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

MINUTES OF MEETING

Date:	November 24, 2009
Time:	10:00 a.m. -- 12:00 p.m.
Place:	Queen Liliuokalani Conference Room King Kalakaua Building, 1st Floor 335 Merchant Street Honolulu, Hawaii 96813
CAC Members:	Present: Keith Rollman, Clayton Yugawa, and Mahina Martin Excused: Jenny Fujita and John Gibo
Others:	Lawrence Reifurth, Director; Clyde Sonobe, CATV Administrator; Laureen Wong, Staff Attorney CATV, and Glen Chock, Program Specialist`
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 10:12 a.m.

II. **Minutes of the October 20, 2009 meeting** – Deferred until the end of the meeting. Ms. Martin had corrections for the minutes: 1) For Paragraph II, that she was a former member of the Board of Akaku and Board Chair; and 2) page 4, I. Announcements, that she had requested a comparative matrix. There were no other amendments to the minutes of last meeting, which were then accepted.

III. **Update on Pending Matters**

A. Oceanic Time Warner Renewal of Oahu Cable Franchise – Director Reifurth opened the floor to comments by CAC members. Ms. Martin stated that she had not received a matrix of what was different in the renewal application from the existing franchise which she had requested at the last CAC meeting. Mr. Sonobe stated that Oceanic submitted an Application that met the minimum requirements for a renewal application. Mr. Sonobe discussed the major issues in the Application for Renewal. Mr. Sonobe stated that Oceanic is proposing capital payments of $3 per subscriber. Mr. Rollman indicated that ownership of assets purchased with capital payments needs clarification. Mr. Sonobe expressed the

Department's position that any facilities and equipment purchased with franchise fees are state property. Mr. Rollman stated that franchise fees were compensation paid by the cable operator for use of the public right of way and that the beneficiaries of the franchise fees are the "public." Ms. Martin asked about Oceanic passing through the franchise fee assessments to subscribers. Mr. Rollman stated that the State as the local franchising authority, can assess franchise fees. Mr. Sonobe stated that Oceanic can pass through the franchise fees (5% of its annual gross revenues) to subscribers. Capital fees are separate from franchise fees, and historically, Oceanic has not itemized this cost on subscribers' bills. However, Oceanic has indicated that it intends to pass through the capital costs to subscribers upon renewal of the franchise. Director Reifurth stated that under federal law, Oceanic can do this. Mr. Rollman stated that PEG access was not mandated under federal law but something that a franchising authority could decide to require of the cable operator.

Mr. Sonobe informed members that DCCA consultant conducts a financial review of the cable operator reviewing the fee assessment collection and payment process. The consultant also did an inventory of PEG assets. The PEG access organizations are not required to provide DCCA detailed financial reports but that may be a requirement under a new contract. Director Reifurth expressed that "pass through" can mean different things, and although capital fees are not itemized on subscribers' bills, Oceanic could include these fees in the computation of its rates for service. Mr. Rollman asked whether the capital payments are renegotiated at the time of renewal. Mr. Sonobe responded that DCCA may ask the parties negotiate a new capital payment plan during the franchise term.

Mr. Rollman indicated that during the franchise term, Olelo would need new equipment to keep up with new technology. Ms. Martin stated that it was a balance – she did not want the consumer to pay more vs. having Olelo keep up with technology. Mr. Rollman stated that there should be a provision in the new franchise that any assets purchased with capital funds are owned by the state. Mr. Sonobe stated that DCCA and Olelo were mediating the ownership of PEG assets. Mr. Rollman suggested that the payment of the capital fund payments be held up until the ownership issue is resolved.

Ms. Martin asked about the process to reach a final contract with Oceanic. Director Reifurth indicated that DCCA would be issuing a franchise order which sometimes the franchisee signs off on the order. Ms. Martin asked what would happen if the franchisee did not agree with the franchise order? Mr. Sonobe indicated that historically, as with transfers of cable franchises, the cable operator and DCCA sit down and work out their differences. If the cable operator does not agree with the Decision and Order issued by the Director, then it has recourse under the law which it can pursue.

Mr. Rollman suggested that from the last franchise, there were more public benefits than just PEG access. For example, INET was installed and this was worth millions. Mr. Sonobe described the INET as for educational and governmental use. The County of Maui has the most fiber installed of all franchise areas because TWE was obligated to provide free connections to all public buildings on Maui as part of the transfer of the franchise. For installation, the requesting agency pays for the cost of labor and materials. The cost of maintenance and repair is covered by the cable operator. Once an agency pays installation equipment costs to the INET, it would be able to use the connection and receive free service. If there was no INET, then the agency would have to go through a private provider and would end up paying a monthly service charge. To value the INET, we would have to look at the monthly charge for bandwidth for the State and County governments. Ms. Martin expressed concern that TWE had a monopoly on cable service and she wanted to ensure that there were more public benefits from the cable operator. Mr. Sonobe explained that the State did not grant exclusive cable franchises, but TWE's position as the sole cable operator in the State came about because of the dynamics of the industry. When TCI transferred its Maui franchise to TWE, DCCA required TWE to provide high speed internet to Hana via microwave. The Big Island also has high speed internet via microwave.

