediately following the Director's appointment or the election. Prior to the Annual Meeting, the Nominating Committee shall also recommend officers to the Board. Officers shall be elected at the Annual Meeting by majority vote of the Board.

**Section 6.10** Resignation or Removal

Appointed Directors under Section 6.9a may resign provided that resignations shall be submitted in writing to the Chair of the Board of Directors and to the President of Oceanic. Appointed Directors under Section 6.9b may resign provided that the resignation shall be submitted to the Chair of the Board of Directors. An Elected Director may resign provided that the resignation shall be submitted to the Chair of the Board of Directors.

The President of Oceanic may remove at any time, for cause, any Director of the Board that it has appointed under Section 6.9a. The Board shall be notified in writing of the reasons for the removal of any such Director.

The Board, by a vote of the majority of the members to which the Board is entitled, may petition the President of Oceanic to remove any of its Directors appointed under Section 6.9a.

The Board may remove any of its Directors elected under Section 6.9c *for cause* by a vote of the majority of the members to which the Board is entitled. The Board may remove any of its Directors appointed under Section 6.9b *without cause* by a vote of two-thirds of the members to which the Board is entitled.

For purposes of this section, "cause" shall include, but not be limited to, any action or conduct by a Director that is contrary to law or the requirements of these Bylaws or that is otherwise harmful or deleterious to the Corporation's business or affairs or the fulfillment of its purpose as set forth herein.

**HAWAII ADMINISTRATIVE RULES**

**TITLE 16**

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

**CHAPTER \_\_\_\_\_**

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## SUBCHAPTER 1

### GENERAL PROVISIONS

**§16-\_\_\_\_ - 1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Access organization" means any nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any public, educational and governmental ("PEG") channels obtained under section 440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization.

"Applicant" means a nonprofit organization which initiates an application or proposal.

"Application" means an unsolicited filing.

"Cable advisory committee" means the cable advisory committee established pursuant to Haw. Rev. Stat. §440G-13.

"Cable franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to Haw. Rev. Stat. Chapter 440G, whether the authorization is designated as a franchise, permit, order, contract, agreement, or otherwise, which authorizes the construction or operation of a cable system.

"Designation" means selection of a PEG access organization as referenced in Haw. Rev. Stat. §440G-3 including an initial selection by application or proposal as well as selection on a renewal basis.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental agency.

"Proposal" means a filing solicited by the director.

"PEG access facilities" means (1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for the use of that channel capacity.

"Service area" means the geographic area for which an access organization has been designated to provide services.

**§16-\_\_\_\_ - 2 Application or proposal for designation of access organization.**

(a) No access organization shall be initially designated except upon written application or proposal therefor to the director, and following public hearing upon notice, as provided in this chapter.

(b) An application or proposal for designation shall be made in a form prescribed by the director and shall set forth the facts as required by the director to determine in accordance with this chapter whether an access organization should be designated, including facts as to:

- (1) The management and technical experience of the organization, and its existing or proposed staff;
- (2) The public media, community media, and/or PEG access experience of the organization and its existing or proposed staff;
- (3) The applicant having among its missions/purposes (as demonstrated by its articles of incorporation, bylaws, or similar corporate documents) to provide training, education and outreach to permit individuals and

organizations the ability to use communication tools to effectively convey their messages;

- (4) The ability of the organization, and its existing or proposed staff, to provide the PEG access services requested by the director;
- (5) The organization's short-term and long-term plans for PEG access services for a designated county;
- (6) The financial capacity of the organization;
- (7) 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;
- (8) The ability of the organization, through the use of electronic media tools, to foster and engage in civic and cultural development and engagement in communities it has served;
- (9) Any other matters deemed appropriate and necessary by the director.

(c) A proposal for designation of an access organization shall be accepted for filing in accordance with this chapter only when made in response to the written request of the director for the submission of proposals.

**§16-\_\_\_\_ - 3 Designation of access organizations; criteria; content.**

- (a) The director is empowered to designate access organizations upon the terms and conditions provided in this chapter.
- (b) The director, after a public hearing as provided in this chapter, shall designate an applicant as an access organization when the director is convinced that it is in the public interest to do so. In determining whether to designate an access organization, the director

shall take into consideration, among other things, the content of the application or proposal, the public need for the services, the ability of the applicant to provide PEG access services, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the services for which designation is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

(c) In determining the area for which an applicant is to be designated, the director shall take into account the cable franchise and local needs within each county.

