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created, independently funded, governed by a board of directors, and tasked with contractual obligations. Not every enterprise functions in the same fashion.

Different levels of openness can be accomplished by different means. Strict statutory structures are not always the best answer and sometimes the wrong one. Blind application of Chapter 92F involves a freight train of government baggage and government bureaucracy.

The PEG access providers were established as flexible vehicles outside the government processes for good reasons. Treating them as part of government effectively collapses the experiment, and creates another government agency, instead of a flexible and vibrant enterprise that can respond quickly to changing market conditions and community needs.

PEG access providers have not acted like nor been viewed as government agencies. Any effort to do so now is fundamentally ill advised and contrary to the underlying reason for their existence. The OIP opinion was over-reaching when it sought to characterize PEG providers as "agencies" of the government and unaware of the real world meaning of such a decision.

**A. PEG ACCESS PROVIDERS ARE NOT STATE "BOARDS" OR "AGENCIES" FOR PURPOSES OF HAW. REV. STAT. CHAPTER 92F**

The most far reaching aspect of the OIP Opinion is the conclusion that PEG cable access stations are "agencies" of the State of Hawaii for purposes of Haw. Rev. Stat. Chapter 92F. But PEG access providers have never and do not now conduct themselves as state agencies.

1. PEG boards of directors do not conduct business as a "board" for purposes of Hawaii's Public Agency Meeting law under Haw. Rev. Stat. § 92-2 (2001)
2. PEG providers do not conduct business as an "agency" for purposes of Hawaii's Administrative Procedures Act ("APA"), Haw. Rev. Stat. Chapter 91.
  - a. In particular, PEG providers have never proposed and promulgated rules after public hearings and the governor?

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approval. Such rules would be subject to the prior review and approval of the Attorney General's office.

- b. PEG access providers do not hold contested case hearing as provided under Haw. Rev. Stat. Chapter 91 in which persons adversely affected may appeal rulings to the State Circuit Court.
3. PEG access providers have never been "agencies" of the State and therefore a part of the Executive Branch required to seek legislative appropriations, meet budgetary requirements, including the right of the Governor to control, restrict, and veto funds and budgets.
4. PEG access providers are not subject to the civil service and labor laws that are applicable to other state agencies.
5. The State Procurement Law, Haw. Rev. Stat. Chapter 103D does not apply. Contracting is not governed by the Department of Accounting and Government Services.
6. PEGs provide service for a fee and State agencies are not set up to do fee-for-service contracts with and for private individuals.
7. No government official exercises day to day control over the operation of PEG providers.
8. The PEG providers were created and organized as private corporations with boards of directors, not through legislation or executive branch authority.
9. PEG providers and government officials have the normal relationships that arise in any contractual arrangements, but such relations do not make the PEG providers government employees

The Hawai'i Legislature has specifically defined "boards" under Hawai'i's Public Agency Meeting Law, Haw. Rev. Stat. § 92-2 and "agencies" under Hawai'i's Uniform Information Practices Act, Haw. Rev. Stat. § 92-2.

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Haw. Rev. Stat. § 92-2, Public Agency Meetings and Records, Part I Meetings, defines a "board" for purposes of open public meeting requirements as:

(1) . any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.

The open meeting requirements of Chapter 92 do not apply unless an entity is a "board" within the meaning of Haw. Rev. Stat. § 92-2.

Haw. Rev. Stat. § 92F-3, Uniform Information Practices Act, defines the term "agency" for purpose of disclosing public information and public records as:

any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the non-administrative functions of the courts of this State.

The government open records requirements of Chapter 92F do not apply unless an entity is an "agency" with the meaning of Haw. Rev. Stat. § 92F-3.

In the past, OIP has considered four (4) factors in determining whether an entity is an "agency" under Chapter 92F: (1) whether the entity was created by the government: (2) the level of government funding (the source of funding is *not* part of the Hawai'i statutory definition, but was taken from a

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Connecticut Supreme Court decision'); (3) the extent of government involvement or regulation; and (4) whether the entity performs a governmental function. <sup>2</sup>

OIP uses five (5) factors to determine whether an entity is a "board" under Chapter 92F: (1) whether the entity is an agency, board, commission, authority, or committee of the State or its political subdivisions; (2) which is created by constitution, statute, rule, or executive order; (3) to have supervision, control, jurisdiction, or advisory power over specific matter; (4) which is required to conduct meetings; and (5) which is required to take official actions.

As OIP has already indicated, these determinations are fact intensive and must be made on a case by case basis after looking at the totality of circumstances. <sup>3</sup> There are many private entities that carry out "public interests," but that does not mean that the entity is engaged in "governmental functions" that in turn make them public "boards" or "agencies."

Under these tests, Olelo is neither a "board" nor an "agency."

**1. PEG ACCESS PROVIDERS ARE NOT AGENCIES, BOARDS, COMMISSIONS, AUTHORITIES, OR COMMITTEES OF THE STATE OF ITS POLITICAL SUBDIVISIONS NOR ARE THEY A "UNIT" OF GOVERNMENT**

Olelo is an independent legal entity separate from the State of Hawai'i and its political subdivisions. It was organized as a not-for-profit corporation under Hawai'i's Nonprofit Corporation Act, Haw. Rev. Stat.

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<sup>1</sup>OIP Op. Ltr. No. 90-31 at 8 (October 25, 1990) cited the Connecticut Supreme Court's decision in *Board of Trustees v. Freedom of Information Commissioner*, 436 A.2d 266 (Conn. 1980) as authority for the proposition that the source of funding should be considered in deciding if an entity is an "agency" for purposes of Haw. Rev. Stat. § 92F-3. The Hawaii Supreme Court has not ruled on the issue. PEG access providers are private "fee for service" contractors.

<sup>2</sup> OIP Opinion Letter No. 90-31 at 14 (October 25, 1990).

<sup>3</sup> *Id.*

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Chapter 415B. It is governed by a Board of Directors consisting of private individuals. Neither the State nor 'Olelo represents to the private or public that 'Olelo is affiliated with the State as an agency, board, commission, authority or committee of the State. 'Olelo has no authority to bind the State of Hawai'i in any legal manner; the State, conversely, cannot bind 'Olelo. 'Olelo has independent legal counsel and is not represented by the State in any legal matters.

2. **'OLELO WAS NOT CREATED BY THE STATE OF HAWAII CONSTITUTION, STATUTE, RULE, EXECUTIVE ORDER, BY COUNTY CHARTER OR ORDINANCE, OR ANY OTHER GOVERNMENT AUTHORITY**

Individuals filed 'Olelo's Articles of Incorporation to create a nonprofit corporation.<sup>4</sup> No state constitutional provision, state statute, county charter provision, ordinance, administrative rule, or executive order "created" 'Olelo or "enables" it to exist.<sup>5</sup>

'Olelo was not "created" by any State or county legislative or executive enactment or appointing authority. It is unlike the Natural Energy Laboratory of Hawai'i Authority,<sup>6</sup> the Aloha Tower Authority,<sup>7</sup> or the Hawai'i Community Development Corporation<sup>8</sup> that were adopted through enabling

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<sup>4</sup> See 'Olelo's Articles of Incorporation on file with the State Department of Commerce and Consumer Affairs, Division of Business Registration.

<sup>5</sup> 'Olelo is not to be confused with Hawaii Public Television. Hawaii's Legislature has adopted specific statutory provisions to promote a community based system of public television. That system is different than 'Olelo. The Hawai'i Public Broadcasting Authority, Haw. Rev. Stat. Chapter 314, was repealed in 1999 and the assets and license transferred to the Hawai'i Public Television Foundation effective July 1, 2000. Hawai'i Laws 1999, c 63, § 7, effective July 2, 2000.

<sup>6</sup> Haw. Rev. Stat. Chapter 227D.

<sup>7</sup> Haw. Rev. Stat. Chapter 206J.

<sup>8</sup> Haw. Rev. Stat. Chapter 206E.

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legislation. The PEG stations are not like Honolulu's Neighborhood Boards which were specifically organized under the City Charter.<sup>9</sup> Nor is 'Olelo like the Honolulu "vision teams" organized by the Mayor of Honolulu to establish neighborhood priorities for publically funded public works projects which are then incorporated into the administration's capital budget and program bills."<sup>10</sup>

Hawai'i's state and county governments know how to create quasi-public corporations or entities to carry out government functions like those noted above. But no government action was taken to create 'Olelo or any other **PEG** access provider. There is no enabling legislation "creating" them. Unless every company in the state organized under Hawai'i's general incorporation law is going to be deemed a "government board" or "agency," the mere fact of incorporation does "create" a public body. Thus, **PEG** providers cannot be considered a board or agency merely because it is incorporated under general law. Such a reading would render meaningless the concept and the distinction between public and private organizations.

Moreover, if there are going to be government bodies that constitute "boards" or "agencies" within the meaning of Chapters 92 or 92F, there must be some definition of their official existence and official functions. There is no state statute, charter, or rule creating or establishing PEG providers' existence, or defining any official functions or duties."<sup>11</sup>

**3. THE STATE DOES NOT HAVE SUPERVISION, CONTROL, JURISDICTION OR ADVISORY POWER OVER SPECIFIC MATTERS RELATING TO THE PEG PROVIDERS**

Neither the State of Hawai'i nor any county has any ownership interest in the PEG providers. They are privately held and owned nonprofit corporation operated by private employees who are neither civil servants nor "public employees" under State law.

For example, on January 19, 1990, 'Olelo and Department of Commerce and Consumer Affairs ("DCCA") entered into a contractual

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<sup>9</sup> Revised Charter of the City and County of Honolulu, §14-101 (1973).

<sup>10</sup> See OIP Op. Ltr. No. 01-01 at 6-7 (April 9, 2001).

<sup>11</sup> Hawaii Attorney General's Opinion No. 90-7 (1990).

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relationship and agreement ("DCCA Agreement") whereby 'Olelo agreed to be responsible for the following activities with regard to public, educational and governmental ("PEG") access: (1) management of the channels; (2) provision of facilities and equipment for the production of programming; (3) training of governmental, educational and community organizations; (4) marketing and promotion of 'Olelo and the channels; and (5) provision of support services to users.

'Olelo and DCCA entered into a subsequent agreement dated June 24, 1991 which essentially amended the January 19, 1990 Agreement by including 'Olelo's management of the PEG fees paid by Chronicle Cablevision of Hawai'i, Hawai'i Kai Area Franchise. 'Olelo's responsibilities remain the same as the January 19, 1990 Agreement.

In December 24, 1998, 'Olelo and DCCA entered into an Agreement ("DCCA Agreement") which superseded the January 19, 1990 and June 24, 1991 Agreements. Under the prior agreements, 'Olelo continued its management of the PEG channels and facilities and equipment.

Nothing in either Agreements between DCCA and 'Olelo or the Decision and Orders issued by DCCA permit DCCA to dictate how 'Olelo manages the channels under its control, assert any editorial power over the content of the programming broadcast on the channels, or impose any requirements on the operations of 'Olelo. 'Olelo's operations are conducted entirely by private parties under guidelines established by 'Olelo.<sup>12</sup> Neither the State nor DCCA offer an administrative support.<sup>13</sup> While 'Olelo, like any corporation is subject to the State's general police powers, the State does not control, oversee, manage, or supervise 'Olelo's operations. 'Olelo is simply a "fee for service" contractor.

'Olelo prepares reports required by its contract, but has no obligation to prepare reports or respond to generalized governmental inquiries.

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<sup>12</sup> 'Olelo hires its own employees who are not subject to civil service or collective bargaining arrangements.

<sup>13</sup> OIP found that the City and County of Honolulu's administrative support, for Neighborhood Boards and the mayor's visioning teams were important factors in rendering them "boards." OIP Op. Ltr. No. 01-01 at 8 and 15.

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Last year Hawai'i's Senate adopted a resolution requesting a financial and management audit of 'Olelo. 'Olelo's Board of Directors rejected the request as improper and did not do the audits. Nothing further occurred.

**4. PEG PROVIDERS ARE NOT REQUIRED TO CONDUCT MEETINGS IN ACCORDANCE WITH STATE LAW TO TAKE OFFICIAL GOVERNMENTAL ACTIONS**

PEG providers are not required by any law or order to conduct public meetings in any way different from any nonprofit corporation under Hawai'i law or by contractual agreement.

There is nothing in 'Olelo's Bylaws or in any state or county law, rule or order that requires 'Olelo to recommend or take any action that directly affects government or government spending, apart from what by contract 'Olelo has agreed to do. 'Olelo neither makes nor recommends formal rules or policies to the government that are intended to affect government policy nor issues rules or enforces any law on behalf of the State. Because 'Olelo was not "created" by the government, it does not take "official" government action.

**5. PEG PROVIDERS RECEIVE NO STATE OR FEDERAL FUNDS**

PEG providers receive no funds from DCCA, the State of Hawai'i or the federal government. They receive no taxpayer or appropriated revenue! PEGs are not part of the State budgetary process. They do not remit any money to the State.

The fact that the cable franchisee is obliged to fund the public access channels -- in a manner analogous to the way a developer must fund the creation and maintenance of a roadway or parks within a subdivision -- has no bearing on the PEG provider's status as a state agency.

**6. PEG PROVIDERS DO NOT PERFORM ANY GOVERNMENTAL FUNCTIONS**

In OIP Opinion Letter No. 93-18 (October 20, 1993), your office concluded that Akaku-Maui Community Television was not a "public agency." The Opinion found that while providing "public" broadcasting can be considered a "governmental function" under section 314-8(1), Hawai'i Revised Statute



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(repealed **1999**), "community" broadcasting is not a required function of any government agency.

Although we believe that Akaku, by providing community broadcasting on Maui, is performing a public service that benefits the public interest, we do not believe that it is performing a government function. We note that "public broadcasting" may be considered a government function under chapter **314**, Hawai'i Revised Statutes. . . however, our research has not revealed any section of Hawai'i Revised Statutes that requires a government agency to provide "community" broadcasting. Nor are we aware of any legal authority that has found community broadcasting to constitute a governmental function.<sup>14</sup>

This opinion was reaffirmed by OIP in OIP Op. Lt. No. **94-23** (December **13**, 1994) which held that Ho'ike was not an "agency" for purposes of section 92F-3.

The federal government does not require community broadcasting, although Congress has authorized states to designate channel capacity on local cable franchises in order to provide for PEG uses.<sup>15</sup> No provision in Hawai'i Revised Statutes requires the government to provide "community broadcasting." Moreover, community broadcasting is not supported by taxpayer's funds but by the payments made by cable franchisee! The State does not manage 'Olelo's funds.

The State has no editorial or content control over the broadcasting. Indeed, the very goal of providing open community access to cable channels without government restriction or interference is at odds with the notion that 'Olelo should be part of the internal government processes, management, and review.

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<sup>14</sup> OIP Op. Ltr. No. 93-18 (October 20, 1993).

<sup>15</sup> The Cable Communications Policy Act of 1984, Pub. L. 98-549 (Oct. 30, 1984), 90 Stat. 2780, 47 U.S.C. 521, 531 ("Cable Act").

