

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

MINUTES OF MEETING

Date: April 4, 2012

Time: 2:00 p.m. – 3:30 p.m.

Place: Queen Lili'uokalani Conference Room
Department of Commerce and Consumer Affairs
335 Merchant Street
Honolulu, Hawaii

CAC MEMBERS Present: CAC members Mahina Martin, Austin Vali, Beth Tokioka, and Gerald Silva.

OTHERS: Kealii Lopez, Director; Jo Ann Uchida, Acting Deputy Director; Laureen Wong, Staff Attorney CATV; and Glen Chock and Cathy Takase, CATV Staff.

AGENDA: The agenda for this meeting was filed with the Office of the Lieutenant Governor.

- I. Call to Order --The meeting was called to order at 2:05 p.m. by Director Lopez.
- II. Introduction of Acting Deputy Director Jo Ann Uchida
- III. Minutes of December 12, 2011 Meeting – There were no questions about the minutes, which were then accepted by the CAC.
- IV. Update on Pending Matters
 - A. 'Ōlelo's Application for Designation of PEG Access Organization on Oahu – Director Lopez explained that although there was no real conflict of interest, she had recused herself from DCCA's the designation decision and contract negotiation with 'Ōlelo to avoid any perception of conflict because of her past employment with 'Ōlelo as President & CEO. Deputy Director Jo Ann Uchida will take the lead in the designation process supported by staff and that there will be multiple opportunities to engage CAC members in the process. Director Lopez indicated that 'Ōlelo's application was the first under Act 19 and would set the ground work for other applications for designation throughout the State. Ms. Wong stated that 'Ōlelo submitted its written Application for Designation on October 25, 2011 and that application along with additional information provided by 'Ōlelo to the DCCA are available for public review at DCCA/CATV's website.
 1. 'Ōlelo's Presentation on its Application – Mr. Roy Amemiya, President and CEO of 'Ōlelo, gave a short presentation on 'Ōlelo's written Application for Designation as a PEG Access Organization on Oahu,

submitted to DCCA on October 25, 2011. Mr. Amemiya reported that 'Ōlelo surpassed 5000 hours of locally produced programming and requested that the funding cap be raised or eliminated. The amount of capital fund payments to be paid by TWE is pending a decision by an arbitrator and would have an impact on the designation process.

Mr. Amemiya stated the short term priorities for 'Ōlelo: transition to tapeless HD technology; migration to file-based program submissions; advanced training classes; relocating Palolo CMC to facilities at Kaimuki High School; outreach to new community groups; creation of a C-SPAN like model to expand government programming; expand coverage of community events; access to video content on tablets and smart phones; research solutions for closed captioning; and upgrading internet connectivity between 'Ōlelo's community media centers.

Mr. Amemiya also stated the long term priorities for 'Ōlelo: creating a presence in East Honolulu; using emerging technology to cablecast more LIVE events; enable client training and program submissions via the internet; and catalyze community engagement for impact on important issues.

Regarding CAC member Gerry Silva's inquiry about the arbitration decision on the capital fund payments, Director Lopez stated that the arbitrator (Senior Hearings Officer David Karlan) was working on his decision which would then be presented to Deputy Director Uchida. Director Lopez informed the CAC that she had recused herself from the arbitration decision. Director Lopez indicated that without a decision by the arbitrator, DCCA may have to hold on finalizing a contract with 'Ōlelo.

Mr. Silva asked if 'Ōlelo would be responding to the unfavorable points raised in Oceanic's testimony. Mr. Amemiya stated that the argument was over financial information and 'Ōlelo's counsel advised it to obtain an opinion from the Office of Information Practices (OIP). Director Lopez summarized the dispute between 'Ōlelo and Oceanic over the confidentiality of certain information requested by Oceanic and informed the CAC that DCCA would follow OIP's ruling. Ms. Wong indicated that DCCA did not have copies of the documents which were being reviewed by OIP. Mr. Amemiya indicated that the current contract between 'Ōlelo and DCCA ends on June 30, 2012. Ms. Wong stated that if more time is needed to negotiate a contract between the DCCA and 'Ōlelo, then the parties could extend the current contract.

CAC member Mahina Martin stated that Oceanic's written testimony submitted to the CAC raised issues, such as repeated misappropriation of funds that needed to be addressed. Mr. Amemiya explained that 'Ōlelo just went through a financial audit with no hint of any misappropriation.