(d) There shall be no more than one entity designated to provide PEG services in each county during any specified time period.

(e) The period of an initial designation shall be not less than five nor more than twenty years.

**§16-\_\_\_\_ - 4 Requirement for adequate service; terms and conditions of service.**

(a) Every access organization shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, and contract requirements.

(b) The director shall require each access organization to enter into a contract containing a statement of services to be provided, performance standards for such services, fees for such services, and all terms and conditions of service, in the form and with the notice that the director may prescribe. Prior to finalizing the terms of the contract, the director or his/her designee shall seek input from the cable advisory committee regarding the appropriate terms.

(c) The director shall ensure that the terms and conditions upon which PEG access services are provided are fair both to the public and to the access organization, taking into account the appropriate service area, input received during the designation process and the resources available to compensate the access provider.

(d) If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon mutual agreement of the PEG access organization and the director, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The director makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for stated reason(s) to include but not be limited to the inability to execute a new contract by the time the contract expires; and
- (3) The terms and conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.

**§16-\_\_\_\_ - 5 Complaints; violations; revocation, alteration, or suspension of access organization designation; penalties.**

(a) Complaints regarding the operation of an access organization may be made orally or in writing to the director. The director shall resolve complaints informally when possible.

(b) Any designation issued hereunder may be revoked, altered, or suspended by the director as the director deems necessary on any of the following grounds:

- (1) For making material false or misleading statements in, or material omissions from, any application or proposal submitted to the department;
- (2) For any sale, lease, assignment, or other transfer of contract without consent of the director;
- (3) For material breach of the terms of the access services contract, following notice and reasonable opportunity to cure;
- (4) For repeated failure to comply with this chapter or any rules or orders prescribed by the director; and
- (5) For engaging in any unfair or deceptive act or practice as prohibited by Haw. Rev. Stat. § 480-2.

(c) In lieu of or in addition to the relief provided by subsection (b), the director may fine an access organization for violations of subsection (b)(1) through (5) in an amount not less than \$50 nor more than \$1,000 for each violation. Each day's continuance of a violation may be treated as a separate violation pursuant to rules adopted by the director. Any penalty assessed under this section shall be in addition to any other costs, expenses, or payments for which the access organization is responsible under other provisions of the law.

**§16-\_\_\_\_ - 6 Renewal of access organization designation.** The designation of any access organization pursuant to this chapter may be renewed by the director as provided in subchapter 3 herein. The periods of renewal shall be not less than five nor more than twenty years each.

**§16-\_\_\_\_ - 7 Transfer of access organization designation.**

(a) No access organization designation or contract therefor, including the rights, privileges, and obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any access organization, whether by change in ownership or otherwise, except upon written application to and approval by the director.

(b) A transfer of an access organization designation shall authorize the new access organization to provide services for the remainder of the term of the existing contract.

**§16-\_\_\_\_ - 8 Oversight of access organization.**

(a) The director or the director's designated representatives may from time to time visit the places of business and other premises and examine the records and facilities of any access organization to ascertain if all laws, rules, contract provisions, and orders of the director have been complied with.

(b) The director shall conduct a compliance review no less than once every seven years and no more than once every three years, the purposes of which shall be:

- (1) to obtain input from the recipients and/or potential recipients of PEG access services regarding their satisfaction/dissatisfaction with the designated access organization's performance under the contract;
- (2) to evaluate the status of needs of the community served by the access organization and the existing technology's ability to meet those needs, including whether the needs, technology or other aspect of services have changed in any material respect since the start of the contract;
- (3) any other compliance matter the director deems appropriate; and/or

(4) to determine, based on any of the information obtained in the course of the compliance review, whether the terms of the then-current contract should be modified.

(c) The process for each compliance review shall include, at a minimum, a public hearing to afford interested persons the opportunity to submit views, data, or arguments, orally and in writing. Notice thereof shall be given as provided in section 16-\_\_\_\_-14 herein.