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By contrast, "public" broadcasting is administered by State law under Haw. Rev. Stat. Chapter **314** (repealed effective July 2, 2000).<sup>16</sup> In 1999 the Legislature debated the potential value of Hawai'i Public Television and '**Olelo** merging. DCCA itself acknowledged that no merger could possibly occur unless Hawai'i Public Television itself became a private entity since the Legislature has no authority over 'Olelo as a private entity. The Hawai'i Legislature adopted Act 63, 1999 Session Laws of Hawai'i 83, which provided for the transfer of assets from Hawai'i Public Television to the Hawai'i Public Television Foundation, a non-profit tax exempt organization under Section 501(c) (3) of the Internal Revenue Code. 'Olelo has not sought nor agreed to any merger with the Hawai'i Public Television Foundation.

Furthermore, PEG providers have not been delegated any power to enforce public laws (unlike **OIP's** finding with regard to the Hawai'i Humane Society<sup>17</sup>), recommend or advise on public works CIP funding priorities,<sup>18</sup> or otherwise shape governmental process.

**B. NEITHER THE STATE NOR DCCA MAINTAINS ADMINISTRATIVE CONTROL OVER PEG PROVIDERS**

'Olelo's Bylaws and the November 30, 1988 Decision and Order No. 135, as amended,<sup>19</sup> both provide for nine (**9**) Board members: six (6) appointed by the Director of the Department of Commerce and Consumer Affairs ("DCCA Director"); three (3) appointed by the President of Oceanic.

Under the Bylaws, the only qualifications to be a Board member are that an individual must be: (a) a resident of the State of Hawai'i; (b) not be

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enforced laws enacted by the State and county for the health, safety and welfare of the public).

<sup>18</sup> OIP Op. Ltr. No. 01-01 (April **9**, 2001).

<sup>19</sup> D&O Nos. 135 and 137 have subsequently been amended by D&O Nos. 154, 156, 158 and 261 (for Oahu), and 243, 174, 241 and 245 (for Maui, Molokai, and Lanai), and 173, 185, 242 and 244 (for Hawai'i) (collectively referred to as "D&Os").

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an 'Oleloemployee or a direct relative of an 'Oleloemployee; and (c) not be a city, state or federal elected official. Board members are not required to have any government connection, do not represent the State, and act as individuals with fiduciary duties to 'Olelo. The individuals are to be selected on the basis of their ability to bring a wide range of community perspective to the Board. Although the DCCA Director has the ability to select six **of** the nine Board members, since 1989 the Board has nominated its own successors and *in every instance* those nominated by the Board have been selected.

Under the Bylaws, neither the State nor DCCA has the authority or any power to appoint or remove PEG Board members.

### **C. PEG PROVIDERS ARE FUNDED THROUGH PEG FEES**

**PEG** providers receive no funds from DCCA, the State of Hawai'i or the federal government. Instead, all of their funding comes from fees provided by a private franchisee.

#### **1. LEGAL BASIS FOR FRANCHISE FEE**

##### **a. Federal Law**

Under the Cable Act, franchising authorities are permitted to impose requirements for cable-related facilities and equipment. Section 611 of the Cable Act permits franchising authorities to require channel capacity to be designated for PEG use. Section 622 also permits franchising authorities to assess a fee up to five percent (5%) of the annual gross revenues, any portion of which may be used for PEG access.

##### **b. State Law**

The State of Hawai'i, as the franchising authority, has elected to impose requirements on cable operators, cable-related facilities and PEG access through Hawai'i Revised Statutes Chapter 440G, Cable Television Systems.

On November 30, 1988 and December 30, 1988, the Director issued D&O No. 135 and No. 137 granting Oceanic a cable franchise subject to certain terms and conditions.

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Under the D&Os, Oceanic is obligated to pay to the Director or the Director's designee (1) an amount equal to three percent (3%) of Oceanic's annual gross revenues ("Access Fees") and (2) capital funds for facilities and equipment ("Equipment and Facilities Fund"). These fees are specifically designated for PEG use (Access Fees and Equipment and Facilities Fund are hereinafter sometimes collectively referred to as "PEG Fees").

## **2. PAYMENT OF PEG FEES TO PEG PROVIDERS**

PEG providers are not the sole recipient of the PEG Fees. According to D&O No. 261 issued August 11, 2000, the PEG stations, as the State's designee must distribute twenty-five percent (**25%**) of the Access Fees to a consortium of public and private accredited educational institutions. Therefore, although 'Olelo is collecting the PEG Fees from Oceanic, the station is not the sole beneficiary of these fees.

## **3. USE OF PEG FEES BY PEG PROVIDERS**

PEG providers are required to maintain the Access Fees and Equipment and Facilities Fund in two separate accounts. The PEG providers' portion of the Access Fees is used for the provider's operations. The Equipment and Facilities Fund is maintained for PEG access facilities and equipment.

Although the PEG providers submit general financial and activity reports to DCCA, DCCA does not exercise any control over the operations of the PEG station. The provider has sole authority to (1) manage the PEG access facilities and channels; (2) provide training to the public for access to the facilities and equipment; (3) conduct its own marketing and promotions; and (4) provide support services to PEG access users. Each PEG provider has established its own guidelines and policies on the content of its programming.

## **D. PEG STATIONS DO NOT PERFORM A "GOVERNMENT FUNCTION"**

As discussed previously in the Akaku and Ho'ike opinions, OIP already opined that "community" broadcasting is not a "government function" and that neither Akaku nor Ho'ike are "agencies" of the State. 'Olelo is similar to Maui's Akaku in that 'Olelo engages in community broadcasting and is not a "agency" of the State because:

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- o The State is not involved in 'Olelo's operations.
- o The State does not manage or provide administrative support to 'Olelo.
- o 'blelo is funded by PEG fees paid by a private cable franchisee.
- o '**Olelo** is not supported by taxpayer's funds.
- o 'blelo does not enforce any State or county law.
- o 'Olelo does not advise, make, or recommend any State or county public policy for government to implement.

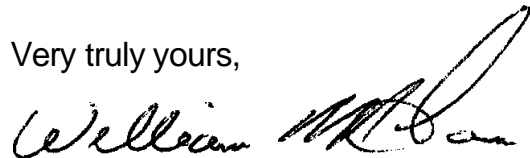
We are not aware of any facts that would alter the conclusions of these opinions.

#### **E. CONCLUSION**

For the reasons stated above, we recommend that **DCCA** reject **OIPs** recent opinion and propose legislation to exclude PEG access cable TV stations from the definition of an "agency" or a "board" for any purposes **and** specifically for purposes of Haw. Rev. Stat. Chapters 91 or **92F**.

We would be glad to discuss this with you further at your convenience.

Very truly yours,



Paul Alston  
William M. Tam

WMT:lc



"Lance La Plante" [REDACTED] on 09/05/2003 04:00:56 PM

2003-75

Please respond to [REDACTED]

To: <cabletv@dcca.hawaii.gov>

cc: [REDACTED]

Subject: Testimony Against Using Olelo's Funds

September 5, 2003

**Aloha** Chairman Recktenwald and **DCCA**:

I attended the public hearing which affects funds for Olelo's facilities on Oahu on Monday, August 25th, I believe I was speaker #94.

Although this will be brief, I would like to have my written testimony submitted for the record.

Over the past 2 years I have had the pleasure of working with people from Olelo - Waianae facility --- they have been an invaluable part of a **partnership** to increase community outreach and awareness in **regard** to conservation issues, especially wildfires in the Hawaiian Islands. I **am** sure you have seen **the papers** and **news** and see what a major problem wildfires **are**. In **fact**, along with invasive plants and **animals**, **wildfires** are a major threat to our ecosystems, our precious watersheds, our island lifestyle, tourism and our economy, and all forms of life in **this** Aina... yours and mine included.

**Along** with Honolulu Fire Department, the Division of Forestry and Wildlife, and Waianae High's Hawaiian Studies students, Olelo has helped us create 3 videos which are now being **aired** and/or are being distributed statewide and maybe be used at a national level for fire prevention. With **the use** of Olelo facilities, we were able to complete a 30-second **PSA**, a 30-minute community **serviceshow**, and a 10-minute informational video. The PSA has been playing for over a year now on Waianae High's "Searider News" on Channel **52** and **also** on Oceanic Cable's "Outside Hawaii"; it has **been** used extensively in outreach presentations island wide; recently it has been shown on **VH1** and **MSNBC** during a program about smoke-jumpers.

None of this would be possible without Olelo!

**We** could not have done **this** without their support, expertise, and island style of doing things which is **so** very important for a non-profit organization to have **this** kind of community support. Every meeting and correspondence with these people has **always been** an uplifting, **educational**, and enjoyable experience. As an outreach coordinator, there is not much more than I could ask **for**... I **am** a very please client.

On a personal level, I watch Olelo every chance I get --- it connects me to my culture, my aina, my community, **opens** my eyes to the world around me... these quality programs cannot be found anywhere else and fortunately **fo** me are repeated regularly.

I would like **you** and **DCCA** to seriously consider another source of funds and to please leave the funds to Olelo's Oahu facilities intact. This will have a great impact on all of **us** here in Hawaii, as a wildfire can devastate a watershed and leave the land lifeless. ..

We need our "water"... we are "thirsty"... and grateful for this blessing we call "OLELO! Do not take this away from us!

Mahalo!

**Lance La Pierre**  
The Nature Conservancy of Hawai'i  
Community Outreach Specialist





Sheila Miles [REDACTED] on 09/05/2003 09:06:47 PM

2003-70

To: cabletv@dcca.hawaii.gov

cc:

Subject: Comments re: Issues, recommendations for PEG Access

Dear Cable TV Division of DCCA,

I have been involved as a volunteer for cable access off and on again through the years. I have followed its growth and changes from the mid 80's when cable access was little more than small studios located off Ward Avenue, when it moved to the CPB building next to Sony and eventually would rent, then buy the old Kodak building.

I have witnessed its shift into a highly efficient, service oriented, friendly entity. It's become a well run, well-crafted business that serves its community members well. It has always been apparent that every step of the way they were doing the best that they could in each circumstance as changes occurred.

I currently co-produce a TV series for Cable access called "Get Healthy Yoga." From the get go the process has been an effort of heart and soul. The amount of energy it takes to produce a series is tremendous. The required amount of learning and staff support has helped to make our process that much easier. I feel cable access is such a valuable resource to the community it serves and to our freedom of speech.

There are no words that could describe the impact we may be having on our community. Our show alone is constantly getting phone calls, letters and emails, with viewers stating what an influence it has had in reducing stress in their lives.

I am concerned that this momentum that has been built over the years will come to a stand still and may eventually fall apart if all aspects of these proposed changes are not reviewed for the impact it will have on a positive future. Therefore I recommend that no changes be made at this time.

Professionally, I have worked in the media for over fifteen years, both in administrative for radio, and TV, radio and print advertising. My experience has been with effective planning and adherence to marketing and budgets, a positive outcome is the end result.

While I realize that each government entity is doing the best job they can given the parameters they work in, my fear is that community access will drop by the wayside not unlike the Makiki Community Library did, when the City and County no longer felt the need to support it.

I can honestly say that the DCCA has been there for the community in all these years and been a



crucial part of Community Accesses growth. I can only hope they will continue to be there for the public in the future.

Respectfully yours,

Sheila Miles

Producer

'Olelo Community Access

Do you Yahoo!?

Yahoo! SiteBuilder - Free, easy-to-use web site design software



"Richard D. Turner" [REDACTED] on 0910512003 11:25:18 PM

200. -177

To: dcca@dcca.hawaii.gov, cabletv@dcca.hawaii.gov  
cc:

Subject: PEG Plan Testimony

Aloha:

**Please find my testimony regarding the DCCA's proposed PEG Access Plan. Please note this serves as supplementary to the testimony provided at the public hearing.**

Mahalo,  
Richard Turner

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Richard D. Turner  
communivision



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**TESTIMONY TO THE  
HAWAII STATE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

PLAN FOR PUBLIC, EDUCATION AND GOVERNMENT ("PEG") ACCESS

Director Recktenwald

My name is Richard Turner. I am currently a consultant providing services including the assessment and planning for community communications such as Public, Educational, and Governmental (PEG) Access. I am also on the Western Regional board of directors of the Alliance for Community Media which is the national support organization for PEG Access. I have twenty five years of experience in PEG Access including serving as the first Executive Director of 'Olelo: The Corporation for Community Television. I have also served on various non-profit boards and have worked as management in all forms of PEG management.

Executive Summary

The following is intended to summarize and emphasize statements from my testimony.

PEG Access is best served by the creation of independent nonprofit organizations.

The public interest is best served by ensuring non-discriminatory, diverse participation in PEG Access.

- Governance processes of PEG Access must be aligned with the principles of the mission of increasing diverse speech including being as public as possible, short of becoming a governmental entity, being as accessible as possible, while standing the test of public scrutiny and not compromising organizational effectiveness.

There is no best model (elected vs. appointed) for governance of PEG Access and none of the models guarantees eliminating all of the concerns raised by the various parties. A mixture of methods will most likely result in the best potential.

Neither the State, nor the cable operator, should intervene in the governance processes, decision making or exercise editorial control over the program content generated by such governance unless the PEG Access organizations are in non-compliance with the law or the State's contract.

PEG Access is designed to be local. The State should be encouraging local autonomy and allow each PEG Access organization, with significant input from their constituency, to determine the best methods and practices within broad guidelines.

Valid complaints about operational issues need to be resolved by management, the governing boards and the DCCA.

The State should be using the least intrusive means necessary to sustain this policy when addressing concerns.

The State must ensure the entities are independent and not judged to be controlled by the State

Collect the full 5% franchise fee allowable under Federal law including all allowable revenues and verify the source of these funds by conducting an audit of these revenues.

Reestablish and revitalize the Cable Advisory Committee and expand it to include effective Neighbor island participation.

- Reconsider the premise that uniformity is in the best public interest.
- Submit legislation that sustains this important policy and specifically states the PEG shall exist.
- Conduct a formal community needs assessment.

### Background

The controversy swirling around PEG Access organizations has existed since inception and while it has ebbs and flows, this is part of the natural course for PEG Access organizations. PEG Access is designed to elicit and facilitate diverse expression that is non-commercial. An electronic soapbox in the electronic park of broadband communications. PEG Access attracts community advocates and critics among its most active users as they become independent producers. They are quickly dissatisfied with anything less than full and meaningful engagement in the development of policies and procedures. It would be abnormal not to have such individuals who are very vocal and hyper-critical. Ironically, it is a success indicator that the PEG Access organization is doing at least something right to have such folks involved and committed to the principles.

In 1995 the State's Legislative Reference Bureau conducted a study in an attempt to address growing concerns by constituents including the board appointment process. The report included findings that there were concerns by users of the PEG Access organizations and that most centered around operational issues that should be addressed by management. That veracity of criticism continues as there has been some bill or resolution introduced into the Legislature every year since. This is by far the exception as I know of no other state that has sustained this much policy activity.

The challenge has been and remains, how to filter through all the static to determine the fundamental policy issues that need to be addressed to ensure healthy and vital PEG Access services. To that end I provide input on the current issue paper issued by the DCCA.

### Issue #1 - Expanded Role for Counties in Cable Regulation

My recommendation is to continue with the current framework. Time-Warner is a significant adversary when it comes to negotiations. This environment has shifted dramatically over the past

fifteen years. Gone are the days of a local company with significant local interest. This has been clearly signaled by the dropping of the Oceanic name and logos and the corporatization and centralization of many functions. The counties are ill-prepared to actively engage in regulatory function including franchising, enforcement and customer service issues.