Mr. Sonobe stated that the renewal takes about 3 years. DCCA met with the public and received many written comments. DCCA also met with TWE and stakeholders and will be fashioning a franchise order to be issued at the end of December. Ms. Martin asked what DCCA needed from the CAC. Mr. Sonobe indicated that the comments from CAC members were helpful to the Director in his decision making. Director Reifurth asked CAC members what they deem as significant. Mr. Yugawa stated that his primary concern, first and foremost, was the protection of consumers against rising costs. Mr. Rollman asked whether P-E-G would be factionalized in the franchise. Director Reifurth indicated that the ultimate decision to divide up PEG would be in the RFP, but the division of funding could be effected in a franchise. Mr. Rollman expressed concern that the public be protected under the franchise order. Mr. Sonobe stated that the franchise order could instruct the cable operator who to pay franchise fees. ‘Ōlelo already has a contract with HENC and Akaku has a contract with MENC, which provide for a percentage of operating monies going to Education as well as 2 channels for dedicated E programming. Education supporters argued that E funding and channels should be carved out of P-E-G. Mr. Rollman stated that there are also rumblings by Governmental agencies. The video taping of neighborhood board meetings may be cut because of a tight City budget. The question of why the City and County of Honolulu is paying for this service keeps coming up. Mr. Sonobe stated that it would not be easy to divide up the G funding since potentially there would be 1/12 of G funding going to all different branches of government (i.e., State Legislature, Governor's office, Mayor's office, City Council). Mr. Rollman indicated that the LFA can control the mix of funding. Ms. Martin agreed but expressed that while G is important, so are E and P sectors.

Director Reifurth stated that TWE’s current franchise expires on December 30, 2009. Ms. Martin asked how CAC members would know what is being negotiated. Director Reifurth indicated that he did not know if the deadline of December 30 could be extended. While there was not enough time for a subsequent CAC meeting before the deadline, Director Reifurth welcomed more comments from CAC members. He stated that the Department was meeting with TWE to discuss terms since DCCA would rather have an agreed upon franchise order as opposed to a lawsuit. Mr. Rollman asked that DCCA continue to require that TWE provide 6 analog access channels.

Ms. Martin expressed her disappointment that CAC members had not been provided a matrix to comment on. Director Reifurth apologized for not providing one but he stated that since the application for renewal was a minimalist document, if CAC members had been provided a matrix, it would not have shown much more than what was already discussed.

IV. Public Comment

A. **Gerry Silva** – suggested that CAC members read D&O 135 and PEG plan. There should be provisions in franchise order to take into account changes that we don't even know about. The INET is valuable to E and G but he wanted community connectivity so that there could be live programming. Citizens should be able to use the INET and testify at a government meeting.

B. **Kealii Lopez** – recommended a short term franchise with benchmarks -- 10 years with two 5-year automatic extension. Cable operator passes through every expense to subscribers or how else does it make money. INET costs are passed through, and capital costs, although not itemized on subscriber bills are also passed through. $3 per subscribers comes out to 25¢ per subscriber a month. She agreed that an LFA can use franchise fees for any purpose under federal law. Even though ʻŌlelo does not get RFP contract, it was ʻŌlelo's intent that PEG assets purchased with franchise fees would be used for PEG access services. She indicated that the DCCA-ʻŌlelo contract was not clear on who owned the PEG assets. Mr. Rollman stated his disagreement that ʻŌlelo was protecting the public but instead ʻŌlelo was protecting ʻŌlelo. Ms. Lopez expressed that ownership of PEG assets could be part of the franchise order and she would not have a dispute with a D&O provision that at all assets purchased with franchise fees remain property of the State. If P-E-G were separated, upgrade costs for equipment would be higher. Ms. Lopez did not have any objection to audits, except that it was time consuming, but she indicated that ʻŌlelo should be more accountable since it receives a lot of money. She hoped that asset ownership could be resolved through mediation. For the migration to HD format, ʻŌlelo would have to train 3000 producers and this would involve a lot of staff time. ʻŌlelo met with Oceanic on November 23rd on the migration from analog to digital format and the dialog was helpful.

Mr. Yugawa asked to see the confidential attachment provided by ʻŌlelo in its November 5, 2009 correspondence to the Department. Ms. Lopez refused because of concern about competitive information. Ms. Lopez stated that it was not possible to buy any equipment that was not using high definition format. It would cost $400,000 for ʻŌlelo to train 3000 active producers. ʻŌlelo may not need high definition for all content such as neighborhood board meetings. As to who pays for the cost of migration, that is the dispute with Oceanic.

C. **Donn Yabusaki** – Technology Services Director at ʻŌlelo. ʻŌlelo has extensive engineering staff and capabilities. If P-E-G were separated out, there is an acute shortage of broadcast engineers. For Oceanic to expand the existing network, this is a smaller cost obligation now than under the existing D&O.

Further comments by CAC members -- Ms. Martin stated that a 20 year franchise might be too long and that benchmarks may be good along with renewal extensions. She commented that installation time frames were too broad and should be shorter and that it would be good to have clear asset ownership in non-profit contracts. She also asked for additional support for Molokai and Lanai. Mr. Rollman stressed the importance of the INET in a franchise.

V. **Announcements** – Director Reifurth announced that the next CAC meeting may be scheduled in January 2010 depending upon Legislative proposals. The contracts with the incumbent PEG access organizations will be extended 6 months upon approval by SPO of an amendment to the exemption from the Procurement Code for these contracts.

VI. **Adjournment** – The meeting was adjourned at 12:12 p.m.