(d) In the event that the director determines, based on the results of a compliance review, that the terms of the then-current contract should be modified, the director shall consult with the cable advisory committee to identify the modified terms. The director shall also consult with the access organization to determine the feasibility and appropriateness of any identified modifications and the resulting costs. However, the decision of the contract terms to be modified and the extent of modification shall be the ultimate responsibility of the director. In the event of any contract modification resulting in additional or different services to be provided by the access organization, the compensation paid to the access organization pursuant to the contract shall be adjusted accordingly.

**§16-\_\_\_\_-9 Reports.** Each access organization shall file with the director reports of its financial, technical, and operational condition. The reports shall be made in a form and on the time schedule as specified in the contract and shall be kept on file open to the public.

**§16-\_\_\_\_ - 10 Time.**

(a) The computing of any period of time shall be in accordance with section 16-201-14,

Hawaii Administrative Rules.

(b) The time limits set by this chapter may be waived or extended by mutual written agreement between the director and the applicant.

## SUBCHAPTER 2

### PROCEDURES FOR NEW AND TRANSFER APPLICATIONS

#### **§16-\_\_\_\_ - 11 Filing of application or proposal.**

(a) Within thirty days of receipt of an application or proposal, the director shall review the application or proposal and notify the applicant in writing that it is acceptable for filing or inform the applicant that it fails to provide certain information. The applicant shall be given at least fifteen days to submit the required information. If the director finds the application or proposal to be complete, the director shall issue notice of acceptance for filing. If no additional information is received or if the application or proposal is still not complete, the applicant's submittals shall be returned, with a statement indicating that the application or proposal as submitted is not acceptable for filing.

(b) The date of the notice of acceptance shall be deemed the filing date of the application or proposal.

**§16-\_\_\_\_ - 12 Requests for additional information or documentation.** To facilitate the review of the application or proposal, the director may informally and at anytime during the process request the applicant to submit additional information or supporting documentation to clarify or supplement the information already contained in the application or proposal.

**§16-\_\_\_\_ - 13 Investigations, examinations, and audits.** In addition to requesting supporting documentation or clarifying information from the applicant, the director may initiate or require any investigation, examination, and audit to be performed as deemed appropriate.

**§16-\_\_\_\_ - 14 Public hearing.** Within thirty days after the issuance of a notice of acceptance for filing, the director shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county and to the holder of any cable franchise in the county in which the proposed service area is located. The director shall also give public notice of the application or proposal and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing.

**§16-\_\_\_\_ - 15 Approval or denial.** After holding a public hearing, the director shall approve the application or proposal in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. The director has the discretion to require the applicant to attend a show cause hearing after the public hearing but prior to making the decision on the application or proposal.

**§16-\_\_\_\_ - 16 Request for reconsideration.** Within ten working days of issuance of the decision, an applicant may request the director to reconsider its decision. The request shall be in writing, shall specify the reasons why the director should reconsider the decision, and set forth any relevant and substantial information that for good cause was not previously set forth in the application or supplemental information, together with an explanation of why the information was not previously presented. The request may also state specifically what points of fact or law the director may have overlooked or misunderstood, together with brief arguments on the points raised. Only one request for

reconsideration may be filed by the applicant. The director shall make a determination on the request and issue a decision affirming or amending the initial decision.

**§16-\_\_\_\_ - 17 Contested case hearing.** The applicant may petition the director for a contested case review hearing within sixty days following the decision. The director may transfer the petition together with the documents concerning the application to a hearings officer for further proceedings pursuant to sections 16-201-26 to 16-201-47.

**§16-\_\_\_\_ - 18 Construction.** To the extent not inconsistent with the procedures described in this chapter, the procedures described in chapter 16-201, Hawaii Administrative Rules shall apply. Should any provision of this chapter be invalidated, all other provisions shall remain in full force and effect.

### SUBCHAPTER 3

#### PROCEDURES FOR RENEWAL APPLICATIONS

**§16-\_\_\_\_ - 19 General.** To the extent not inconsistent with the provisions of this subchapter, all of the provisions stated in subchapters 1 and 2, with the exception of sections 16-\_\_\_\_-2 and 16-\_\_\_\_-11, together with the sections in this subchapter shall apply to all renewal applications.