Clearly, Time-Warner's business model is to aggregate large contiguous geographic areas to create economy of scale for increased profits and for cost effectively delivering enhanced telecommunications services. It is only in the public interest to meet Time-Warner's business model with one effective regulatory office rather than spreading it across four counties diluting effectiveness and increasing the size of government.

## Issue #2 – Governance – PEG Board Appointment Process

This issue has received considerable debate and analysis. The **LRB** report did this relatively well by doing research and comparative analysis with other **PEG** access organizations across the country. The **LRB** found that there was no consensus on one or best model for governance of **PEG** Access. It did find there were instances where great concerns with elected boards resulted in changes made to those organizations to increase the number of appointed over elected board members. From this analysis it is clear that it is not the governance model (appointed versus elected) that determines success or reduced controversy with **PEG** Access.

The **1995** **LRB** study interviewed Kathleen Schuler, a consultant hired in **1989** by the State to form the **PEG** Access non-profits. Schuler sheds light on the original rationale for the State and cable operators appointing board members based upon the concerns of the amount of resources, primarily funds, being granted to the **PEG** Access organizations. It was clear then that the Director appointment model, designed to address concerns at formation, presented other concerns including lack of participation and conflict of interests that would have to be readdressed. From the report:

Schuler adds that it was always understood that at some future time, the board appointment process would be reviewed, and in fact the 'Olelo agreement with the **DCCA** states that "it is agreed that the appointing agencies will consult with the Board of Directors over time concerning the appointment process with a view to making appropriate changes."

The **LRB** had specific recommendations on board appointment which the State has not acted upon. From the report:

3. It is not within the State's direct power to decide whether to change the board structure of the access organizations to include the votes of cable subscribers, as the access organizations are private nonprofit organizations. The only act the State can directly perform relating to the board would be to have the **DCCA** withdraw from the board selection process, which would cause the access

organizations to have to restructure their boards. The Bureau finds that there is an unusually high degree of state control and involvement with the access organizations. Given that the greater the amount of state involvement the more possible it becomes to run into First Amendment problems and to open the State to liability, the DCCA may want to reevaluate its close involvement with the access organizations and decide whether it is now appropriate for the state government to give up that role.

There are additional concerns that to the extent the State exercises a high degree of control over the PEG Access organizations, they were judged **as** extensions of the State subject to all laws and regulations such **as** UIPA. This **raises** liability and First Amendment concerns which is the primary reason for creating independent non-profits in the first place. To ensure an arms length distance from government.

Furthermore, while the DCCA professed that consistency in administration of public funds derived from the cable franchises is in the public interest, they have created inconsistencies in their directing a one percent franchise fee to Hawaii Public Television Foundation (HPTF) with no protection provisions similar to the PEG Access organizations. The DCCA appropriately retains minimal control over the one percent HPTF funds and certainly not board appointment, nor review of by laws and there is no apparent controversy over this relationship although the implementation source back to the same Federal policy. One should question how consistency is in the public interest considering the need is inconsistent.

If the State wants to ensure an independent entity at *arms* length distance is established to carry out these policies then the State must ensure the entities are independent and not judged to be controlled by the State.

After twelve years of operation it is safe to say that the original concerns that formed the rationale for the government/cable appointed board were never realized or have been sufficiently addressed. Annual independent financial audits support this. Removal of the appointment power from the Director does not diminish the authority of the DCCA to ensure that public interest concerns will be met. This includes franchising authority, contractual authority and review of by laws. Even some of these are overly intrusive and exceed the need to ensure that public concerns will be met.

Removal of the Director from appointment then begs the question what will happen? The PEG Access organizations do not want, nor is it in the public interest to create a chaotic environment in which special interest groups hijack the governance process paralyzing or worse yet diverting the interests. 'Olelo voluntarily established prohibitions to avoid board members who are elected officials **as** one measure to ensure being an independent entity.

Trust that the individuals appointed to the boards will fulfill their legal obligation **as** directors to act in the best interests of the public, the organization, its mission and its contractual obligations with the State. The DCCA holds the safely measure of contract cancellation should they default on that trust. Through the contractual process, the DCCA could create **an** orderly process in

which each PEG entity would convene and conduct a process in which a mix of self-appointed, elected and DCCA/Cable ex-officio governance could be created.

Some have asserted that some class of persons should have the privilege of electing the board such as users or cable subscribers. It should be clear that the oversight and governance emanates from the collection of fees for use of public lands. The class of people whose interest in effective use of those funds are the public, not PEG Access users nor cable subscribers.

I must point out a conflict with the statement in the draft on page 5.

The DCCA acknowledges the autonomy and decision making authority of each PEG board of directors...

But the very fundamental issue of determining the governance, the essence of autonomy, is not granted to those entities. When Akaku decided how best to design its governance structure, the DCCA objected and pressured Akaku into changing that process and structure back to being under the determination of the Director of the DCCA. While this did not directly impose or intervene in daily operational management and financial matters, it places appointees in that position.

I further assert the reluctance of Olelo's board to confront the State in Decision and Order proceedings wherein the outcomes were detrimental, is an inherent conflict of interest and artifact of the governmental/cable operator appointment process.

I strongly recommend that the practice of appointment by government and the cable operator except for ex-officio positions come to an end. One model that is workable but does not address the arms-length argument would be to have the board appointment process similar to commissions in which the administration nominates and the Senate confirms.

Within Issue #2 is Option 5 Establishment of a Mechanism for Public and Producer Input. The DCCA should require such provisions as part of the contractual agreement. This should include provisions similar to HRS Chapter 92 as appropriate to an independent non-profit organization.

### Issue #3 Cable Advisory Committee

We have seen a reduction of public input into this very important area of public policy all while the stakes have been raised by corporate consolidation. The public voice has been lost by the failure of the prior administration and cable office to have an active Cable Advisory Committee. The CAC should be reinstated immediately as this process begs such participation. The CAC should be expanded to include roles for PEG producers, PEG managers and effective representation for Neighbor Island participation.

#### Issue #4 Financial Resources

The DCCA should investigate further various models for funding PEG Access in the context of community needs assessment. Everyone doesn't want to be cut and can rally the forces to explain why their project or idea should be funded. The DCCA should be considering models that take into account geographic disparities and isolation as well **as** total numbers in population.

There is a case to be made that there be some baseline of services available to all State residents within a reasonable proximity. This may mean that there is a redistribution of funding beyond the simple allocation of county collection and county distributed.

On one hand 'Olelo deserves credit for funding state agencies that inherently serve the entire State population such **as** the DOE and State Legislature. There are communities on Oahu that are underserved and while one could argue that they could drive **from** the North Shore to downtown the reality is this is just as much a barrier as driving from Hana to Kahului.

Basic PEG Access services should include tape pick-up delivery systems. Basic camera and editing services. This will require extensive collaborations with existing community infrastructure for this kind of solution to become a reality. The DCCA must **find** ways to create greater incentives for collaborations and partnering. Only then will we solve the problems such as presented on Maui in which Akaku feels stuffed in a shoebox and needs larger space to be effective and MCC sits with a fully equipped facility that has no staff or operational support.

The argument of revenues tied to counties is a historical artifact. **If** there was one franchise for all of Time-Warner then collected franchise fee revenues are the result of one statewide franchise. This would be no different from when **Oahu** had two franchises, one for Hawaii Kai and all the rest of Oahu. Revenues flowed freely to Olelo that served the entire island.

It is strongly recommended that a formal community needs assessment be conducted. The State should move to a single franchise with specific provisions **by** county. Remove the cap on 'Olelo **as** the more Olelo receives, the more it can support statewide initiatives such **as** the HENC and Legislative coverage. Collect the full **5%** on all allowable cable revenues on all islands. Establish baseline universal type access service levels based upon percentage of population consuming cable. Where baseline services can't be met consider assessing a special assessment to fund such activities. Continue the funding to **PBS** Hawaii and restrict the uses of such funds to the development of infrastructure and equipment.

#### Issue #5 - PEG Channel Resource

Over the past seven years we have seen the reduction or loss of PEG Access provisions with each new Decision and Order. On Oahu the PEG channels were a component of total system capacity rather than individual channels. Compared to the collected financial resources channel capacity is relatively small considering the total number of programmers being served. Follow time provisions and combine PEG channels makes for the most efficient use of the channels. However some have put a negative stigma **on** repeat or re-run programming, yet it is an obvious business



model for commercial television that the money is made in syndications, re-runs. How many times do we have to see Seinfeld. HBO is nothing but repeats with the exception of rare premiere HBO created programming. This duality creates an unreasonable burden for PEG Access producers and programmers which rely upon repeats to get their message to a larger audience as they are narrowcasters not broadcasters.

A better metric is the dollar per minute per audience exposure metric. If it costs \$1000 per minute is the commercial standard then something that **costs \$1** per minute should get 1000 exposures. While this overstates the point it brings to light there is more to this issue than just simple number of exposures for one particular program. Should this same rule apply to 30 second public service announcements or station promos or identification?

It is recommended that channel allocations be restored to 10% of total channel capacity. It is further recommended that repeats be considered a way to realize greater return on investment for volunteer hours and equipment resources. Finally that criteria for expansion of channels be articulated.

#### Issue #6 – Sustainability

It should be clear that the ability for this important public policy to be sustained is tied exclusively to legislation and a regulatory framework wherein public interest give backs are the quid pro quo for utilizing public property. Sustainability is reliant upon an aggressive regulatory body, the DCCA to serve and act in the public interest by strengthening PEG Access at every opportunity. In particular PEG Access organizations should be encouraged to **amass** capital to find ways to lower long term operating costs such real estate acquisition.

Any “for profit” activity that are outside the mission should only be done via a separate arm of the organization with performance and financial audits to ensure there is adequate separation and independence. PEG Access organizations **as** independent entities have the discretion to engage in for profit activities. However to do **so** puts their 501 (c) 3 status at risk **as well as** compromises their fundamental mission and should not be done with resources derived **from** public interest policies.

#### Issue #7 – Greater Community Participation

Facilitated productions provides the greatest opportunity and threat to a more inclusive community participation. The issue becomes grey very quickly as all public access initiatives are facilitated. Playback of programming is facilitated. Training is a form of facilitation. Mentoring is a form of facilitation. The issue becomes contentious when the PEG Access entity becomes a speaker by becoming involved in the selection or promotion of one form of content over another.

The PEG entities should not be allowed to be a speaker for anything except about their mission and in the delivery of their services. Public dollars extracted from cable subscribers should not be utilized to subsidize one speaker over another. Production **resources** such **as** specialized edit bays or cameras should not be held for special class of users such **as** employees only.

Outreach via decentralized or satellite services should be encouraged. Alternative services that suit the needs of various speakers (users) should also be encouraged.

#### Issue #8 – Cooperation and Collaboration Among PEG Organizations

While it is stated the DCCA strongly encourages PEG entities to collaborate one would have to ask how. Current practices seem to indicate the opposite. Instead of getting the parties to work more closely together the DCCA ordered Olelo to hand over 25% offunding to a new and separate entity. They are now further apart and isolated than ever. While the DOE Distance Learning is housed on the second floor in Olelo’s building how much collaboration, partnering, networking or interaction takes place? Why haven’t the institutions done more to embrace the cooperative public producer community? Why do individual schools and teachers have to go to Olelo to be trained and gain accessto production capacity when Olelo significantly funds UH and the DOE with little to no accountability? Because the DCCA has chosen not to be involved. This lack of leadership has resulted in conflict, duplication and ineffective use of resources.

It is recommended that equipment title should revert back to the “public” when any PEG entity is divesting it from inventory. Rather than sitting in storage closets close scrutiny including independent audit of inventory could ensure that equipment with adequate remaining life could be reassigned to another entity. Once no other entity could use that equipment it should be auctioned to recapture any remaining finanaal value. Returned funds should be used to offset high expense for rural areas.

It is further recommended that a statewide distribution network be established facilitating the digital transmission and retransmission. It should not be up to the PEG entity as to what programming should appear on a PEG Channel. It should only be via request of a resident to carry such programming. If no one from Oahu requests a program from Maui then it should remain on Maui. An on-line web based library would permit residents to request programming and with on-near-demand be able to sponsor the program for cablecast on the PEG channels.

#### Issue #9 – PEG By-laws

Again, there is no compelling public interest in uniformity of PEG by-laws. There is a case to be made in bureaucratic simplicity as it is easier to administer and monitor however this conflicts with increased localism as one size does not fit all. The DCCA needs to actively investigate and penalize PEG entities that ignore or violate their by-laws as it relates to mission and public interest provisions.

#### Issue #10 Chapter 92F

There should be proposed legislation amending 440G streamlining and making non-profit appropriate provisions to ensure open records and open meetings.

### Issue #11-Daily Operational Procedures

There are some provisions that should be consistent **as** they are noted in the public interest policy. This includes content disclaimer, rules restricting governing political or campaign programming, rules restricting solicitation by non-profit organizations. These provisions should be consistent across the State.

### Issue #12 – Development of Technical Standards

FCC technical standards are sufficient and should be adopted to ensure sufficient transmission quality. There should be additional resources during disasters and emergencies by ensuring adequate I-net connections so that all **PEG** resources are interconnected including emergency operations centers.

### Issue #13 – Review of connectivity

Interconnectivity should be increased especially from satellite centers. A thorough analysis of distribution and switching requirements should be done in the context of a formal community needs assessment. However specific principle should be set forth **as** public policy that include collaboration to avoid duplication as an example. Interconnection should not be confused with the efforts of some institutions to harbor channel resources in an exclusive fashion. Currently UH does not fill all channel time and there are other educational programmers including the general public which should be able to use fallow time so that it remains a community educational channel rather than **UH's** educational channel. We should be increasing the sense of the collective good rather than allowing special interest to prevail.

### Issue #14 – Programming (**CSPAN** for Hawaii)

This is already being done just not under one label or organization. There is no need for creating or duplicating into another structure a programming entity for statewide interests. **CSPAN** is a cable company initiative. Instead, an initiative to increase channel capacity and interisland transmission coupled with specific incentives to increase collaboration among the entities should be considered. This is where Hawaii is ahead of the rest of the Nation. There are no other states where the **PEG** entities cooperate and network to provide coverage of the state legislative proceedings.

### Issue #15 Resolution of complaints concerning **PEG**s

This is one of the most contentious issues **as** there are a few people who feel there is no redress for their grievances. The DCCA must review the practices of the contracted entities to ensure there is due process. Requiring diverse boards, transparent process including open meetings and decision making will go a long way to improve these issues. Raising peoples understanding of how to approach these issues is also required.

It must also be recognized that public access naturally attracts self-appointed highly vocal critics

in disproportionate numbers. There will be a very small number who will never be satisfied and the boards and the DCCA must have a proposal to determine when someone falls into this category and then dismiss their efforts as misdirected.

However the DCCA must have an active review and accountability method to ensure that the organizations are true to their mission, by laws, policies and procedures.

**Issue #16 – Role of PEGs: Production versus Facilitation**

I addressed this previously and will only add that any such facilitation should be content neutral. This means that the process must be transparent enough that it is clear to those involved that Olelo staff are not directly involved in hand picking what content shall be best served by facilitation or that a particular point of view deserves such facilitation.

Finally, in the process of submitting testimony I shall fully disclose my financial interests with 'Olelo. Currently, I am not employed nor am I under or in consideration for future contracts with 'Olelo or any PEG Access entity. My wife is employed as a line-supervisor and manager of the Media Center at 'Olelo. As a volunteer, I regularly produce programming distributed via the PEG Access channels and volunteer in the production of other programs distributed via the PEG Access channels.