Director Lopez stated that staff will go through Oceanic's written testimony and evaluate its claims. Director Lopez stated that Oceanic as an intervener per Act 19 plays a role in the designation process, and it is important for OIP to make a determination on 'Ōlelo's documents because these documents may address issues raised by Oceanic.

CAC member Beth Tokioka asked what documents were claimed confidential. Mr. Amemiya explained that 'Ōlelo was in contract negotiations with CATV, and it did not want potential competitors to see its financial information. CAC member Austin Vali asked what was the motivation behind Oceanic's opposition. Mr. Amemiya indicated that he believed that bandwidth issues were behind Oceanic's position. Mr. Amemiya stated that many PEGs have closed since 2005 due to reduction in funding. When that happens, channels and bandwidth go back to the cable operators and they can use the reclaimed bandwidth for commercial stations as opposed to being used for community access. Mr. Amemiya stated that PEG channels are repayment for use of public rights of way by cable operators.

Mr. Vali asked how much public access is needed when there is the Internet and when the government is facing deficit funding. Mr. Amemiya expressed that because of the diverse ethnic groups in Hawaii, public access is a perfect way to get access to small groups such as immigrants.

Mr. Vali asked how 'Ōlelo measures success? Mr. Amemiya stated that the number of program hours per day and the diversity of programming were important. Ms. Martin asked whether a consumer would want his dollar to go to profit for a cable company or to go to public access especially for rural communities. Mr. Amemiya explained that 'Ōlelo received \$97 million from Oceanic since 1989. Last year 'Ōlelo received \$4.7 million in access operating fees and 25% of this amount went to HENC. This means that it costs \$1.08/month to a subscriber for operating fees and 25 cents per month per subscriber (approximately \$3/sub/year) for capital payments. Mr. Vali asked the amount of cash on hand, and Mr. Amemiya replied that 'Ōlelo has \$2.4 million unrestricted reserves or six months operating costs. Mr. Amemiya indicated that at one time 'Ōlelo had \$4.5 million in reserves but due to economics, it was losing money. 'Ōlelo has not filled vacant positions and had to lay off 2 staff persons. Mr. Amemiya went over 'Ōlelo's unaudited statements for the past 3 years which 'Ōlelo deemed confidential. 'Ōlelo raised some money during the past year such as \$495,000 in rental income but had to pay out \$669,000 for its ground lease. For the CMC facilities at schools, the schools provide the space and 'Ōlelo is charged \$100/month which is often waived by the schools. Director Lopez stated that DCCA and Oceanic are waiting for OIP to issue a decision on certain confidential financial information that 'Ōlelo is claiming as confidential, and once OIP makes its determination, DCCA will review whether Oceanic may amend

its testimony. Director Lopez invited Oceanic to address the CAC at this time, but it declined to do so.

2. Result of Public Hearing – Ms. Wong stated that DCCA held a public hearing on 'Ōlelo's application at Washington Middle School on March 29, 2012. The hearing lasted almost 3 hours and most of the 35-36 persons who presented oral testimony were in support of 'Ōlelo's application. Copies of DVD video recording of public hearings were provided to CAC members. As of April 3, 2012, DCCA received almost 100 written comments, almost all in support of 'Ōlelo. Ms. Wong provided a short summary of the testimony received by DCCA which included: appreciation and support for dedicated staff; appreciation for the multi-lingual programs; support to lift the cap on 'Ōlelo's funding; transition to High Definition; and make more programming accessible via social media. Ms. Wong stated that DCCA will post the written testimony online and would prepare a short summary of public testimonies for CAC.

B. Oceanic Time Warner Cable's Renewal of East Hawai'i and West Hawai'i Cable Franchises

Director Lopez stated that Oceanic has submitted applications to renew and consolidate its Big Island franchises. CATV staff continues to meet with Oceanic and discuss franchise terms and started to put down terms in written draft. Ms. Wong stated that Time Warner Cable recently notified the DCCA of its internal restructuring and intent to assign TWE's franchise to a new corporate entity, Oceanic Time Warner Cable LLC. DCCA will examine TWC's request for approval, but it may require that TWE amend its application to renew the Big Island franchises. At this time it is unclear as to the impact of TWC's internal restructuring, and DCCA is working with Oceanic and DCCA's mainland counsel on this issue. As a result the current Big Island franchises which end on April 16, 2012 may be further extended.

