

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

MINUTES OF MEETING

Date: June 7, 2011
Time: 1:00 p.m.
Place: Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

CAC Members Present: Mahina Martin, Gerry Silva, and Austin Vali (Interim)
Excused: Beth Tokioka (Interim)

Others Present: Keali'i Lopez, Director; Everett Kaneshige, Deputy Director; Glen Chock, Acting CATV Administrator; Laureen Wong, Staff Attorney CATV, and Cathy Takase, 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 by Director Lopez at 1:01 p.m.
- II. **Introductions** – Introductions were made of DCCA Director, Deputy Director, CAC members, and CATV staff.
- III. **Update on Pending Matters**
 - A. Hawaiian Telcom Services Company, Inc. Application for Cable Franchise, submitted on November 5, 2010 to provide all digital video programming to Oahu subscribers

Director Lopez stated that the role of the CAC members with respect to the application is to provide advice to the director on the application. Director Lopez informed the members that the CATV division has held two public hearings on the application and that CATV staff had performed a review of the application.

Mr. Lester Chu gave a presentation on the application on behalf of Hawaiian Telcom Services Company, Inc. (HTSC). Mr. Chu

distributed a written summary of the HTSC presentation to Director Lopez, CAC members and others present. A copy of that written summary, dated June 7, 2011, is attached to these minutes. Mr. Chu stated that HTSC submitted its restated application for a cable franchise for Oahu on November 5, 2010. Mr. Chu noted that the PUC had in the previous month closed its HTSC docket looking at service quality. Mr. Chu explained that HTSC will be providing full digital video programming service, not internet streaming. The video service would thus include all channels and full programming, including high definition and video on demand. Mr. Chu noted that public hearings were held on the HTSC application in April. He explained that the video programming is a new service for HTSC, which provided telephone service for 128 years and later added data services. He stated that HTSC understands that it will need to compete through price, product and service to win each customer, and noted that this competition will be good for Oahu consumers.

Mr. Chu noted that HTSC has spent a long time and made substantial investment to build out the core IP backbone and access infrastructure for its MPLS IP Network to provide quality voice, data and video services. Mr. Chu explained that the pipe to the home is not limited by the bandwidth because not all channels are streamed through the pipe at the same time. Rather, when a channel is selected, it is changed at the node then streamed through the pipe to the home. Mr. Chu stated that HTSC understands that the starting point for HTSC is to learn how to provide good content, make good partnerships, and provide good customer experiences. He stated that HTSC has had trials ongoing and has gotten feedback on fixing service as well as customer service, billing, and repair.

The floor was then opened for questions and comment by CAC members and DCCA staff.

CAC member Austin Vali asked whether HTSC would be selling advertisement. Mr. Chu stated that HTSC would ultimately do so when they reached a critical mass. Mr. Vali then asked if HTSC would have self-created channels and local origination programming like Oceanic Cable's OC16. Mr. Chu stated not at this time. HTSC has had some discussion and has some interest, but local origination programming is not part of the launch of its services. Mr. Vali asked whether the channel lineup would be the same as Oceanic's. Mr. Chu responded that HTSC's lineup would be competitive and basically the same with some variances. Mr.

Vali asked about the roll-out of service timetable. Mr. Chu stated that HTSC does not want to go all over geographically at the start, but will have a phased roll-out of coverage starting in one area. HTSC has submitted a proposed roll-out schedule and intends to eventually have Oahu-wide coverage. Mr. Vali asked what the timetable was for wide coverage. Mr. Chu said that the timing of the rollout is not something they want to publicly state for competitive reasons.

CAC member Gerry Silva asked about customer service standards and whether a call would be returned within 2 hours like Oceanic's call back service. Mr. Chu stated that HTSC understands that in order to be successful it must and therefore has put a lot of focus on customer service and on answering calls made to HTSC for any reason. They intend to have a call back service like Oceanic. HTSC's intent is to have better customer service. Mr. Silva asked about compression of HD signal. Mr. Chu stated that HTSC is conscious about making sure it has a quality signal and will be providing channels on a switched basis so that there will be no trade-off on quality. Mr. Silva noted that Oceanic has similar technology and that has a delay in programming on demand. Mr. Chu stated that HTSC is looking to implement quick channel changes. Mr. Silva asked if HTSC would be able to originate programming from a lot of different locations, such as community events island-wide. Mr. Chu noted that if they were to wire all locations it would be very difficult. The ability to create quality video is now common, but there would be problems with uploading the video from different sites. HTSC would be able to provide local content, but the process needs to be figured out. At the end of the day, the solution is more on a holistic basis versus infrastructure, allowing people to provide content. Programming is not HTSC's focus at this time. In response to Mr. Silva's inquiry regarding service to military bases, Mr. Chu responded that that would require a separate franchise with the military.