Mahalo for your consideration and investment of time in this process and providing an opportunity for community input.

Richard D. Turner  
Kaneohe, Hawai'i

To: File (PEG Public Comment)

2003-1 '8

From: Patti

Date: September 5, 2003 - 9:37 9:51 a.m.

Subject: Anonymous Phone Call left on CATV's Voicemail (marked urgent, private)

Person called leaving a somewhat lengthy message.

Basically, has strong concerns about PEG access centers going into the production business and basically their intent is to become a "competing, profit venture" contrary to their mission. Feels PEG centers cannot be competing against producers for which these centers were established for.

Also claims that the PEG centers are renting equipment out to individuals for a nominal charge but who are not putting anything on the air. Feels that this is a conflict of interest. There are producers who have to borrow money to purchase equipment in order to make production.

Feels DCCA has to stop this and pleads to the Director in doing so.

(Note: This is a summary of voicemail message and not taken verbatim.)

2003-179



Patti K Kodama  
09/08/2003 08:13 AM

To: cabletv@dcca.hawaii.gov  
cc:  
Subject: Vietnamese community and VNtv are blessed!



"Nina  
09/04/2003 09:22 PM

To: mreectenwald@dcca.hawaii.gov  
cc: [REDACTED]  
Subject: Vietnamese community and VNtv are blessed!

Dear Mr.. Mark Reectenwald,

The Vietnamese community has been blessed since VNtv started exposing its missions to our community. Vietnamese is the newest ethnics group in America.

We are among of 8,500 Vietnamese expatriates living in Hawaii sharing the experiences of adaptation to new life in America via a weekly VNtv program aired by Olelo Community Television at channel #52.

I appreciated the opportunity to be one of voices at the hearings of Testimony in Support to Continue with Current Frame Work held on Monday, August 25, 2003 at Queen liliuokani Building.

My 3-minute testimony is not enough to express how much I appreciate Olelo Community Television (OCT) which is helping us to enrich and promote our culture and the community wellness.

OCT's board and staff have been very supportive to my program since 1998. With OCT's facilities, we could express and show the roles of building communities to the world by the OCT's webbsite.

VNtv could be viewed by 3 million overseas Vietnamese and Vietnamese living in Vietnam.

I busted to tears when I received email from my family (in Vietnam) telling me how much they enjoy watching VNtv.

VNtv has received significant remarks from viewers. They are priceless rewards to the Vietnamese community.

Thanks again for your support and I am strongly keeping VNtv's tremendous growth along with all the Olelo Community Television's excellent jobs.

Mahalo,  
Nina Nhung Nguyen,  
Director/Producer VNtv

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Get a FREE computer virus scan online from McAfee.  
<http://clinic.mcafee.com/clinic/ibuy/campaign.asp?cid=3963>



"Silayan Casino" [REDACTED] on 09/05/2003 04:55:47 PM

2003-1-20

To: cabletv@dcca.hawaii.gov  
cc:

Subject: Testimony for Olelo Community Television

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To Whom It May Concern:

Here is my testimony for Olelo. I was unable to deliver it personally during the hearing on August 25, 2003.

Thank you for your attention and consideration on this matter.

Aloha,  
Silayan Casino



- Testimonial for Olelo.forum082503.doc

## Testimonial for Olelo

Good afternoon. My name is Silayan Laarhoven Casino. I had prepared this testimonial for the public forum on Monday, August 25, however was not able to present it due to time constraints. Therefore, I **am** now submitting it electronically through email.

My life has changed through the services of Olelo Community Television. As a participant in the Halia Aloha Video/Production workshop (Halia Aloha- Precious Memories of Hawaii), over the past 3 months, my mind and eyes have been opened up to the ever-growing need of oral history recording.

Even before my class at Olelo, I recognized the need for recording history and being aware of what the older generations have lived through. I enjoy hearing stories and hunger for the knowledge they can pass on to us younger people.

My instructor at Olelo, award-winning producer **Leah** Kihara, taught us the basics on lighting, framing, focus, positioning your subject, interview methods, setting up and breaking down the video camera equipment, using a microphone (lavaliere), and many other tasks **necessary** to complete our projects. My classmate Lyna and I **also** visited the Hawaii State Archives to take pictures of archival photos to be used to complement the interview segments we were producing. There were many things I learned during the workshop. Having learned to use the video camera, I grew to really appreciate the value of being able to gather stories in video format- not just written form, for my and future generations.

I am very grateful to Olelo for providing the public access services they do. **As** a recent benefactor **of** the service, I appreciate the classes they offer on television, the open forums and discussions open to the public for input, and the encouragement to be creative in coming up with possible projects for the future.

As a member of several community organizations, such **as** the Honolulu Filipino Junior Chamber **of** Commerce, the Fulbright Association of Hawaii, The Filipino Association of University Women, I know the skills I acquired through Olelo will benefit many future community projects and initiatives.

Please support the continuations of this valuable community service, so that other citizens of Hawaii may benefit as much **as** I did and **so** that the local community has the opportunity to actively participate in decisions affecting all of us, and the State of Hawaii as a whole. **As** a case in point, this hearing is being televised on Olelo.

It has been my pleasure and honor to present my testimony in favor of continued funding for Olelo Community Television.. I thank you for your attention and consideration.

Submitted by Silayan L. Casino

Phone: [REDACTED]

Email: [REDACTED]



2003-181



Patti K Kodama  
09/08/2003 08:44 AM



To: cabletv@dcca.hawaii.gov  
cc:

Subject: Olelo Community Television Funding

Lynn Burian



To: dcca@dcca.hawaii.gov

09/05/2003 05:10 PM

cc:

Subject: Olelo Community Television Funding

To whom it may *convern*:

Attached is my testimony of support of full funding for Olelo Community Television. I hope this is not too late. Thank you.

Lyna Burian



- Olelo.doc

FILIPINO AMERICAN HISTORICAL SOCIETY of HAWAII

744 Elepaio Street, Honolulu, Hawaii 96816

Tel. 734-1136

September 5, 2003

Department of Commerce and Consumer Affairs  
1010 Richards Street  
Honolulu, Hawaii 96813

Subject: Testimony in support of  
**OLELO COMMUNITY TELEVISION**

To whom it may concern:

On behalf of the Filipino American Historical Society of Hawaii (**FAHSON**), I would like to offer testimony in support of full funding for Olelo **Community** Television.

**FAHSON** is a non-profit grass roots organization that promotes the preservation of Filipino history and culture in Hawaii. Its membership is made up of volunteers that work very hard in **trying** to reach the local community to achieve its goals.

We have been so grateful to Olelo for its wonderful programs that help **small** organizations like ours get our message out to **the** community. **Programs**, such as "Giving Aloha," "Hali'a Aloha," and "Oahu Speaks," just to name a few, are excellent **and** very professionally done. Olelo welcomes community members to make use of these venues to help them accomplish their mission. I would say Olelo is one of the few government supported entities that give more than what is expected of them. We should be looking to them as a model of what we can do to help each other.

I **strongly** urge you to continue full funding of Olelo. They have been doing such a great job in helping the Hawaii community. Thank you for **this** opportunity to give **this** testimony.

Respectfully Submitted,

Lyna O. Burian  
Vice-president, **FAHSON**



"miraluna" [REDACTED] on 08/07/2003 11:21:24 PM

2003-182

Please respond to [REDACTED]

To: cabletv@dcca.hawaii.gov

cc:

Subject: Letter to DCCA supporting Olelo Public Access TV

Hello,

Please open attachment for my letter in support of Olelo Public Access Television.

It's an important letter that will enlighten the DCCA!

Mahalo,

Pam COX

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Join Excite! - <http://www.excite.com>  
The most personalized portal on the Web!



- DCCA letter.doc

DCCA  
Cable Television Division  
1010 Richards Street  
Honolulu, HI 96813

To Whom It May Concern:

Olelo Public Access Television is a bastion of intellectual freedom for people from all walks of life.

Affordable training offers equal opportunity and access for aspiring filmmakers.

Olelo offers clients the opportunity to become proficient in every aspect of filmmaking and of paramount importance, a platform to *air* their shows.

The quality of the instructors and mentors are unparalleled and of the highest caliber.

At Olelo, clients feel that they are part of a nurturing Ohana family where every person is encouraged to give free rein to their highest artistic expression and individualism.

Aspirations, whether modest or ambitious, are supported **100%** by both the staff and one's peers. We are all rooting for each other's success!

Program categories **run** the gamut and include but are not limited to the following:

1. **Arts & Performance**
2. Children's Programming
3. Government Issues
4. Community Service/Information
5. Culture/Ethnic Issues
6. Economic Issues
7. **Educational/Instructional**
8. Educational Issues
9. Environmental/Health Issues
10. Inspiration

- 11. Issues
- 12. National/International Issues
- 13. Native American
- 14. Native Hawaii
- 15. Native Hawaii Issues
- 16. Pacific Islander
- 17. Personal Growth
- 18. Social/Political Issues
- 19. sports
- 20. State Government Issues

No other vehicle offers the diversity of “voices”, freedom of expression and creative free reign that Olelo does.

Olelo has had a powerful impact on the fundamental fabric of **our** island’s society **and** economy by providing jobs, **a** springboard for aspiring filmmakers seeking to launch a career and **a** creative outlet for people of all ages and backgrounds.

The following examples are reflective of Olelo’s positive influence:

1. **14 year old Alyssa Lugmao** is from **a** middle income family

I have had the pleasure of taking three workshops with her (Camera, Screenwriter and Advanced Producer). She has also taken the I-Movie Editing, Studio, Lighting and Director workshops and in fact, she plans to take every workshop that Olelo offers.

**Who** knows? She could be the next Steven Spielberg!

I marvel that one who is **so** young is **as** focused, committed **and** motivated **as** she is! She **is** blossoming in the nurturing Olelo environment.

2. **Bud Henry is a retired senior citizen** in my Advanced Producer workshop.

He has created a beautiful short film based on a poem that he wrote more than **30** years ago.

Bud was beaming ear to ear with pride when he premiered his film for the class and we told him how much we loved it!

Olelo has opened up a whole new world for Bud in his retirement!

Cutting Olelo's funding would handicap their ability to adequately service the needs of clients, whether they are youngsters, like Alyssa who are the "hope of our future", senior citizens like Bud, who are finding a creative outlet during their "golden years" and others who have found a viable vehicle to express their ideas, viewpoints and philosophy.

In fact, Olelo desperately needs additional funds to upgrade and purchase additional equipment, software and facilities.

As an example, there is only one (1) "window burn" station available for hundreds of clients and more are needed to keep up with the high demand.

Another example are the limited number of cameras available.

Olelo only has eight (8) PD 100 digital cameras available to clients for remote location shooting. These same eight (8) cameras are also utilized in the classroom by students.

When I took the camera workshop, there were only two (2) cameras available for eight (8) students. This was because the other six (6) cameras were being used for remote location shooting by other clients. Obviously, this was a handicap because not every student was able to get adequate "hands on" training in the classroom.

I received my actual camera training in the "field" with the support and mentorship of the wonderful staff

Olelo is a dynamic catalyst that has dramatically changed people's lives!

Freedom of speech is the foundation of our democracy and it thrives and flourishes at Olelo.

Olelo should be applauded for the diversity of programming it offers and the positive influence it is having on people's lives!

Cutting Olelo's funding would have an adverse affect and severely limit services. In fact, what we need is additional funding!

Mahalo,

Pamela Cox  
Olelo Client  
(Certified - Camera, Editor, Producer)



Steve Meyer [REDACTED] on 0910712003 10:08:41 AM

2003-93

To: cabletv@dcca.hawaii.gov  
cc:

Subject:

To: DCCA From Steve Meyer

When was the last time Joe Moore went to Waianae to cover a story?

Or the slick camera persons and career-minded young reporters of Channel 8 to Palolo for other than a fire?

Has any commercial radio or video operation offered personal statement time or long hours of in-depth debate time to representatives, senators or political

candidates?

Do eparsely-attended neighborhood board meetings get full representation in newspapers?

Most obviously you are ALL aware of Olelo's value to our state. Certainly no one

can say that the other islands should be denied the opportunity to also be of service.

But robbing Peter to pay Paul will weaken one and be insufficient for the other,

leaving two inefficient entities.

I have given many hours of time, energy, and even parts of my retiree's pension

to Olelo and thus to the island; and Olelo has done many fine things for me. I

feel fortunate that I don't have to make the decisions you must make. I salute

your search for balance.

Written Testimony In **Support of Option #1:**  
To Continue with Current Framework

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

SEP 8 1 46 PM '03

Issue ~~#:~~ Expanded Role for Counties in Cable Regulation

A. E. F.

FILE --

2003-84

Public Comment Meetings on  
Statewide Cable Television Access Plan  
Monday, August 25, 2003 (4:30 – 6:30 pm)  
Queen Liliuokalani Building (Rm 404, 1390 Miller Street)

TO: Director, Department of Commerce & Consumer Affairs

FM: Nina Nguyen, Vietnamese Interpreter and  
Independent Producer of VNtv

My name is Nina Nguyen, producer of VNtv, and I speak in support of maintaining the current working framework for Olelo Community Television. As an interpreter, I am aware of my people's need here in Hawaii and feel responsible for its resolution. For over 5 years, Olelo has allowed me the opportunity through its tremendous network and volunteer services to communicate with my people from statewide to national and international. Any change in the quality and level of services provided will hurt the development of Vietnamese community in Hawaii and nationally. VNtv is currently the only Vietnamese program on the website.

.There are three goals of my program. The first goal is to preserve and cultivate the customs, philosophy and practices of the Vietnamese people. Our program stresses that parents be good role models for the children to follow so that the young ones do not get into trouble with the law.

The second goal is to teach the Vietnamese the need and method of assimilation into American society through education from my program.

The last goal is probably the strongest for me since we were forced to leave our country in 1975. It is to communicate the torture and injustices that Communists have inflicted upon my people, from



the 5,000 men, women and children massacred and buried in the town of Hue (some alive) to the 1,000,000 people who died at sea trying to escape the tyranny and hatred of the Communists (called boat people). Religious groups continue to receive punishment from the Communists. Every Vietnamese here in Hawaii have horror stories of the Communists' injustices.

Through VNtv's **79** episodes, copies of my program in English and Vietnamese translations are sent all over the United States and to foreign countries, even to Vietnam. I have interviewed important Vietnamese leaders whose comments on the war and the future of the Vietnamese people are like documentaries for the future generations to view and learn.

Currently, I have videotaped Vietnam War veterans to pay respect for their efforts in fighting for another country's freedom.

The staff and volunteers of Olelo have been very supportive to my program as well as others. Olelo Community Television is an exclusive media that allows the coverage of all the "true" voices of our communities from political points of view, government activities, health education, community awareness, etc.

Any changes would result in a lowered quality. I am very happy with the constant improvements here at Olelo and the opening of the new Palolo satellite station and wish to thank the people involved with Olelo for their excellent contribution to a worthy cause.

In ending, I strongly support the current framework of Olelo Community *TV* at the State level.

Mahalo,  
Christa Nguyen  
NINA NGUYEN



[REDACTED] on 09/08/2003 05:56:56 PM

2003-186

To: <cabletv@dcca.hawaii.gov>  
cc:

Subject: Olelo Wai'anae

Aloha,

The award winning Olelo satellite program in Wai'anae is an example of the high technology that the government of Hawai'i is trying to encourage. It has the potential and has been effective in bringing economic advancement and more economic independence for the Wai'anae District. It diversifies the economy which is in line with the wishes of the government and community of Hawai'i.