**§16-\_\_\_\_ - 20 Initiating the renewal process.**

(a) An access organization seeking renewal shall submit to the director a written notice of intent to renew no later than twelve months prior to the expiration of its existing contract.

(b) Within thirty days of receipt of the notice of intent to renew, the director shall issue a written notice to the access organization stating that the renewal has been either accepted for further processing or rejected. The permissible grounds for rejection shall be limited to those set forth in section 16-\_\_\_\_-5 herein and shall, in the event of rejection, be identified in the director's notice. The date of the director's notice shall be the date of filing for the purpose of further proceedings as provided herein.

(c) If the notice of intent to renew is accepted, the director shall process the request for renewal in the same manner as for applications and proposals, as provided in Subchapter 2 herein.

(d) If the notice of intent to renew is rejected, the access organization may seek reconsideration and/or review of the decision as provided in sections 16-\_\_\_\_-16 and 16-\_\_\_\_-17 herein.

**§16-\_\_\_\_ - 21 Alternative renewal procedures.** Nothing in this chapter shall preclude an access organization from submitting an application for renewal at any time. Likewise, nothing shall preclude the director from granting or denying such an application, after affording the public adequate notice and opportunity for comment.

## CHAPTER 440G

### CABLE TELEVISION SYSTEMS

- 440G-1 Short title
- 440G-2 Repealed
- 440G-3 Definitions
- 440G-4 Issuance of cable franchises and regulation of cable operators by director of commerce and consumer affairs
- 440G-5 Cable franchise required
- 440G-6 Application or proposal for cable franchise; fee; certain requirements
- 440G-7 Cable franchise application or proposal procedure; public hearing; notice
- 440G-8 Issuance of cable franchise authority; criteria; content
  - 440G-8.1 Requirement for adequate service; terms and conditions of service
  - 440G-8.2 Cable system installation, construction, operation, removal; general provisions
- 440G-9 Complaints; violations; revocation, alteration, or suspension of cable franchise; penalties
- 440G-10 Renewal of cable franchise
  - 440G-10.1 Transfer of cable franchise
- 440G-11 Rate, filed with director; approval
- 440G-12 Other duties of director; suit to enforce chapter
- 440G-13 Cable advisory committee
- 440G-14 Reports
- 440G-15 Annual fees
- 440G-16 Rules
- 440G-17 Criminal and civil liability

**§440G-1 Short title.** This chapter shall be known as the Hawaii Cable Communications Systems Law. [L 1970, c 112, pt of §1; am L 1987, c 301, §1]

**§440G-2 REPEALED.** L 1987, c 301, §2.

**§440G-3 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Access organization" means any nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section 440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization.

"Applicant" means a person who initiates an application or proposal.

"Application" means an unsolicited filing.

"Basic cable service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement, or otherwise, which authorizes the construction or operation of a cable system.

"Cable operator" means any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"Cable service" means (1) the one-way transmission to subscribers of video programming or other programming service and (2) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

"Cable system" means any facility within this State consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless that facility or facilities uses any public right-of-way; or (3) a facility of a public utility subject in whole or in part to the provisions of chapter 269, except to the extent that those facilities provide video programming directly to subscribers.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Facility" includes all real property, antenna, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, and other personal property used by a cable operator in providing service to its subscribers.

"Institution of higher education" means an academic college or university accredited by the Western Association of Schools and Colleges.

"Other programming service" means information that a cable operator makes available to all subscribers generally.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental agency.

"Proposal" means a filing solicited by the director.

"Public, educational, or governmental access facilities" means (1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for the use of that channel capacity.

"Public place" includes any property, building, structure, or water to which the public has a right of access and use.

"Public utilities commission" means the public utilities commission of this State.

"School" means an academic and noncollege type regular or special education institution of learning established and maintained by the department of education or licensed and supervised by that department.

"Service area" means the geographic area for which a cable operator has been issued a cable franchise.

"Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §3; am L 1991, c 294, §1]

**§440G-4 Issuance of cable franchises and regulation of cable operators by director of commerce and consumer affairs.** The director shall be empowered to issue cable franchises and otherwise administer and enforce this chapter. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §4]

**§440G-5 Cable franchise required.** No person shall construct, operate, or acquire a cable system, or extend an existing cable system outside its designated service area, without first obtaining a cable franchise as provided in this chapter. [L 1970, c 112, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1987, c 301, §5]

**§440G-6 Application or proposal for cable franchise; fee; certain requirements.**

(a) No cable franchise shall be issued except upon written application or proposal therefor to the director, accompanied by a fee of \$1,000.

(b) An application for issuance of a cable franchise shall be made in a form prescribed by the director. The application shall set forth the facts as required by the director to

determine in accordance with section 440G-8(b) whether a cable franchise should be issued, including facts as to:

- (1) The citizenship and character of the applicant;
- (2) The financial, technical, and other qualifications of the applicant;
- (3) The principals and ultimate beneficial owners of the applicant;
- (4) The public interest to be served by the requested issuance of a cable franchise; and
- (5) Any other matters deemed appropriate and necessary by the director including the proposed plans and schedule of expenditures for or in support of the use of public, educational, and governmental access facilities.

(c) A proposal for issuance of a cable franchise shall be accepted for filing in accordance with section 440G-7 only when made in response to the written request of the director for the submission of proposals. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §6]

**§440G-7 Cable franchise application or proposal procedure; public hearing; notice.**

An application or proposal for a cable franchise shall be [processed] as follows:

- (1) After the application or proposal and required fee are received by the director and within a time frame established by rule, the

director shall notify an applicant in writing of the acceptance or nonacceptance for filing of an application or proposal for issuance of a cable franchise required by this chapter;

(2) After the issuance of a notice of acceptance for filing and within a time frame established by rule, the director shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county and to any telephone or other utility and cable company in the county in which the proposed service area is located. The director shall also give public notice of the application and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing;

(3) After holding a public hearing, the director shall approve the application or proposal in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. If the director does not take final action after the issuance of a notice of acceptance for filing and within a time frame established by rule, the application or proposal shall be deemed denied; and

(4) The time limit for final action may be extended, on the director's approval of the applicant's request and justification in writing for an extension of time to the director at least two weeks in advance of the requested effective date of the extension, or by mutual agreement. [L 1970, c 112, pt of §1; am L 1987, c 301, §7; am L 1998, c 2, §101]

**Revision Note**

In opening paragraph, "processed" substituted for "proposed" to correct printing error in main volume.

**§440G-8 Issuance of cable franchise authority; criteria; content.** (a) The director is empowered to issue a cable franchise to construct or operate facilities for a cable system upon the terms and conditions provided in this chapter.

(b) The director, after a public hearing as provided in this chapter, shall issue a cable franchise to the applicant when the director is convinced that it is in the public interest to do so. In determining whether a cable franchise shall be issued, the director shall take into consideration, among other things, the content of the application or proposal, the public need for the proposed service, the ability of the applicant to offer safe, adequate, and reliable service at a reasonable cost to the subscribers, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the service for which authority is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

(c) In determining the area which is to be serviced by the applicant, the director shall take into account the geography and topography of the proposed service area, and the present, planned, and potential expansion in facilities or cable services of the applicant's proposed cable system and existing cable systems.

(d) In issuing a cable franchise under this chapter, the director is not restricted to approving or disapproving the application or proposal but may issue it for only partial exercise of the privilege sought or may attach to the exercise of the right granted by the cable franchise terms, limitations, and conditions which the director deems the public interest may require. The cable franchise shall be nonexclusive, shall include a description of the service area in which the cable system is to be constructed, extended, or operated and the approximate date on which the service is to commence and shall authorize the cable operator to provide service for a term of fifteen years. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §8]

**§440G-8.1 Requirement for adequate service; terms and conditions of service. (a)**

Every cable operator shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, franchise requirements, and its filed schedule of terms and conditions of service.

(b) The director shall require each cable operator to submit a schedule of all terms and conditions of service in the form and with the notice that the director may prescribe.