CAC member Mahina Martin asked how long the video service trials had been running, and how many people were involved. Mr. Chu stated that the video service trials started in September of last year. He said that they started with employees and expanding from there to up to a couple of hundred homes, including non-employees. Ms. Martin asked whether the call service center would be local or whether that service would be outsourced. Mr. Chu stated that it would be local and there would be no outsourcing. Ms. Martin asked about concerns raised at the public hearings on

the application. Mr. Chu stated that not much was raised, but that one speaker had criticized Oceanic's customer service. Ms. Martin asked if a set top box was needed and, if so, whether each TV would require a box to which Mr. Chu responded that a set top box must be used for each TV in order to receive the digital programming. In response to Ms. Martin's inquiry, Mr. Chu noted that there would be no analog service.

Mr. Silva asked if there would be a link to civil defense. Mr. Chu stated that HTSC was working out the details with civil defense. Mr. Chu stated that HTSC would be providing residential service first and later commercial service. Ms. Martin noted the testimony of the Hawaii Educational Networking Consortium (HENC) about HTSC's offering of educational channels. Mr. Chu stated that HTSC was having discussions with CATV to provide support in the same manner as the incumbent provider for PEGs as well as the INET. He noted that they are in the start-up phase and that large investments needed to be looked at in that light because they had no guarantee of being successful. Mr. Chu stated that with market share comes market responsibility. Ms. Martin asked about anticipated problems in the transition to add services. Mr. Chu stated that they are taking extra care so that service transition is as seamless as possible. He noted that their service will mirror that of Oceanic's, but that it will allow for more extensive search for content, taking what is there to the next level. He stated that they will provide customers a choice in the style of service desired. He noted that in contrast to Oceanic's start up when everyone was a potential customer, there is now competition for customers.

Ms. Martin asked about why HTSC was pushing the application which had sat for a while. Mr. Chu explained that HTSC had asked for an extension because of financial issues they were going through, but that was behind them now. The time is now right and customers are anxious to get the service.

Director Lopez explained to the CAC members that DCCA was in the final phase of the application process, and that CATV staff had had discussions with HTSC on various questions and framework. She stated that DCCA is interested in consumer's having a choice, and with HTSC being able to provide that over time on Oahu. She said that some of the build out will be done over time, but that some of that information was confidential because it is proprietary. She noted HTSC's desire to support community television. She also noted that with competition, the price may not go down, but the

consumer may instead get more for what they are paying. Acting Cable Administrator Glen Chock discussed the application process and the role of the Director and DCCA. Mr. Chock noted that testimony from the public hearings was available on the DCCA website.

Director Lopez expressed appreciation for the CAC's review of the application, and asked the members if there were any specific areas of concern to them.

Mr. Vali stated that, given that technology was changing every day, his main concern was the financial security of the company and its wherewithal to take the project from start to finish. Ms. Martin agreed and expressed concern that HTSC move into the arena with enough care to allow them to do what they said they would do. She also noted that HTSC's actions on Oahu would be important to watch should the company extend the service to the neighbor islands. Mr. Silva stated his concern that customer concerns be addressed properly and that good programming be offered. He also expressed concern about the financial viability of the service, but believed that this is the direction the company must take.

B. RFP for PEG Access Services Contracts – DCCA to request to SPO to cancel in light of Act 19

Mr. Chock explained that in 2005 DCCA was informed that its contracts with PEG access organizations were subject to the State Procurement Code. Mr. Chock noted that two RFPs had been issued. The first RFP issued in 2007 was cancelled because of protests submitted and resulting lawsuits. A new RFP was issued in May 2010, with new protests filed. While SPO and DCCA were working to resolve the protests, Act 19 was signed into law which exempts PEG contracts from the State Procurement Code and authorizes the DCCA Director to designate the PEG access organizations. In light of Act 19, which takes effect on July 1, 2011, the Director requested that the SPO cancel the 2010 RFP, which it did on June 3, 2011.

Director Lopez noted that DCCA was seeking a six-month exemption from SPO for existing contracts to allow the department time to make the designations under the Act.

IV. New Business

- A. Act 19 (Session 2011) – Designation of PEG access organizations, exemption from State Procurement Code

Copies of Act 19 were made available.

Deputy Director Everett Kaneshige explained that Act 19 authorizes the DCCA Director to designate access organizations, which would be exempt from the procurement code. He explained that the Act sets forth criteria for the designation and that the CAC will be involved in reviewing the criteria as part of the evaluation process for the designation. Mr. Kaneshige noted that the 2010 RFP had been cancelled and that an exemption was being sought for the interim to extend the current contracts with the access organizations pending completion of the designation process. He stated that the Department would be going through the details as to what is needed for the designation, and that the Department intended to make the designations in a series rather than all at one time in order to allow the Department to work out the process.

Mr. Vali asked how contact was to be handled with the existing PEGs. Mr. Kaneshige stated that the statute sets forth the requirements for the Department. He noted that the process would be similar to the evaluation for a cable franchise in that it will involve both a review and negotiation process. He said that the Department would need to be mindful of the differences of each island and the various access organizations as it worked to fine tune the designation process.