It trains the youth of Wai'anae to be productive, tax paying citizens in high paying and creative jobs. Programs such as this reduce crime and help ease social problems in the Wai'anae District.

It also allows a voice for the minority and native Hawaiian opinion.

The program has my strongest recommendation for continuation at even higher levels of funding and priority.

Mahalo,

Baron K.F. Ching, M.D.  
[REDACTED]

State Capitol Room 216  
Honolulu, HI 96813

Phone: (808)58606230  
Facsimile: (808) 586-6231

**Senator David Y. Ige**

2003-187

FILE \_\_\_\_\_  
A. E. \_\_\_\_\_  
SEP 5 8 19 AM '03  
CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

# Fax

To: Mark Recktenwald From: David Ige and Carol Fukunaga

Fax: 566-2856 Pages: Cover +2 pages

Phone: Date: 9/5/2003

Re: Cable TV Access Plan cc:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

• Comments:

Comment 8 on the Department of Commerce and Consumer Affairs Plan for Public, Education, and Government (PEG) Access.

The original to follow via interoffice mail.



**The Senate**  
**State of Hawaii**

STATE CAPITOL

HONOLULU, HAWAII 96813

September 5, 2003

The Honorable Mark E. Recktenwald  
Director  
Department of Commerce and Consumer Affairs  
P. O. Box 541  
Honolulu, Hawaii 96809

Reference: Department of Commerce and Consumer Affairs' (DCCA) Plan For  
Public, Education, and Government (PEG) Access DRAFT-FOR  
COMMENT

Office of Information Practices (OIP) Opinion Letter 02-08 Issued  
September 6, 2002

**Dear Mr. Recktenwald:**

We have reviewed Department of Commerce and Consumer Affairs draft  
plan for public, education, and government access and would like to offer the  
following comments.

### **OIP Opinion Letter 02-08**

We believe that any plan **must** address and provide clarity for the issues  
raised by the OIP opinion letter 02-08, issued September 6, 2002. We would like  
to recommend that appropriate action be taken that would:

1. Clarify that PEG access organizations are state agencies and subject to the requirements of the Uniform Information Practices Act (Modified), chapter **92F**, Hawaii Revised Statutes (UIPA).
2. Clarify that franchise and other fees paid by cable operators are public funds and should be collected by the State and appropriated by the legislature. This would ensure proper oversight of these public funds.
3. Require that the governor appoint members of the board of directors of the PEG access organizations, with advise and consent by the Hawaii State Senate,

Mark E. Recktenwald  
September 5, 2003  
Page 2

## ISSUE #4: Financial Resources

We believe that franchise fees should remain in the county in which it was collected. Transferring fees from one county to another is a significant policy change, especially if the subscribers paying the **fees** do not benefit from the transfer. The legislature should determine whether fees are transferred to another county.

As you are aware, some PEG access organizations have stopped funding education institutions in their area. This has had significant impact on the stability and growth of educational programming for cable subscribers. We believe that DCCA should provide for direct allocation of franchise fees to education entities (university of Hawaii, department of education, Hawaii Association of Independent Schools, **etc.**) in each county. This would provide for more stable funding and allow long term planning and development of educational programming.

## ISSUE #5: PEG Resource

We also believe that DCCA should provide for direct allocation of channels to education entities (university of Hawaii, department of education, Hawaii Association of Independent Schools, **etc.**) in each county. This would allow long term planning and development of programming.

## ISSUE #7: Greater Community Participation

We believe that the community partnerships created by O'lelo to expand accessibility to PEG resources is an excellent model and results in added value to all participants. We believe that the plan should strongly encourage these partnerships to maximize resources.

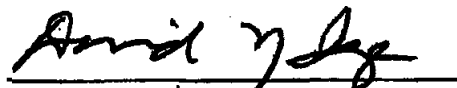
If additional information or clarification is required, please let us know.

Sincerely,



Carol Fukunada  
State Senator  
11th District

Sincerely,



David Y. Ige  
State Senator  
17th District

Rita Kawehiokalaninui-I-amamao Kanui  
[REDACTED]

CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

200-188

SEP 9 10 19 AM '03

A . E

August 25, 2003

**Re: h u t into the DCCA Plan For Public, Education and Government**

Aloha,

Due to such short notice of this meeting and the fact that we at the Holi-Mole productions a newly created entity are evolving editors, camera and producers In the making we will try our best **to** make our points at this hearing. Please bear with **us**.

**My** name is Kawehi Kanui **1/3** part of the Holi-Mole (which means, "vines-taproots" denotes our focus being broad and deep) Video Productions a independent **NOT FOR PROFIT** video company formed **to promote** ~~and~~ work towards **the education needs** and purposes of the Waimanalo community to train people of all ages about video production and what it takes to be a camera, editor and producer in video and productions and hopefully **to** instill and develop skills in those interested to **see** the larger possibilities that **can** secure themselves a job in **this** field anywhere even to open their **own** business one day and hopefully **create** our own **long** over due Hawaiian Television station owned, managed and controlled **by** Hawaiians (nationality not ethnicity) **and** the broader community, for the community with private funds raised by the **community**.

After reading the draft for comment it is clear that there are some areas that **needs** more input, clarification and follow-ups **to** be fair to everyone. For example, there is a need for **more community** involvement in the decision **making on** all **islands** with **regular** report **of those** meetings for public review on all levels, better checks and balances. I would say that there is too much "political" involvement and control in the Olelo programs and not enough community involvement, feed back and implementation, Olelo should stand neutral but that's **our** opinion, in order **to** stave off too much political infiltration and leave **Olelo a** voice for the people station **as intended**.

**The** Waimanalo Ahupua'a according **to** our history and maps, extends **all** the way **from** the top of Konahuanui at the top of the Pali, down to Lanikai **beach** into Kailua, Keolu Hills, Waimanalo, Kalama Valley, Hawai'i Kai and out to Kuliouou ending at Maunalua **Bay**. The Waimanalo Ahupua'a is on Crown and **government** lands which means that Hawaiians (nationality, not ethnicity) have access to places **not** being **used** and other lands to consider in **our** planning for possible sites for a new Olelo satellite here in Waimanalo. The population in **this area** is over 100,000 people with a lot **to** say and share. Funding for another Olelo satellite video production **studio** is **needed** in Waimanalo and **that** is what **we want to see happen** with the **funding on** hand now and through Holi-Mole video **and** the Waimanalo community at the organizing helm. Most people we have **talked to** are In agreement and very excited about having another Olelo satellite in the Ahupua'a of Waimanalo, that is long over due. Waimanalo has a lot to share and **see** that most people in Hawai'i never **get to see**. We would like to be able to make that possible, with our first steps in this hearing sought by Holi-Mole **as** the lead group in the organizing of the **Community as whole so support this** project. **We** held two meeting yesterday. **Once upon a** time, the Waimanalo **Library had a** video **production studio but** was **closed** down because the

legislature did not allocate enough funding to pay the staff with the experience and skill to continue to teach and complete their projects. Funding eventually lapsed. Twenty years later the enthusiasm for a video production studio still lights up their eyes and ideas come spewing out of them like flowing water. Therefore, we know by this and upcoming meetings that we will have support from this Ahupua'a, advocated first by Holi-Mole Productions who saw the need and have the foresight to follow their na'au. We have received good feedback and enthusiasm to those we have talked about this project to including; the community in general, naupuna and other associations in the community of Waimanalo.

Meanwhile, follow-up community meetings are on going and a report is forthcoming upon request.

Thank You,

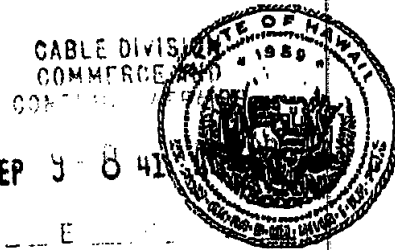
R. Kawehi Kanui, Ben Kaholi and Philip Hyatt--Holi-Mole Videos.

HOBERTIN (N)A  
 PRESIDENT  
 DONNA MENDOZA ALM  
 VICE PRESIDENT  
 COLLEEN HANABUSA  
 MAJORITY FLOOR LEADER  
 CAI KAWAMOTO  
 MAJORITY FLOOR LEADER  
 SHAN S. TSUTSUI  
 MAJORITY CAUCUS LEADER  
 FRED HEMMING  
 MINORITY LEADER  
 ROB HOGUE  
 MINORITY FLOOR LEADER  
 PAUL WHALEN  
 MINORITY FLOOR LEADER

**The Senate**  
**The Twenty-Second Legislature**  
 of the  
**State of Hawaii**  


---

 STATE CAPITOL  
 HONOLULU, HAWAII 96813  
 September 8, 2003



SEP 9 8 41 AM  
 A... E...  
 FILE...

2003-190

FIRST DISTRICT  
 LORRAINE R. INOUE  
 SECOND DISTRICT  
 RUBBELL B. KOKUBUN  
 THIRD DISTRICT  
 PAUL WHALEN  
 FOURTH DISTRICT  
 SHAN S. TSUTSUI  
 FIFTH DISTRICT  
 ROSALYN H. BAKER  
 SIXTH DISTRICT  
 J. KALANI ENOUE  
 SEVENTH DISTRICT  
 GARY L. HOOPER  
 EIGHTH DISTRICT  
 SAM JOHNSON  
 NINTH DISTRICT  
 LEO HARRA JR.  
 TENTH DISTRICT  
 BRIAN T. TANIGUCHI  
 ELEVENTH DISTRICT  
 CAROL PUKUNANA  
 TWELFTH DISTRICT  
 GORDON HINDLE  
 THIRTEENTH DISTRICT  
 SUZANNE CHIN OAKLAND  
 FOURTEENTH DISTRICT  
 DONNA MENDOZA ALM  
 FIFTEENTH DISTRICT  
 NORMAN SAKAMOTO  
 SIXTEENTH DISTRICT  
 DAVID Y. HUI  
 SEVENTEENTH DISTRICT  
 RON MENDOZA  
 EIGHTEENTH DISTRICT  
 CAI KAWAMOTO  
 NINETEENTH DISTRICT  
 BRIAN HANNO  
 TWENTIETH DISTRICT  
 WILLIE O. EBERRY  
 TWENTY-FIRST DISTRICT  
 COLLEEN HANABUSA  
 TWENTY-SECOND DISTRICT  
 ROBERT LUNDGREN  
 TWENTY-THIRD DISTRICT  
 MELODIE WILLIAMS ALUJA  
 TWENTY-FOURTH DISTRICT  
 ROB HOGUE  
 TWENTY-FIFTH DISTRICT  
 FRED HEMMING  
 CHIEF CLERK  
 PAUL T. KAWAUCHI

Mr. Mark E. Recktenwald, Director  
 Department of Commerce and Consumer Affairs  
 PO Box 641  
 Honolulu, HI 96809

Reference: Department of Commerce and Consumer Affairs  
 Plan for **Public Education, and Government (PEG)**  
**Access**

Dear Mr. Recktenwald:

Upon my review of **DCCAs** draft plan for PEG, I would like to offer  
 the following for your consideration,

**Present Role of 'Olelo**

I sense that there is some concern as to 'Olelo's  
 role/effectiveness in community participation. Whatever the criticisms  
 you may have heard, I ask that before you **make** a decision, you visit **the**  
 Wai'anae Telecommunication Center located at Wai'anae High School.

In recent weeks, the media has covered the **success** of the  
 partnership between Wai'anae High School, 'Olelo, UH - Leeward  
 Community College, Hawai'i Technology Trade Association, and the  
 Wai'anae Coast Coalition,

Along with **the** support of **U.S.** Senator Daniel K. Inouye and the  
 Alaska Native/Native Hawaiian Institutions Assisting Communities grant,  
 a community communications center was constructed and is completely  
 operational. This grants objective was the partnering between public  
 and private and the creation of economic opportunity.

The community support, interest and investment is excellent and  
 this program's model **should** be emulated throughout this State.

The Wai'anae High School students have displayed a level of  
 professionalism and skill that the support and participation of 'Olelo **has**  
 made possible. HMSA, Hawaii State Teacher's Association and K o



Mr. Recktenwald  
September 8, 2003  
Page 2

'Olina Resorts, to name a few, have had or are having thek commercials created by these students. Commercials and public service announcements to be aired at **prime time** throughout the State and elsewhere.

The recently created **Ko'Olina Training Fund Scholarship Program** has have many applicants from Wai'anae with the hope of developing their skills to better promote this State.

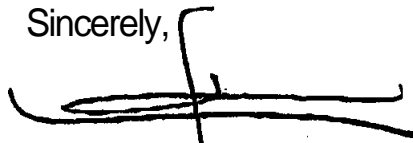
You **could** not ask for a better result of the monies which fund **PEG**. it is for this reason that I ask that you visit what should be the model of accomplishment for the DCCA.

#### PEG and INET

If you are looking for a change **in** structure, then I ask that you **look** to the possibility of permitting educational programs of PEG to **access the INET**. **INET** is located at Wai'anae High School but 'Olelo needs to have access so that the program can be broadcast iive. imagine giving all students the opportunity to learn media from the best, Wai'anae High School is the **best**.

When you are ready to visit the facility please call me, I would find it **an** honor to **be** there with you, Again, I cannot imagine a decision being **made** without an on-site visit to Wai'anae

Sincerely,



**COLLEEN HANABUSA**  
Senator, **Twenty-First District**

cc: Governor Linda Lingle



"Stuart McKinley" [REDACTED] on 09/09/2003 05:17:59 PM

2003-192

To: <cabletv@dccahawaii.gov>  
cc:

Subject: NEW PEG ACCESS REGULATIONS

Good People:

*Thank* you for accepting my late comments.

I **am** producer of a monthly public access **show** entitled, "Labor's **POV.**" **As** a senior agent at the HGEA/AFSCME Local **152**, I have long **realized that** labor's, **and** working people's, **perspectives** are substantially under-represented in **the** media. **I've** **tried** to remedy **this** problem in one small way.

'Olelo **trained** and **guided** me in the production **of** my series, which **has** been on the air for more **than 20** months. **I** have volunteered countless hours at **the** Mapunapuna **facility**.

My perspective in **this** matter:

Regarding **the** redistribution of **funds**:

'Olelo's **funding** represents a **small** percentage **of the** Oceanic/Tim&Warner **O'ahu** cable subscription fees, and is meant to support PEG **access** on **Oahu**. There is **no** precedent that **I am** aware **of**, here or on the mainland, for using **PEG** funding for areas outside **the** subscribers' geographic service **area**.

The **DCCA** **has** been urged by a neighbor island **access** center to **pool** all **the** available PEG **funds** state-wide, then **divide those funds into four equal** portions, for O'ahu, Maui, Kauai, **and** Hawaii counties. **This** would be inequitable. It would result in drastically reduced funding for O'ahu.

Their justification is that the **neighbor** islands have underserved communities. My response is **that O'ahu** has underserved communities **as** well, even with satellite centers to address the problem. Funding **cuts** could result in the closing **of O'ahu's** satellite centers. Underserved communities on the neighbor islands would **benefit** at **the**

expense of undeserved communities on Oahu. **This** would be creating a larger problem by solving a smaller problem.