(c) The director shall ensure that the terms and conditions upon which cable service is provided are fair both to the public and to the cable operator, taking into account the

geographic, topographic, and economic characteristics of the service area and the economics of providing cable service to subscribers in the service area. [L 1987, c 301, pt of §9]

**§440G-8.2 Cable system installation, construction, operation, removal; general provisions.** (a) A cable franchise shall be construed to authorize the construction or operation of a cable system within the service area above, below, on, in, or along any highway or other public place and through easements which have been dedicated for compatible purposes.

(b) The technical specifications, general routes of the distribution system, and the schedule for construction of the cable system shall be subject to the director's approval.

(c) In installing, operating, and maintaining facilities, the cable operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes authorized by the director.

(d) The cable operator shall indemnify and hold the State and the county harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its cable system, notwithstanding any negligence on the part of the State or county, their employees or agents. Upon receipt of notice in writing from the State or county, the cable operator shall, at its own expense, defend any action or proceeding against the State or county in which it is claimed that personal injury or property damage was caused by activities of the cable operator in the installation, operation, or maintenance of its cable system.

(e) The cable operator shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area; provided that service is actually being delivered within a reasonable distance from the school or institution of higher education which may request service.

(f) The cable operator shall designate three or more channels for public, educational, or governmental use.

(g) Upon termination of the period of the cable permit or of any renewal thereof, by passage of time or otherwise, the cable operator shall remove its facilities from the highways and other public places in, on, over, under, or along which they are installed if so ordered by the director and shall restore the areas to their original or other acceptable condition, or otherwise dispose of same. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the cable operator shall be liable for the cost of its removal.

(h) The use of public highways within the meaning of section 264-1 and other public places shall be subject to:

(1) All applicable state statutes and all applicable rules and orders of the public utilities commission governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable public welfare rules adopted by the governing body of the county in which the county highways are situated;

(3) For state or federal-aid highways, all public welfare rules adopted by the director of transportation; and

(4) For the relocation of cable facilities, the provisions of section 264-33 concerning the allocation of expenses for the relocation of utility facilities.

(i) In the use of easements dedicated to compatible purposes, the cable operator shall ensure:

(1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a cable system;

(2) That the cost of the installation, construction, operation, or removal of facilities is borne by the cable operator or subscribers, or a combination of both; and

(3) That the owner of the property is justly compensated by the cable operator for any damages caused by the installation, construction, operation, or removal of facilities by the cable operator. [L 1987, c 301, pt of §9]

**§440G-9 Complaints; violations; revocation, alteration, or suspension of cable**

**franchise; penalties.** (a) Subscriber complaints regarding the operation of a cable system may be made orally or in writing to the director. The director shall resolve complaints informally when possible.

(b) Any cable franchise issued hereunder after hearing in accordance with chapter 91 may be revoked, altered, or suspended by the director as the director deems necessary on any of the following grounds:

(1) For making material false or misleading statements in, or for material omissions from, any application or proposal or other filing made with department;

(2) For failure to maintain signal quality under the standards prescribed by the director;

(3) For any sale, lease, assignment, or other transfer of its cable franchise without consent of the director;

(4) Except when commercially impracticable, for unreasonable delay in construction or operation or for unreasonable withholding of the extension of cable service to any person in a service area;

(5) For violation of the terms of its cable franchise;

(6) For failure to comply with this chapter or any rules or orders prescribed by the director;

(7) For violation of its filed schedule of terms and conditions of service; and

(8) For engaging in any unfair or deceptive act or practice as prohibited by section 480-2.

(c) In lieu of or in addition to the relief provided by subsection (b), the director may fine a cable operator, for each violation of subsection (b)(1) through (8), an amount not less than \$50 nor more than \$25,000 for each violation. Each day's continuance of a violation may be treated as a separate violation pursuant to rules adopted by the director. Any penalty assessed under this section shall be in addition to any other costs, expenses, or payments for which the cable operator is responsible under other provisions of this chapter. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §10]

**§440G-10 Renewal of cable franchise.** Any cable franchise issued pursuant to this chapter may be renewed by the director upon approval of a cable operator's application or proposal therefor. The form of the application or proposal shall be prescribed by the director. The periods of renewal shall be not less than five nor more than twenty years each. The director shall require of the applicant full disclosure, including the proposed plans and schedule of expenditures for or in support of the use of public, educational, or governmental access facilities. [L 1970, c 112, pt of §1; am L 1987, c 301, §11]

**§440G-10.1 Transfer of cable franchise.** (a) No cable franchise, including the rights, privileges, and obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by

transfer of control of any cable system, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the director.