C. TWE Petitions for Effective Competition

Ms. Wong reported that Oceanic filed two petitions, one for Oahu and the second for its Big Island franchises, for effective competition with the Federal Communications Commission ("FCC"). Oceanic is claiming that there is effective competition on Oahu because Hawaiian Telcom Services Company, Inc. ("HTSC") has entered the market. DCCA filed opposition to this petition because it does not believe that HTSC is able to offer video service to the extent argued by Oceanic. For the Big Island petition, Oceanic is claiming that there is effective competition because many residents subscribe to the DBS video programming services. Again, DCCA does not believe that the percentage of residents subscribing to DBS services meets the required test for effective competition. All paperwork has been completed and we are waiting for FCC ruling. If the petitions are granted by the FCC, the State will not be able to regulate basic service rates and Oceanic may be able to offer select communities better services and rates in order to compete. Ms. Martin asked if Oceanic could take

away services if effective competition is granted. Ms. Wong indicated that the full impact of effective competition is not yet clear. Director Lopez stated that a favorable ruling on Oceanic's petitions would eliminate the State's ability to regulate basic service rates and provide Oceanic flexibility to have different rates for different areas. Mr. Vali asked about the extent of Hawaiian Telcom's video program service on Oahu, and Ms. Wong stated that Hawaiian Telcom needed to upgrade its facilities to be able to provide video programming throughout the Oahu franchise. Director Lopez indicated that it was a question of Hawaiian Telcom's percentage of coverage on Oahu. Ms. Martin asked the impact of effective competition on other islands. Director Lopez stated that DBS service has less of a footprint on Maui and Kauai, so there is much less competition for Oceanic.

V. New Business

A. Digital migration of Education Channels

Ms. Wong reported that Oceanic moved the Education Channel TEACH (State DOE) from analog to digital format only on the neighbor islands, and the Education Channel TEC (UH) on Kauai and the Big Island. Prior to the migration, Oceanic consulted and worked with UH, HENC, State DOE on scheduling and converter box distribution to students in the transition of the Education Channels. Oceanic also provided required notice to neighbor island subscribers and to the DCCA. Neighbor Island PEG access organizations however contacted DCCA and complained that Oceanic had not provided them sufficient notice of the planned migration. DCCA required Oceanic to provide analog subscribers access to the migrated Education Channels. Oceanic developed a converter box distribution plan which provided upon request, a digital box at no additional cost to an analog subscriber, and an additional box without cost upon further request. Current analog subscribers who own television sets equipped with QAM tuners do not need any special equipment to view the migrated TEC and TEACH Education channels. Oceanic agreed to inform the neighbor island PEGs of the digital migration of the Education Channels and of its box distribution policy. In February 2012, Oceanic requested a waiver of applicable provisions in existing franchise orders that defined a "Channel" as a minimum of 6 MHz. On March 5, 2012, DCCA issued a Notice of Finding of Fact and Intent to Issue a Decision and Order on this issue.

Director Lopez stated that a waiver was requested to avoid noncompliance with neighbor island franchise orders. DCCA worked with Oceanic to address issues on access by analog subscribers to migrated channels. Director Lopez indicated that a question was raised concerning how the State can give up analog spectrum from PEGs (equivalent of 18 digital channels) Oceanic needed more bandwidth to deploy more services and increase internet capability. DCCA's position is that spectrum is a community asset and would be part of the franchise negotiations going forward (Big Island and Maui franchises). Director Lopez stated that with the Governor's Broadband Initiative, the State would be looking at community broadband and other issues.

Director Lopez then excused herself to attend Legislative hearings and Deputy Director Uchida conducted the rest of the meeting.

Ms. Martin stated that digital migration of the Education Channels had been messy and sudden and was not simple for non-urban communities. Rural subscribers would have difficulty getting information about the digital box. She questioned why the State was giving away a valuable public asset. Deputy Director Uchida asked for suggestions for improvement. Ms. Martin stated that for rural areas, notice of digital migration had not sunk in and suggested that for future migrations, Oceanic work with Akaku to find the best way to get the word out. She expressed that more time would be needed for rural customers for a transition of digital channels. Ms. Wong stated that Oceanic would provide 2 digital converter boxes without charge to analog subscribers upon request. Ms. Tokioka stated that a free digital box was not the same as offering service, and the waiver decision was to accommodate the migration of the Education Channels after the transition. Mr. Vali asked if a subscriber could request one box per TV and Ms. Wong stated that subscribers could get a reasonable number of boxes from Oceanic at no extra charge. Ms. Wong stated that while DCCA acknowledged that a digital box was not as convenient for some subscribers as channel surfing, Oceanic did not need DCCA permission to transition its channels to digital format but that DCCA required Oceanic to provide analog subscribers continued access to the migrated Education Channels. Ms. Tokioka stated that Oceanic should have provided a longer notice period before migrating channels to digital format to allow more time to get the word out to subscribers.