Funding should **remain** commensurate with **service** population. Oahu deserves the **lion's** share of funding precisely **because** we serve **the lion's** share of Hawai'i's population.

Regarding regulatory control at the county level

**This** would be, if **nothing** else, duplication of effort on **the part of** government. Further, **the** counties have no experience or expertise in these **matters**. On the **mainland**, control at the city and county level has **resulted** in **many** cash-strapped communities using PEG funds for other purposes, **as** there is no specific requirement that the funds be **used** only for PEG. Additional administrative fees alone would insure that no matter how **the** funding is **distributed**, less would **actually** be available for public access. **This** would be a corruption of public access television's chatter.

Regarding **restrictions** on facilitated productions:

**This is a favorite complaint of a tiny but vocal group of detractors who insist that any use of 'Olelo funds to assist non-profit groups produce programming (mostly supplying staff technicians) or other community-building projects ('Olelo's "Vote2002," for example), diverts funding from their own community projects. This is self-serving nonsense.**

'Olelo **keeps** its commitment to the folks who walk in their **doors** to produce or deliver programs. It also **has** a responsibility to public access viewers **to** produce quality programming that cannot be found on commercial television.

Face it, **most** of the programming produced by 'Olelo-trained producers is forgettable. **Some of** it is, unfortunately, drivel. **It is** the bad that drives **the** good out of **this particular** marketplace. Which of you is willing **to** sit through hours of **boring**, low-budget programming

to **find** that **particular** gem of a show (like, ahem, "Labor's **POV**") that may be hiding on public access **T V** ?

Most producers **are** sincere, earnest, and operate in good faith. That doesn't mean that they produce programs that most viewers **want to see**, much less produce programs that **most** anyone is willing to support financially.

If 'Olelo viewership is to grow and be rewarded for their patronage, 'Olelo itself **must take** responsibility for

producing the kind of quality programming that "Vote 2002" exemplifies. Precisely because of the limitations of commercial TV, 'Olelo *can* fulfill an important niche. Realizing that niche and exploiting it benefits all of 'Olelo's users and viewers.

Were **some** producers adversely ~~affected~~ by the priority that 'Olelo gave to its **own** programming during the 2002 political season? **Yes**. I was **one** of them. Programs that I viewed **as** vital to my and, through me, the labor community's interests were shunted aside in favor of "Vote 2002." That hurt.

I brought my concerns to 'Olelo's attention. They tried to **address** my concerns. We achieved **a** compromise. I wasn't completely satisfied, but I did understand that 'Olelo was in good **faith** attempting to air programming that served a genuine public need.

Ultimately, I agree with their intent.

I recount **this** not to criticize 'Olelo, but rather to illustrate that **they can** and should serve **a** higher public purpose **than** to merely help **me** produce my well-intentioned drivel. While my drivel is certainly important to me, it must not dictate the destiny of **an** entire system.

I respect that 'Olelo is looking out for **all** its producers' **interests** by stepping forward to occasionally produce quality, timely programming in **the** community interest. It would be foolish and petty of me to not **recognize** their **purpose**.

In *summary*, I respectfully ask that **you** distribute public **access'** **share** of cable TV revenues on a per **capita** basis. That is fairest.

All parties *can* make a compelling *case* based on perceived need. **"Need"** is a bottomless pit. **"Fair"** is that those who contribute to support cable TV in their **area** get back an **equal** portion of their contribution to support non-commercial, community-based programming in their, not someone else's, **area**.

Further, I respectfully request that **you** keep regulatory control of public access TV at **the** state level. County authority would simply lead to greater "official" competition for portions of cable TV revenues. **Too** many **cooks** will spoil **this** soup. **As** in **so** many other **aspects** of island governance, the counties merit representation, not control.

And finally, I respectfully **request** that you permit 'Olelo the latitude to sail its own **course**. **As** with me, **they** will undoubtedly not please all their constituents **all** the time. **They** have demonstrated, however, that **they** will endeavor to do what's right for **the** entire corporation. And when they do step on toes, **they** have demonstrated that they **are** not above apologizing and making amends.

If that attitude ever changes, I'll be sure to let **you** know.

Thank **you** for this opportunity to comment.

*Aloha,*

**Stuart E. McKinley**

**Producer**

**"Labor's POV"**

[REDACTED]

[REDACTED]



# Romance Productions

A Division of Eternitas Corporation



2003-196  
CABLE DIVISION  
COMMERCE AND  
CONSUMER AFFAIRS

SEP 4 1 56 PM '03

A. E. [initials]

FILE [initials]

30 August 03

Department of Commerce and Consumer Affairs  
Cable Television Division  
1010 Richards Street,  
Honolulu, Hawaii, 96813

Dear Sir or Ms:

In view of your tentative plans to modify the existing support currently given to Olelo Community Television, we feel that it is imperative that I bring to your attention, the great service thus far rendered to the people of all ages in this important community.

I am a retired pilot, adventurer, entrepreneur, and writer: And as you may well know, there are no abundant opportunities for people my age. I was, however, accepted, and took courses in production direction, and camera at the Olelo center, and proceeded to produce two films for Tv. One titled "The Power of a Smile", and the other "Our Coast Guard"; the former ran for 10 minutes, and emphasized how Hawaii has become known for its friendliness throughout the world. The latter "Our Coast Guard" ran for one hour, was well received, and was aired for five days on channel 54. It portrayed the great service rendered the people of Hawaii, and of the entire area of the Pacific surrounding us. Currently I am working on a format for a production dealing with what I believe to be the most important question facing our youth today, namely, how to avoid the temptation of drugs, an alcohol that are being blatantly offered them in every corner of our country.

Finally, it is important to note that it is not merely the opportunity given Hawaii's people in studying TV production at Olelo, but the tremendous impact it has on the people through the airing of such current and important material via **Olelo's** channels. It would be a great pity indeed, if such a fine opportunity was to be curtailed.

Thank you for your kind attention.

Sincerely with ALOHA

Henry Bush



Patti K Kodama  
09/10/2003 03:44 PM

2003-196

To: cabletv@dcca.hawaii.gov  
cc:

Subject: VNN Contribution Reaches Beyond

"Castagnetti, Gene"

[Redacted]

To: "mrecktenwald@dcca.hawaii.gov" <mrecktenwald@dcca.hawaii.gov>

cc: [Redacted]

Subject: VNN Contribution Reaches Beyond

09/09/2003 10:43 AM

Aloha Mr. Recktenwald. I attended the public hearing on 25 Aug, and want to reinforce the Olelo is well on the right track in the diversity of the audience it reaches, specifically on Vietnamese's Television. I know that VNN is viewed by the Vietnamese community here in Hawaii and also overseas in Southeast ASIA, but what is also significant is the viewing audience of VNN 'reaches beyond', the normal viewing boundaries in Hawaii to all ethnic groups, because of the high quality of programmed shows, such as this past Monday nights 9/11 Anniversary Commemorative Ceremony. As this nation approaches the second anniversary of the tragic terrorist attack on America, I find it compelling that only channel 52 VNN has seen fit to remind the public that the Global War on Terrorism, (GWOT), is not over and the fact that Olelo has a emotional moving program that included all the religious dimensions truly reflects that peoples of all "faiths". know that freedom is not free and that American sacrifice is on going during this anniversary week. Ms. Nguyen's documentary speaks volumes to the great contribution VNN is making, when we consider that not only America, but 38 other nations lost citizen in the WTC attack. I salute Ms. Nguyen's professional skills in putting together such a memorial program of "Remembrance", which touches the spirit of America, and reaches beyond the boundaries of birthplace, race, religion, and "SHOUTS WE ARE AMERICANS FIRST", and is in keeping with what I believe the scope and purpose of Olelo's Charter stands.

Well Done, a faithful viewer of Olelo

G.E.Castagnetti



Patti K Kodama  
09/09/2003 10:22 AM

2003 - 197

To: cabletv@dcca.hawaii.gov  
cc:

Subject: Re: Olelo Program

"Rep. Maile Shimabukuro"  
<repshimabukuro@capitol.hawaii.gov>

To: "mrecktenwald@dcca.hawaii.gov"  
<mrecktenwald@dcca.hawaii.gov>

09/08/2003 10:11AM

cc:  
Subject: Olelo Program

Aloha Mr. Recktenwald,

I would like to ask you to please keep the Olelo Program status quo. The program has been a great asset to my districts of Wai'anae, Makaha and Makua as well as to the larger Hawai'i community. The programs of teaching technological skills to the students of Wai'anae is a great vehicle for advancement of career opportunities and economic development for the people of my districts as well. Additionally, the community information broadcasts and government proceedings broadcasts have been invaluable to the communities of Hawai'i.

Mahalo for your time and consideration of this request.

Sincerely,

Maile S. L. Shimabukuro  
Representative, District 45  
Wai'anae, Makua, Makaha  
Hawai'i State Capitol  
415 S. Beretania St, Rm. 315  
Honolulu, HI 96813  
808 586-8460  
808 586-8464 fax





Patti K Kodama  
09/09/2003 07:35 AM

2003-198



To: cabletv@dccahawaii.gov  
cc:

Subject: DCCA\_PEG\_Plan



uno.com

To: mrechtenwd@dcca.hii.gov

09/05/2003  
02:55PM

cc:  
Subject DCCA\_PEG\_Plan

Date: September 5, 2003

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office"/>

To: The Department of Commerce and Consumer Affairs

From: David R. [Redacted]

Subject: Comments on the DCCA Plan for PEG Access.

I am writing to provide input into the DCCA Plan for PEG Access.

I have been an Olelo Community Television Producer for over ten years. I worked for Olelo for four years. I am currently an elected representative of Olelo Community Television Producers and sit as a member of the Access Services Advisory Committee to Olelo's Board. Finally, I have twenty years experience working in nonprofit management.

There are two issues on the DCCA Plan For PEG Access I would like to comment on.

**ISSUE #2: Governance - PEG Board Appointment Process**

I support and encourage the DCCA to do anything that will help provide more diverse representation on Olelo's Board of Directors. The current system is inadequate in providing and ensuring diversity. Two options that I strongly support to help promote diversity are: Option 4: Election by PEG constituents, and Option 5: Establishment of a Mechanism for Public and Producer Input.

The way Olelo's Board is chosen must be changed. The current system is not working. For instance there is no adequate system set up at Olelo to ensure the fair and equitable treatment of Olelo staff and community members. Olelo's President & CEO has sole discretion on how things are done at Olelo, there is no check and balance system set up. Complaints have been made to

Olelo's Board in person, in writing, and at Board meetings about unfair and inequitable treatment, but to date Olelo's Board has done no follow up, has formed no committees, has asked no questions and has done no investigation. The standard response to these concerns by Olelo's Board is that they do not get involved in the day-to-day operations of Olelo. Olelo needs a Board that is responsive to the community it serves, and that will ensure the fair and equitable treatment of all.

**ISSUE#3** : Cable Advisory Committee

I encourage you to reestablish the Cable Advisory Committee. The more oversight of how Olelo does business the better.

**Thank** You,

David Ray Mulinix

LINDA LINGLE  
GOVERNOR



RODNEY K HARAGA  
DIRECTOR

Deputy Director  
BRUCEY MATSU

RECEIVED

2003-199

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

2003 SEP 17 A 10: 29

IN REPLY REFER TO:

DIRECTOR'S OFFICE  
COMMERCE AND  
CONSUMER AFFAIRS  
ESS 10.4311

September 11, 2003

SEP 11 10:29 AM '03  
FILE

TO: MARK RECKTENWALD, DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

FROM: RODNEY HARAGA, DIRECTOR  
DEPARTMENT OF TRANSPORTATION *Rodney Haraga*

SUBJECT: STATEWIDE CABLE TELEVISION ACCESS PLAN

The Department of Transportation ("DOT") has reviewed the Department of Commerce and Consumer Affairs' ("DCCA") Plan for Public, Education, and Government ("PEG") Access and appreciates the opportunity to offer the following comments:

Under the existing PEG access process, one of the DCCA's regulatory functions pertains to "the expansion and functional improvements of the Institutional Network ("INET")." The proposed Statewide Cable Access Plan ("Plan") considers shifting this regulatory authority away from the DCCA and over to the Counties (see Issue #1 of the Plan).

The State of Hawaii has a vested interest in the existing INET and Next Generation Network ("NGN") infrastructure because it has expended millions of dollars to install it. A reallocation of regulatory authority may jeopardize this interest by limiting the State's ability to utilize and expand this infrastructure.

The DOT currently saves over fifty thousand dollars annually for network services to its Kapolei offices and for departmental Internet service that utilize the INET. This cost savings might be lessened or eliminated if the State is not directly involved in the regulatory framework of PEG Access. The DOT may also need to spend additional funds if the existing INET agreement is changed or withdrawn.

The DOT plans to connect more of its remote locations to the NGN via the INET in the near future. The DOT estimates saving over one hundred thousand dollars annually by migrating more of its existing network services. Changes to the INET agreement may severely reduce the benefits of our plan, render it obsolete, or make its implementation economically unfeasible.

Mark Recktenwald, Director  
September 11, 2003  
Page 2

CSS 10.4311

Due to these concerns, the DOT strongly feels that the State should continue to take an active role in the regulation of cable television to ensure that existing **and** future State interests are considered and protected.

Attachment

**NOTICE OF PUBLIC COMMENT MEETINGS**

**STATEWIDE CABLE TELEVISION ACCESS PLAN**

**Kahului, Maui**

DATE: Tuesday, August 12, 2003  
TIME: 4:30 p.m. to 6:30 p.m.  
LOCATION: Maui Community College  
Ka'a'ike Building, Room 105  
310 West Kaahumanu Avenue

**Lihue, Kauai**

DATE: Wednesday, August 13, 2003  
TIME: 4:30 p.m. to 6:30 p.m.  
LOCATION: County Building (Mo'ikeha Building)  
Rooms 2A & 2B  
4444 Rice Street

**East Hawaii - Hilo**

DATE: Tuesday, August 19, 2003  
TIME: 4:30 p.m. to 6:30 p.m.  
LOCATION: University of Hawaii at Hilo  
Room UCB 127 - Ho'oulu Terrace  
200 West Kawili Street

**Honolulu, Oahu**

DATE: Monday, August 25, 2003  
TIME: 4:30 p.m. to 6:30 p.m.  
LOCATION: Queen Liliuokalani Building  
1390 Miller Street, Room 404

**West Hawaii - Kona**

DATE: Wednesday, August 27, 2003  
TIME: 4:30 p.m. to 6:30 p.m.  
LOCATION: Hale Halawai  
75-5760 Ali'i Drive

**Purpose:**

The Department of Commerce and Consumer Affairs ("DCCA") is currently evaluating issue relating to Public, Education, and Government ("PEG") access in Hawaii. The goal is to develop a Statewide Cable Access Plan ("Plan") that sets forth the State's policies regarding PEG access. The Plan will guide the development and enhancement of services provided by PEG Access Organizations.

DCCA has scheduled these meetings to solicit comments regarding PEG access. To facilitate the discussions, DCCA has prepared a discussion document that identifies the State's current policies toward PEG access, and possible changes to those policies.

DCCA invites the public to share their views on this issue.