(b) Sections 440G-7 and 440G-8 shall apply to the transfer of cable franchises. [L 1987, c 301, §12]

**§440G-11 Rate, filed with director; approval.** (a) The director shall require each cable operator to file a schedule of its rates of service on a form and with the notice that the director may prescribe.

(b) To the extent permitted by federal law, the director shall regulate rates to ensure that they are fair both to the public and to the cable operator. [L 1970, c 112, pt of §1; am L 1987, c 301, §13]

**§440G-12 Other duties of director; suit to enforce chapter.** (a) The director has the power and jurisdiction to supervise and regulate every cable operator within this State so far as may be necessary to carry out the purposes of this chapter, and to do all things which are necessary or convenient in the exercise of this power and jurisdiction.

(b) The director may adopt, pursuant to chapter 91, rules necessary to carry out this chapter.

(c) The director or the director's designated representatives may from time to time visit the places of business and other premises and examine the records and facilities of all cable operators to ascertain if all laws, rules, cable franchise provisions, and orders of the

director have been complied with, and shall have the power to examine all officers, agents, and employees of cable operators, and all other persons, under oath, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for administering this chapter.

(d) The director may appoint, without regard to chapters 76 and 77, an administrator, engineers, financial analysts, and other technical staff as may be necessary and may appoint one or more attorneys for purposes of enforcing this chapter. The director shall define their powers and duties and fix their compensation. The director may also appoint clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter subject to chapters 76 and 77.

(e) The director shall have the power and authority to institute all proceedings and investigations, hear all complaints, issue all process and orders, and render all decisions necessary to enforce this chapter or the rules and orders adopted thereunder, or to otherwise accomplish the purposes of this chapter.

(f) The director or other aggrieved party shall have the right to institute, or to intervene as a party in, any action in any court of law seeking a mandamus, or injunctive or other relief to compel compliance with this chapter, or any rule or order adopted thereunder, or to restrain or otherwise prevent or prohibit any illegal or unauthorized conduct in connection therewith. [L 1970, c 112, pt of §1; am L 1971, c 138, §1; gen ch 1985; am L 1987, c 301, §14; am L 1996, c 184, §1]

**§440G-13 Cable advisory committee.** There is established the cable advisory committee. The committee shall consist of five members appointed by the governor as provided in section 26-34.

The committee shall advise the director and cable operators on matters within the jurisdiction of this chapter at the request of the director or any cable operator.

The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties. [L 1970, c 112, pt of §1; gen ch 1985; am L 1987, c 301, §15]

**§440G-14 Reports.** Each cable operator shall file with the director reports of its financial, technical, and operational condition and its ownership. The reports shall be made in a form and on the time schedule prescribed by the director and shall be kept on file open to the public. [L 1970, c 112, pt of §1; am L 1987, c 301, §16]

**§440G-15 Annual fees.** (a) Each cable operator shall pay an annual fee to be determined by the director. The fees so collected under this section shall be used to offset the costs of administering this chapter.

(b) The director shall adjust the fees assessed under this section, as necessary from time to time, pursuant to rules adopted in accordance with Chapter 91. [L 1987, c 301, §17; am L 1991, c 87, §1; am L 1993, c 280, §23, 1999 \_\_\_\_\_.]

**[§440G-16 Rules.]** The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. [L 1987, c 301, §20]

**[§440G-17] Criminal and civil liability.** Nothing in this chapter shall be deemed to affect the criminal and civil liability of cable programmers, cable operators, or access organizations pursuant to the federal, state, or local laws regarding libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws, except that no access organization shall incur any such liability arising from, based on, or related to any program not created by the access organization, which is broadcast on any channel obtained under section 440G-8, or under similar arrangements.

[L 1991, c 294, §2]

#### **Cross References**

Cable television service fraud, see §§708-8200 and 708-8201.