Director Lopez noted that the Act also requires that DCCA perform annual audits of the access organizations.

- B. H.B. 1342 – Exempts broadband infrastructure improvements from state or county permitting requirements and also exempts telecommunications companies from replacing utility poles when installing or improving telecommunications cables, under certain conditions

Mr. Kaneshige explained that in addition to its traditional duties, CATV has oversight over the emerging area of broadband. He stated that DCCA has responsibilities under Act 199 passed in 2010 and as an ARRA grant recipient. He noted that one of the tasks under the grant was to work with stakeholders to see if an

exemption from permitting could be done to expedite and stimulate broadband deployment. H.B. 1342 was meant to create that exemption. It exempts the placement of cables onto poles from permitting and other approvals under certain conditions. The Department anticipates that the Governor will sign the bill. The bill was intended specifically to assist UH in accomplishing its grant to provide broadband to all schools in Hawaii in the timeframe required by the grant. The Department did take an active role in working with stakeholders to come up with language for the bill.

Ms. Martin expressed her concern because the permitting process was in place to protect citizens, and she asked who would regulate the exemption to protect the neighborhoods. Mr. Kaneshige stated that no new authority would be created and acknowledged the natural nervousness where there is no direct oversight. He explained that the bill applies to a fairly narrow situation to replace cable where the replacement cable will be the same or lighter, generally substituting fiber optic cable for copper cable. Ms. Martin asked if there were penalties and fines if a provider put too much on a pole. Mr. Kaneshige stated that there were no regulatory fines, but noted that the exemption would only apply if the new cable did not increase the weight and diameter of cable on the pole so that the safety of the pole is not compromised. The bill also requires the provider to use reasonable best efforts to comply with all applicable safety and engineering requirements. He further noted that the bill requires that all work be posted on the state website, and that DCCA would administer but not monitor this notice to the public and affected parties of work that will be done. Mr. Silva expressed concern over the lack of review and inspection, and asked whether this was self-certification. Mr. Kaneshige affirmed that it would in effect be a self-certification.

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

Mr. Chock stated that on April 27, 2009 Oceanic notified DCCA of its intent to seek renewal of its East and West Hawaii franchises, which expire on December 31, 2011. CATV worked with financial consultant Merina & Co. to prepare an overall work plan and timeline of activities. CATV held meetings with interested parties and the public to assess community needs and how the public may benefit from Oceanic franchise renewals. Oceanic has asked to consolidate its applications. DCCA anticipates that an application will be submitted for review in June or July 2011. Public hearings

will then be scheduled in Kona and in Hilo, and a decision on the application should be made by the end of the year

Ms. Martin asked about the length of the franchises. CATV counsel Lauren Wong stated that it would be five to fifteen years depending upon the application. Ms. Martin expressed concern about the Oahu franchise's use of an offshore call center because Oceanic is reaping the benefits of being a sole provider, and she is interested in ensuring that monies stay in Hawaii. Ms. Martin further stated that she had experienced a forty minute wait on a call to Oceanic. Ms. Wong stated that Oceanic has expanded its call center here and is working to hire and train more local employees. Ms. Wong noted that CATV had toured the new call center and that CATV does monitor customer service issues. Director Lopez stated that CATV would look into the volume of work being outsourced.

V. Public Comment

Director Lopez asked for public comment, noting a limit of seven minutes to each speaker to allow time for questions by members.

- A. J Robertson - Hoike. Mr. Robertson supports the Hawaiian Telcom application, but is concerned about channel slamming. Hoike wants to expand its services and to look at HD as part of its access package. Hoike has a satellite media center in Kilauea on the north shore of the island, which opened at the beginning of May.
- B. Roy Amemiya – `Ōlelo Executive Director. `Ōlelo is pleased that the PEG RFP was cancelled and with Hawaiian Telcom's testimony that it is interested in providing similar services for PEGs as the incumbent. Written testimony was also submitted.
- C. Jay April – Akaku. Mr. April commented on the need to plan for and deploy broadband. Mr. April stated that he would like to see the franchise fees raised 5% for close captioning, and capital contributions to PEGs increased. He would also like the Hawaiian Telcom franchise to place PEGs in enhanced tiers. He also provided comment on broadband in general and support of PEGs and expanded community media. He will send in written comment summarizing his testimony.

- D. Gordon Fuller. Mr. Fuller offered comment on the 21st Century Accessibility Act, noting that programming must have captioning and devices must take into account accessibility. Mr. Fuller suggested that certain amounts of the franchise fees be used to make PEG programming accessible. He also noted that the Hawaiian Telcom application did not address increasing broadband. He will send in written testimony.

VI. Announcements

Director Lopez stated that she would forward any additional comments or materials received from testifiers to the CAC members. She noted that the next phase would be to review the PEG access contracts and Oceanic's franchise application for East and West Hawaii. She noted that it was possible that the CAC meetings would be rotated among the counties to allow review of the PEG access operations.

VII. Adjournment – The meeting was adjourned at 2:47 p.m.