**Copies of the discussion document may be obtained at:**

- DCCA's website at <http://www.hawaii.gov/dcca/> (Internet access is available at State Public Libraries)
- DCCA's office:

Cable Television Division  
1010 Richards Street, 2nd Floor  
Honolulu, Hawaii 96813

- Cable Company offices:

Maui  
 Oceanic Time Warner Cable  
 350 Hoohana Street  
 Kahului, Hawaii 96732  
 Phone: (808) 877-4425

Kauai  
 Oceanic Time Warner Cable  
 3022 Peleke Street  
 Lihue, Hawaii 96766  
 Phone: (808) 245-8951

East Hawaii – Hilo  
 Oceanic Time Warner Cable  
 1257 Kilauea Avenue  
 Hilo, Hawaii 96720  
 Phone: (808) 932-2099

West Hawaii – Kona  
 Oceanic Time Warner Cable  
 74-5605 Luhia Street  
 Kailua-Kona, Hawaii 96740  
 Phone: (808) 331-4903

Oahu  
 Oceanic Time Warner Cable  
 200 Akamainui Street  
 Mililani, Hawaii 96789  
 Phone: (808) 625-2100

- PEG Access Organizations:

Maui  
 Akaku – Maui Community Television  
 333 Dairy Road, Suite 104-A  
 Kahului, Hawaii 96732  
 Phone: (808) 871-5554

Kauai  
 Ho'ike – Kauai Community Television, Inc.  
 4211 Rice Street, Suite 103  
 Lihue, Hawaii 96766  
 Phone: (808) 246-1556

Big Island  
 Na Leo 'O Hawaii, Inc.  
 91 Mohouli Street  
 Hilo, Hawaii 96720  
 Phone: (808) 935-8874

Oahu  
 'Olelo – The Corporation for Community  
 Television  
 1122 Mapunapuna Street  
 Honolulu, Hawaii 96819  
 Phone: (808) 834-0007

- Governor's Neighbor Island Liaison Offices:

Maui  
 2264 Aupuni Street, # 1  
 Wailuku, Hawaii 96793  
 Phone No.: (808) 243-5798

Kauai  
 3060 Eiwa Street, ~~#101~~  
 Lihue, Hawaii 96766  
 Phone No.: (808) 274-3100

East Hawaii – Hilo  
 75 Aupuni Street  
 Hilo, Hawaii 96720  
 Phone No.: (808) 974-6262

West Hawaii – Kona  
 75-170 Hualalai Road, #D114  
 Kailua-Kona, Hawaii 96740  
 Phone No.: (808) 327-4953

In addition to presenting oral comments at the public comment meetings, interested parties may also submit written comments via:

- Email to [cabletv@dcca.hawaii.gov](mailto:cabletv@dcca.hawaii.gov)
- U.S. Mail to:

Cable Television Division  
Department of Commerce and Consumer Affairs  
1010 Richards Street, 2ndFloor  
Honolulu. Hawaii 96813

Those who plan to present oral comments at the public comment meetings are also requested to reduce their comments into writing and submit a copy for the record to DCCA. Deadline to submit comments to DCCA is Friday, September 5, 2003.

If you require special assistance or auxiliary aids or services to participate in this public informational gathering meeting (e.g., sign language interpreter, large print, taped materials, wheelchair access, parking for the disabled, etc.), please call Clyde Sonobe of the Cable Television Division at (808) 586-2620 (voice only) not less than **10** days prior to the meeting, so that appropriate arrangements can be made.

Department of Commerce and Consumer Affairs’ (“DCCA”) Plan  
For Public, Education, and Government (“PEG”) Access

The DCCA is currently evaluating issues relating to PEG access in Hawaii. The goal is to develop a statewide cable access plan which will set forth the State’s policies towards PEG access. That plan will guide the development and enhancement of services provided by PEG Access Organizations.

This document is intended to initiate a public discussion concerning the State’s current policies towards PEG access, and possible changes in those policies. It identifies the State’s policies and practices regarding significant issues in PEG access, and identifies some possible alternatives for change which have been suggested by various parties in recent years. However, the list of issues and options is by no means final, and DCCA welcomes the public’s input on what other issues and options should be considered as DCCA develops the plan.

DCCA is making this document available for public comment. The public is welcome to comment specifically on the issues identified in this document, or more generally on their views concerning PEG access in Hawaii. The public can comment in writing, by email, or at public **forums**. These **forums** will be scheduled in each county and will be an opportunity to provide input to the DCCA in finalizing its plan.

Email comments should be addressed to **cabletv@dcca.hawaii.gov**. Written comments should be addressed to:

Cable Television Division  
Department of Commerce and Consumer Affairs  
State of Hawaii  
1010 Richards Street, 2<sup>nd</sup> Floor  
Honolulu, Hawaii 96813

Once this document has been circulated and public comments reviewed, DCCA will finalize the plan and make it available for general distribution.

**Background**

The regulation of the cable television ("tv") industry is based on federal laws which allow local regulation by a local franchising authority (“LFA”). The DCCA was designated by the Hawaii State Legislature as the LFA for the State of Hawaii.

PEG access was started through the collaboration of the DCCA, the cable tv operators, and the four Counties. A PEG access organization was established in each County as a private, nonprofit 501(C)(3) corporation to serve the unique requirements of that County. Following are the PEG corporations:



|        |  |
|--------|--|
| Hawaii | Na Leo ‘OHawaii, Inc. (“Na Leo”)                             |
| Kauai  | Hoike - Kauai Community Televisioq Inc. (“Hoike”)            |
| Maui   | Akaku - Maui County Community Television, Inc. (“Akaku”)     |
| oahu   | ‘Olelo - The Corporation for Community Television (“‘Olelo”) |

Each of these access organizations **is** funded by fees which are collected by the cable operator from its subscribers. Federal law states that an LFA can assess up to 5% of the cable tv operator’s gross revenues for purposes of these franchise fees. For example, if a subscriber’s monthly invoice for cable service totals \$100.00, the franchise fee assessed for that subscriber cannot exceed \$5.00. The recipients of these fees include the four PEG access organizations, the DCCA and the Hawaii Public Television Foundation (“HPTF”). The HPTF is better known to many as KHET Public Television.

The current distribution of franchise fees collected in each County is:

- 3% To the PEG access organization for the specific County where fees are collected
  - 1% To the Hawaii Public Television Foundation (public Television – PBS)
  - 64%** To the DCCA to support the administration of the program
- Note: DCCA receives 1% of standard service revenues, not **gross** revenues.  
 1% of standard service .revenues are approximately **.64%** of gross revenues.

In addition to operating funds collected from cable subscribers, the cable operator also makes capital fund payments to the PEGs for the purchase of items including equipment, furniture and fixtures. These payments are not a part of the **franchise** fee cap of **5%**, and **are** not directly assessed to subscribers on their invoices. The capital fund payment amounts are the result of negotiations that involve the DCCA and cable operator with input from the **PEGs**. **At** certain designated dates within the franchise period, the **PEGs** are requested to work with the cable operator to develop a capital payment plan that is then submitted to the DCCA for consideration.

The PEG access organizations also receive channel capacity on the cable tv operators’ systems. All four PEGs have been authorized the use of five (5) channels; to date, only ‘Olelo on the island of Oahu has all **5** channels cablecasting programming on a full time basis. Additional channels can be requested by the PEGs, with supporting documentation. These requests will be reviewed by the DCCA who will then enter into discussions with the cable operator. Based on the results of this review process, DCCA will then make a decision on the request for additional channel(s). The review criteria include items such as current use of channels in production, percentage of first time versus re-run programming, channel utilization by local producers, and other factors related to channel demand.

Note: On Oahu, ‘Olelo has entered into a contract with the Hawaii Educational Network Consortium (“HENC”) to be its Education Program Manager. HENC is a consortium comprised of representatives from accredited educational institutions within Hawaii including public and private lower and higher education schools such as the University of Hawaii, Department of Education, and Hawaii Association of Independent Schools.

'Olelo allocates twenty-five percent (**25%**) of its revenues from franchise fees to HENC to fund educational programs and services that are primarily cablecast on two of 'Olelo channels.

**ISSUE #1: Expanded Role for Counties in Cable Regulation**

Currently, the State of Hawaii through the **DCCA** performs the regulatory functions pertaining to the cable television industry in Hawaii. Major activities include basic service tier rate regulation, franchise applications / renewals / transfers, resolution of customer service complaints, appointment of **PEG** boards, negotiation of operating agreement with **PEGs**, and the expansion and functional improvements of the Institutional Network ("**INET**"). The **DCCA** also participates in matters indirectly related to cable television, such as advocating for the interests of Hawaii consumers with regard to Direct Broadcast Satellite ("**DBS**"). The **DBS** industry is regulated on the federal level by the **FCC** and is not regulated on the State or Local level.

It should be noted that Hawaii is one of a very few States that has franchising authority at the State level. On the mainland, regulation of the cable industry most often resides at the city, county or municipal level. In certain states, a cable operator may interface with scores of **LFAs**.

A key threshold question is whether, and to what extent, the State should be responsible for **PEG** access matters and cable tv regulation.

Regulatory Framework Options:

Option 1: Continue with current framework

**Option 2: Expand the Counties' Role**

**This option could range from providing an increased role for the Counties at the State level, to a total transfer of the regulation of the cable television industry from the State to each County government.**

One approach would be to establish a greater role for the Counties, while retaining some duties for the State. The possibilities include one or more of the following:

***Partial Shift of Franchising Authority:*** The Counties could take the lead in negotiating the specific terms and conditions of franchises in their county, while the State would retain the right to review and approve the final product. This would give Counties the ability to shape the agreements to suit their unique needs, while allowing the State to ensure that statewide interests (such as access to the **INET**) are adequately protected.

**PEG activities:** Each County could be responsible for the activities of its PEG access organization. For example, the Counties could be responsible for selection of board members, negotiation of contracts with the PEGs, and/or facilitating the resolution of complaints.

In addition, a planning entity, composed of members from each County, could be organized to develop and implement strategies to continue the collaboration between these independent PEG organizations.

**Cable Advisory Committee:** The Counties could have a greater role in cable governance at the State level through representation on the DCCA's cable advisory committee. Issues concerning the committee are discussed in more detail below.

Another approach would be a total transfer of duties and responsibilities of the DCCA as the local franchising authority, via amendment of State laws, to each County. Thus, each County would be empowered to determine the appropriate assessment and distribution of franchise fees within the County, would negotiate directly with cable operators on the terms and conditions of their franchise agreements, and would establish their own policies on PEG access issues. In summary, each County would be able to determine what policies were best for that County, and complaints or concerns about cable service or PEG access would be resolved at the County level.

**As** noted above, the DCCA's regulation of the cable industry is currently supported by a portion of the franchise fee. To the extent functions currently performed by the DCCA are transferred to the counties, funding could **be** re-allocated from the DCCA to the counties **to support** those **functions**.

**ISSUE #2: Governance - PEG Board Appointment Process**

Currently, members of the PEG board of directors are appointed by the Director of the DCCA and by the cable operator for each County. The number of board members for each PEG entity differs, reflecting the unique needs and wishes of each board.

| County   | PEG Entity | DCCA Appointed | Operator Appointed | Total |
|----------|------------|----------------|--------------------|-------|
| Hawaii   | Na Leo     | 11             | 1                  | 12    |
| Honolulu | 'Olelo     | 6              | 3                  | 9     |
| Kauai    | Hoike      | 7              | 2                  | 9     |
| Maui     | Akaku      | 14             | 1                  | 15    |

The DCCA acknowledges the autonomy and decision making authority of each PEG board of directors, and accordingly does not involve itself in the daily operational and financial management of the access organization. Each PEG board is responsible for all financial and operational management matters, including the resolution of complaints from its producers and stakeholders. The DCCA and each PEG organization have a contract currently in force that is automatically renewed annually unless terminated or modified.

As board vacancies occur, each PEG access organization initiates a nomination process that includes public notice of the vacancy, review of applications received, selection of nominee, and presentation of recommended nominee to the DCCA or cable operator for appointment to the board. The DCCA and the cable operator have the discretion to accept or reject the recommendation. DCCA and the cable operator also have the authority to remove directors once they are appointed.

A recent opinion by the Office of Information Practices (~~“OIP”~~) stated that the DCCA’s board appointment authority was a factor in OIP’s opinion that PEGs were an agency for Uniform Information Practices Act (“UIPA”) purposes. Some observers believe that this opinion has jeopardized the private, non-profit **status** of PEG access organizations and have argued vigorously for the board appointment process to be amended by removing the DCCA’s appointment authority.

The issue of governance, specifically the appointment of board directors, has been a much debated topic over the past few years. One argument in favor of continued DCCA involvement concerns the funding of the PEGs. Franchise fees are the result of orders issued by the DCCA to the cable operator. The cable operator is ordered by the DCCA to calculate, collect and distribute funds from cable subscribers for PEG purposes. The DCCA has historically believed that it needs to exercise oversight of the expenditure of these funds. The current board appointment process provides the DCCA with some amount of oversight, both through the selection of directors and through the power of removing directors. Proponents of change argue that the DCCA retains adequate oversight through the annual reporting and contract renewal process. They believe that the DCCA has adequate oversight by the fact that the contract can be renegotiated or not renewed.

### **Possible Governance Options:**

There are a number of possible options, some of which are identified here. The options could be combined, i.e., board members could be selected by several different means. One key question is whether different approaches should be allowed in each of the different counties, or whether there should be uniformity across the State.

Option1: Continue with current appointments by the DCCA and cable operator

Option 2: Self appointment by the PEG Boards

This will provide the board of each PEG access organization with autonomy in the recruiting, selection and appointment of its board members. The current board of directors for each access organization will be responsible for the appointment of future board members. Public notice of vacancies and a published nomination process will be required. In this scenario, the DCCA could also be represented on each board in an ex-officio role.

Option 3: Appointments by Various Entities

This option would provide for appointment of board members by entities or individuals other than the DCCA, or the cable operator, such as **the Mayor of** each county, county councils, or the Legislature. This may provide more diverse representation.

Option 4: Election by PEG constituents

This will provide the constituents of PEG access organizations with the ability to participate in the selection and appointment of board members. Constituents could include viewers, cable subscribers, producers or other interested parties. Candidates for vacancies could be identified by a nomination committee or by interested candidates simply submitting an application or letter of interest. An election, conducted by the access organization, would then be held to determine the new board member. The election process ( mail-in ballots, electronic: email, internet ) would be left to each access organization.

Option 5: Establishment of a Mechanism for Public and Producer Input

Some PEGs have established a process that allows public and producer input into their policy formulation and decision making. This can foster an atmosphere of open participation that allows various viewpoints to be considered by the PEG board of directors as part of their decision making process.

Should the DCCA require the establishment of a process by each PEG that will allow public and producer input into matters being considered by the boards of directors, and if so, what form should that process take?

**ISSUE #3: Cable Advisory Committee**

The Cable Advisory Committee (“CAC”) is intended to advise the Director and cable operators, upon request, with cable television related matters. The committee is comprised of five (5) members who are appointed by the Governor and serve without pay but are entitled to reimbursement of necessary expenses. The committee last met in 1990, and the last member’s term expired in 1996. No replacement members have been named since then. It appears that the prior Administration believed that the CAC had been established to provide guidance during the formative years of cable regulation, and that it had outlived that role.

Cable Advisory Committee Options:

Option 1: Appoint members to the CAC

Under this option, the Governor would appoint five members to the CAC. Current law does not specify residency or other requirements for membership. However, the Governor could select representatives from each of the four counties.

Option 2: Introduce legislation to eliminate the CAC

Such legislation would be appropriate if the CAC has outlived its usefulness.