- B. Time Warner Cable Internal Restructuring – Ms. Wong referred to previous statements that TWC notified the DCCA of its internal restructuring and proposed assignment of TWE's franchise to Oceanic Time Warner Cable Inc. Ms. Wong stated that TWE needed to provide more documents to DCCA before DCCA could determine whether it would approve of assignment of Hawaii franchises to new corporation.

VI. Public Comment

- A. Meredith Nichols – provided comment on Oceanic's migration of the Education Channels to digital format only. She stated that she believed Oceanic's motivations were that of profit. Ms. Nichols is a digital subscriber and she was not able to obtain a digital converter box at no charge for her second TV which is an analog set.
- B. J Robertson – provided comment on Oceanic's digital migration of the Education Channels. He stated that there was no communication from Oceanic to Hoike during the months of December, January and February, but that Oceanic talked with him in March after the Education Channels had been moved. Mr. Robertson talked about the history of PEG channels being moved in the channel lineup. Mr. Robertson stated that he could not see an increase in internet speeds, but the

number of video-on-demand channels had increased except that many of the 58 VOD channels were adult entertainment channels. He would have like to have worked with Oceanic to transition PEG channels to digital over several years.

- C. Jay April – provided comment on Oceanic's digital migration of the Education Channels. He stated that digital migration of channels was inevitable but he was troubled that the proposed Decision and Order was a done deal. He stated that 2 out of 5 access channels were being taken away from community access. Digital boxes were a significant barrier for consumers and that public bandwidth had been taken without compensation. He disagreed with the Findings that Oceanic acted in good faith and did not believe that the State would benefit from future increased broadband speeds. He requested that DCCA consider rejecting or amending the Findings to gain a public benefit for the PEGs. Mr. April stated that the digital migration of the Education Channels was a done deal by Oceanic in exchange for future benefits.

In response to questions by CAC members, Mr. April stated that Oceanic was trying to pit PEG access organizations against beneficiaries by meeting separately with education partners and approached county and state officials. Deputy Director Uchida asked if his arguments were unique to Maui, and Mr. April stated that his arguments applied to neighbor islands in general.

Ms. Tokioka asked if DCCA could stop the digital migration of Oceanic's channels. Mr. April asserted that DCCA had full authority to stop the digital migration of the Education Channels. Ms. Wong stated that federal law does not require that Oceanic obtain DCCA's permission to move Education Channels from analog to digital format and that DCCA cannot order Oceanic to reverse the digital migration of its Channels. Oceanic is required to provide analog viewers access to channels on basic service tier, and DCCA therefore required that Oceanic provide digital converter boxes to analog subscribers. Oceanic is seeking a waiver from the provisions of the current franchise agreements since the bandwidth of a digital channel is less than 6 MHz, and would use the recovered bandwidth for the benefit of the neighbor islands. Ms. Tokioka inquired what would happen if DCCA did not approve the waiver request. Ms. Wong replied that Oceanic would be in noncompliance with its neighbor island franchise orders. Ms. Martin asked what were the benefits to the neighbor islands for the recovered bandwidth and when did Oceanic request a waiver. Ms. Wong replied that Oceanic's request for a waiver came in after the digital transition of the Education Channels. Ms. Martin stated that she did not support granting a waiver if the waiver request was after the fact and that she believed that Oceanic acted in bad faith. Ms. Martin also stated that Oceanic was taking advantage of the State. Mr. Vali stated that there should be a solid benefit to subscribers and not something reserved for in the future. Ms. Tokioka stated that any such changes impacting viewers should be discussed with the PEGs by DCCA and/or Oceanic well in advance. Ms. Martin asked what would be the effect if DCCA did not grant Oceanic's waiver request. Ms. Wong stated that DCCA had the authority to fine Oceanic after conducting a full administrative hearing and weighing the severity of the violation. Mr. Silva referred to his

previous testimony before the CAC on December 15, 2009 that DCCA needs to set aside bandwidth for community access in future franchise orders. Mr. Vali stated that he would unwind the deal if he could but the damage was done and the channels were moved. Ms. Martin indicated that this was a flag for more to come and questions about reclaimed bandwidth.

Deputy Director Uchida stated that CAC members were invited to submit additional written comments to DCCA on this issue within one week.

- VII. Announcements – Beth Tokioka and Austin Vali were confirmed by the Senate to the CAC.
- VIII. Adjournment --The meeting was adjourned at 4:04 p.m.