Option 3: Introduce legislation to amend composition of the CAC

Increase the size of the CAC so that more points of view can be represented, or otherwise modify the structure and / or role of the CAC.

**ISSUE #4: Financial Resources**

As stated previously, franchise fee assessments are consistent statewide, except for an agreed upon limitation that is in place for ‘Olelo on Oahu. ‘Olelo is subject to a \$3,7M cap that may increase annually based on the Consumer Price Index (“CPI”). This calculated cap amount is compared against the actual 3% calculation, and the lower amount is remitted to ‘Olelo.

As stated previously, the distribution of franchise fees collected are as follows:

- 1) 3% of gross revenues to the PEG access organization for the specific County where fees are collected

2) 1% of gross revenues to the Hawaii Public Television Foundation (Public Television – PBS)

3) 1% of standard service revenues to the DCCA

Note: Approximately 0.64% of gross revenues

Due to the differences in population as well as differences in cable services purchased by subscribers, franchise fees vary widely among the four counties. Under current **DCCA** policy, the fees collected in each County remain in that County. Fees collected for each PEG access organization in 2002 are:

|        |                |
|--------|----------------|
| Hawaii | \$547,243.00   |
| Kauai  | \$270,569.00   |
| Maui   | \$608,510.00   |
| Oahu   | \$3,387,288.00 |

**Financial Resources Options:**

**Option 1: Continue with the current financial structure**

**Option 2: Should franchise fees be redistributed among the Counties?**

Currently, franchise fees for PEG access collected in a particular County remain there for the benefit of its residents. Some observers have suggested that there should be some mechanism to redistribute franchise fees so that neighbor islands receive a larger percentage of the statewide total. They suggest that absent such redistribution, some areas of the neighbor islands are not able to receive even a minimal “baseline” of access services.

One possible approach would be to redistribute any fees assessed in excess of a certain amount on Oahu. That amount could be the \$3.7 million cap that is already in place for ‘Olelo, or it could be some other amount. A formula or some other process to allocate these funds would need to be implemented to ensure fairness in distribution.

**ISSUE #5: PEG Channel Resource**

Currently, all PEGs have access to five (5) channels on the cable operator’s cable systems in each County. Only ‘Olelo on Oahu has activated and is cablecasting programming on **all** five channels.

The availability of consistent channel capacity has allowed statewide cablecasting capabilities for the State Legislature, University of Hawaii and the Department of Education. By designating 2 channels for “E” purposes, both the UH and DOE are now able to develop and implement instructional curriculum that can be utilized by campuses on all islands. They are also able to take advantage of teaching resources residing on a particular island to reach students statewide. This results in leveraging not only personnel resources for statewide benefit, but also consistency in curriculum. For example, a Calculus instructor on Maui will be able to reach students on all islands, increasing quality of curriculum. On Oahu, ‘Olelo has reached an agreement with the Hawaii Educational Networking Consortium (“HENC”) to manage and program ‘Olelo’s two (2) “ E channels dedicated to the UH and DOE. HENC is composed of members representing the UH, DOE, East West Center (“EWC”) and the Hawaii Association of Independent Schools (“HAIS”).

Statewide broadcast capability from the State Legislature has recently been improved by having broadcast feeds sent directly to the UH for statewide carriage on UH's HITS microwave network. This will result in more efficient transmission of live legislative broadcasts to the neighbor islands. In addition to broadcasts from the State Legislature, each PEG access organization has the resources to implement live broadcasts from their respective City/County councils and executive branch. At this time, not all PEGs have elected to implement live **County** government broadcasts.

PEGs can request additional channel capacity beyond the current allocation of five (5) channels. Requests for additional channel(s) must be accompanied with documented justification including, but not limited to, the following information: Statistical data illustrating the use of existing channels, types of programming being cablecast on each channel, statistics on channel programming that is first run versus re-run, percentage of first run programming versus re-run programming, and percentage of time used for “bulletin board”.

### **ISSUE #6: Sustainability**

The issue of sustainability can be summarized by this question:

“What would happen to each PEG organization if funding from franchise fees suddenly decreased significantly or disappeared completely?”

The question was first posed by the DCCA a few years ago as a discussion mechanism. The major item that prompted DCCA’s request for plans of self sufficiency was the evolution of technologies that compete with cable tv. At first, wireless cable companies were the primary competition but lacked the market share to significantly impact the cable tv operators. Currently, there is a technology that may present true competition to cable tv, without cable’s regulatory requirements: Direct Broadcast Satellite (“DBS”). The DBS industry is represented by two major vendors, DirecTV and Echostar (Dish



Network). If these service providers continue to gain market share, at the expense of cable tv companies, revenues to all beneficiaries of franchise fees will decrease. In addition to competitive technologies, there is also the potential of an evolving cable tv industry. If cable tv companies provided their services through the use of new or innovative technologies, such as Wireless Fidelity (“WI-FI”), would they still be held to requirements such as franchise fees? The development of new delivery systems and technologies will be a significant consideration in future regulatory policy.

The second item that affects sustainability relates to regulatory issues facing telecommunications / entertainment companies and the services they provide. For example, the FCC has recently determined that cable modem service (Oceanic’s Roadrunner) is **an** information service, not a cable service. Many jurisdictions, including the State, have questioned this opinion, which currently is being reviewed by the FCC and also being litigated in federal court. The cable modem issue illustrates the uncertainty in this area, i.e., that services currently assessed with franchise fees may not be assessed in the future. **This** uncertainty relating to designation **of** type of service and the applicability of franchise fees also holds true for services being developed and not yet deployed. There is no certainty in how the FCC will identify a new service, whether **as** an information service or a cable service.

Given this uncertainty, how will PEGs continue providing current services while planning for additional, enhanced benefits? Should they seek other sources of revenues, and if so, what sources are appropriate? Should DCCA actively encourage and / or require PEGs to seek other sources of revenue, or should it be left to the discretion of the PEG entities?

### **Sustainability Options:**

#### **Option 1: Seek funding from other sources**

In order to minimize dependence on cable tv related franchise fees and to increase available funding, should PEG access organizations pursue other sources of funding through various methods such as solicitation of grants, private – public joint ventures, and traditional fundraising activities?

#### **Option 2: Identify acceptable “for profit” activities as part of PEG mission**

Although PEG programming is non-commercial in nature, should PEG organizations have the discretion to pursue certain “for-profit” activities, and if so, what activities would be acceptable?

**ISSUE #7: Greater Community Participation**

One of the primary goals of all PEG access organizations today is the extension of their services to all areas of their communities. This involves addressing the issue of physical access to the existing PEG facility i.e., how to provide services to residents who may not have easy access to resources either because of geography or other factors. The DCCA gives each PEG access organization discretion to select appropriate means to attain these goals. Following are services currently being provided by some or all of the PEGs:

**Remote Access Centers:** Currently, some of the PEGs are considering or have implemented remote facilities to address the concern of accessibility to PEG resources. On **Oahu** for example, 'Olelo has implemented remote sites in Kahuku and Waianae. Although these are not fully equivalent to 'Olelo's main facility in Honolulu, they do provide easier access for residents in the Leeward and **North** Shore communities of Oahu.

**Mobile Facilities:** Equipping a mobile van with production capabilities is also being considered to address the needs for more outreach to remote geographic areas. This option provides tremendous opportunities for greater outreach.

**Alternate Sites:** It has been suggested that the PEGs explore working relationships with existing institutions that could extend the reach of their services. **This** could include collocating with an existing non-profit corporation whose operations could be complimentary. By creating such alliances, the public will gain added access to PEG services while the PEGs will benefit by incurring lower outreach costs due to collocation agreements.

**Facilitated Production:** PEGs currently provide the public with the option of creating programming without becoming a certified producer. Such easy access services include staff supported "open mike" sessions as well as volunteer supported facilitated productions. These types of assisted services greatly expand and enhance the impact of PEG resources to their communities.

**Equipment and Staffing:** Regardless of the alternatives implemented, whether remote, mobile or collocated, the effectiveness of these options will be determined by their ability to deliver acceptable service levels to the end-user. Certain minimum equipment requirements have to be addressed including cameras, editing equipment and consistent programming formats, such as DVD, etc. More important to the success of this outreach initiative is the support provided by the PEG access organization that would accompany these possible alternatives. It is critical to the success of this effort that client/user support is readily available to assist wherever these alternatives are implemented.

**ISSUE #8: Cooperation and Collaboration Among PEG Organizations**

The DCCA strongly encourages the PEG entities to collaborate and cooperate in order to maximize the resources available to each. By working cooperatively, the PEGs will hopefully reduce redundant, resource consuming activities. Resources can be leveraged and efficiencies maximized in his type of environment. Following are areas where resources may be leveraged:

***Equipment Resources:*** PEGs should implement a policy of notification when equipment is planned to be retired. This will provide the opportunity for another PEG to request the equipment instead of it being discarded or donated. A documented process needs to be implemented in order for there to be mutual agreement and understanding on the operational logistics. This will ensure an open and fair process. In addition to retired equipment, cooperative purchasing and sharing of equipment is encouraged. This may reduce overall costs for unique pieces of equipment that may be more practically purchased by all four PEGs with an understanding regarding its shared use.

***Personnel Resources:*** The DCCA encourages PEGs to share technical / support resources. This may simply be regularly scheduled “roundtables” where staff from each PEG meets to share ideas, experiences, etc. Or it can be structured instructional sessions where a trained resource presents a certain topic. These sessions will not only increase the expertise available in each PEG access center, but it will also further enhance the sense of community among the PEGs themselves.

***Programming Resources:*** The DCCA supports the current agreement between the PEGs to share **programming** developed in their respective communities when it is appropriate. **As** issues of common interest develop, the exchange of viewpoints between the islands becomes more appropriate and relevant. The use and leveraging of common technologies is encouraged to expedite this exchange of viewpoints and ideas.

**ISSUE #9: PEG Bv-laws**

Although the by-laws of the PEG organizations are similar in nature and content, there are some differences which reflect the unique requirements and needs of each access entity. **For** example, the number of board members varies due to the requirements of each board. Certain boards prefer a greater number of members, and have increased their board size, **while** others have retained the same number since the original formation of the organization. The DCCA is sensitive to the unique needs that may face each PEG access organization and will work with them to address their specific requirements while still maintaining certain overall consistency.

The DCCA expects each PEG access organization to comply with their bylaws to remove the potential for complaints and inconsistent operations. Specifically, the DCCA is concerned with the process by which its board meetings are conducted and strongly encourages the adoption and implementation of procedural rules, such as Roberts Rules of Order. Adoption and adherence to such rules will facilitate more productive, fair, and efficient meetings.

**ISSUE #10: Chapter 92F / Uniform Information Practices Act (OIP opinion dated 09-06-02) : Openness to the Public Records**

All PEGs state that they comply with HRS Chapter 92F UIPA. The Office of Information Practices determined in its opinion dated September 6, 2002 that Hoike and ‘Olelo are subject to and must abide by the UIPA.

**Chapter 92F UIPA Options:**

**Option 1: Legislative modifications to amend requirements**

Some of the Chapter 92F requirements may be unduly burdensome and / or costly for non-profit entities such as the PEGs to comply with. Legislation could be proposed which would streamline these requirements as applied to the PEGs while still ensuring openness on the part of the PEGs.

**ISSUE #11: Daily operational procedures – responsibility of each PEG**

Although the DCCA recognizes the unique needs of all four PEG access organizations, it strongly encourages the implementation of daily operational guidelines that address certain significant issues. For example, the daily operational procedures for all PEGs should include hours of operation. The DCCA is **not** implying that all PEGs keep the same hours, only that the hours of operation are included. By developing a consistent set of operational guidelines, it eases the transition for producers or constituents who may have the opportunity to utilize PEG facilities in more than one County. Other potential items could include:

- Frequency of scheduling for first time programming vs re-runs
- Sign-out and use of equipment
- Content disclaimer
- Rules governing political or campaign programming

**ISSUE #12: Development of technical standards**

The DCCA encourages the development of technical standards among the PEGs that will result in certain baseline consistency among them. The creation of certain technical standards will result in the following benefits:

- Similarly trained staff
- Cross support between organizations
- Additional resources during disasters and emergencies
- Potential purchasing benefits such as volume procurement

**ISSUE #13: Review of connectivity (PEG Network) currently provided by TWE**

The DCCA is currently working with Oceanic Time Warner Cable to review the interconnections that make up the PEG Network in all Counties. The PEG Network is the means by which all PEG programming is sent to and received by the cable operator's headend facility in each County. Once the PEG programming is received at the cable operator's facility, it is then inserted into the channel program lineup and distributed to subscribers along with other programming.

The following interconnections comprise the PEG Network

- PEG access organization to the cable operator's headend facility
- UH and DOE to PEG organization, or directly to cable operator's headend facility
- County government to PEG organization, or directly to cable operator's headend facility

In most of the counties, the programming from the UH, DOE and government are consolidated at the PEG facility then sent on to the cable operator's facility. Although this has been historically done, the DCCA will consider other options acknowledging that there may be costs that would need to be addressed by the requesting entities.

**ISSUE #14: Programming (CSPAN for Hawaii)**

**Some** members of the community have identified a need for more civic affairs programming including State and County legislative, executive and judicial proceedings, as well as community based activities such as neighborhood board meetings.

The goal is to provide statewide distribution of civic / public affairs television programming as a means to encourage democratic participation and public interest through cablecasting. This endeavor will require the commitment and cooperation of many organizations including coordination of their resources.

There are many alternative approaches to accomplish these objectives, such as the expansion and enhancement of “G” programming currently provided by each of the four PEG access organizations. Another option which has been suggested is the creation of a separate, independent non-profit entity which would produce and distribute public affairs programming in Hawaii, similar to what CSPAN does on a national level. This non-profit would be responsible for managing the creation and distribution of public affairs programming on a statewide basis. A source or sources of financial support would need to be identified. Also, there are issues concerning channel capacity which would need to be addressed.

**ISSUE #15: Resolution of complaints concerning PEGs**

The DCCA recognizes the private, non-profit status of the PEG organizations, and accordingly relies on the PEG's board of directors, officers and employees to be responsible for overall client satisfaction, including the satisfactory resolution of complaints received regarding its operations and management.

However, situations have arisen where the DCCA's involvement is required to assist in the resolution of inquiries and complaints received from PEG producers or other constituents. In these instances, the DCCA will attempt to facilitate a reasonable solution / compromise that address the concerns raised while also respecting the policy and decision making of the PEG's board of directors. To accomplish this objective, DCCA will relay complaints to the PEGs and request a copy of the responses to those complaints. The appropriate resolution of complaints by the PEGs is a factor taken into account by the DCCA in evaluating the performance of each PEG.

**ISSUE #16: Role of PEGs :Production versus Facilitation**

As the needs of their clients have evolved, PEG access organizations have reviewed and assessed how they can continue to serve their unique communities. In addition to their mission of training developing production skills, and providing a forum for exchange of ideas, PEG access organizations have also been involved in activities that some have deemed non-traditional. Examples include: (1) responding to local government RFPs for video and captioning services which results in competition with private organizations, and (2) the development of programming utilizing the organization's resources, which could result in decreased availability of equipment or other resources (such as air time) to the public users of these access facilities. The development of such programming is sometimes referred to as “community building”.

The DCCA has given the PEGs discretion to determine whether, and to what extent, they should engage in such activities. **Should** DCCA continue to allow them discretion to undertake such activities, and if so, should there be any limits on that discretion?