

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

MINUTES OF MEETING

Date: August 22, 2008
Time: 10:00 a.m. -- 11:30 a.m.
Place: Queen Liliuokalani Conference Room
King Kalakaua Building, 1st Floor
335 Merchant Street
Honolulu, Hawaii 96813

CAC Members: Present: Clayton Yugawa, Keith Rollman, David DeLeon,
and John Gibo
Excused: Jenny Fujita

Others: Lawrence Reifurth, Director; Clyde Sonobe, CATV
Administrator; and Lauren Wong, Staff Attorney CATV.

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 10:05 a.m.
- II. Introduction of New CAC Member – John K. Gibo was recently appointed by Governor Lingle to fill Sam Aiona’s seat (Mr. Aiona resigned since the last meeting) on an interim basis, subject to Senate confirmation in the next Session. Mr. Gibo is presently a Program Specialist with the Office of Community Services.
- III. Minutes of the January 9, 2008 meeting – There were no questions about the minutes of last meeting, which were then accepted.
- IV. Update on Pending Matters
 - A. Oceanic Time Warner Oahu Franchise Renewal Process – Clyde Sonobe reported that the technical review of Oceanic’s system was completed in April 2008 and a report is pending. The community needs assessment ascertainment is in progress. The first Community Meeting was held on July 15, 2008 at McKinley High School, and due to public interest, two other Community Meetings are scheduled: September 9, 2008 at Kapolei Middle School and September 10, 2008 at Windward Community College (Handout 1). The Department and its consultants also met with different stakeholders including members of the Legislature and Honolulu

City Council; representatives from University of Hawaii and Department of Education, Olelo's Board of Directors and staff, and PBS Hawaii and the Administrator of the Legislative Public Access Room. The consultants toured Olelo's facilities and satellite centers. Olelo's board, staff and supporters have requested that Olelo's present benefits continue under a new franchise. Interested persons are encouraged to complete and turn in the surveys posted on the DCCA/CATV webpage by September 30, 2008.

B. PEG Access

1. PEG Access Services Contracts with Incumbent PEG Organizations – Mr. Sonobe stated that the Department has been extending these contracts on a six-month basis. On May 30, 2008, the Department asked State Procurement Office (SPO) for another exemption from the Procurement Code for the present PEG contracts. SPO granted the exemption on June 24, 2008 on the condition that the Department must proceed with rulemaking as suggested by Judge Joel August in a lawsuit filed by Akaku against the Department. The Department is in the process of scheduling public hearings on the proposed rule, HAR 16-131-70 (Handout 2). Director Reifurth stated that the Department may ask the SPO for a further extension of its procurement exemption at the end of the year. SPO may deny this request once the rulemaking process is completed, and the Department maybe then required to proceed with the RFP for PEG Access Services. Mr. DeLeon asked whether the public could appeal the decision of SPO to the Public Procurement Policy Board, and Mr. Sonobe indicated that this issue was already presented to the Policy Board who decided to defer to SPO on this matter. Director Reifurth stated that the Department is proceeding along two tracks: 1) HCR 358 Task Force which is to submit a report to the Legislature before the next session and 2) the proposed rulemaking. Director Reifurth stated that the Department is moving ahead with the Task Force which will be submitting a report to the Legislature. At the same time, SPO put the Department in the position of having to move forward with rulemaking.
2. RFP for PEG Access Services Contracts issued on July 30, 2007 – This agenda item was also discussed above in B.1. Mr. Sonobe stated that the RFP is on hold because of the

protests which SPO will have to address. Akaku has filed numerous lawsuits against the Department on the RFP.

3. Proposed Amendments to Hawaii Administrative Rules regarding selection of access organizations --This agenda item was also discussed above in B.1. Mr. DeLeon asked which comes first – rulemaking or RFP. Director Reifurth stated that rulemaking comes first and in accordance with a SPO directive, the proposed rule amendment follows existing law. Mr. Gibo asked how Olelo could protest the RFP without a rule. Director Reifurth stated that an Akaku lawsuit filed after the RFP was issued argued that a rule was strongly suggested by Judge August. Director Reifurth encouraged CAC members to attend the public hearings that are scheduled for different islands and have the public provide comments to the proposed rule amendments.
 4. Olelo's 6th Access Channel – temporary designation to December 31, 2008 – Director Reifurth reported that Olelo's 6th access channel was provided on temporary basis. When the RFP was issued, channel capacity was a factor for potential bidders. The activation of the 6th channel was then made co-terminus with Olelo's contract which has been extended to December 31, 2008. Director Reifurth stated that Olelo has full use of the 6th access channel.
- C. Hawaiian Telcom Services Company, Inc. Application for Cable Franchise (island of Oahu) – Mr. Sonobe reported that HTSC's application for video programming is still pending. HTSC submitted a 20th request for extension which will expire on September 30, 2008. HTSC has recently undergone another management change and has new senior managers. The Department is looking into HTSC's application and is still hopeful that HTSC can complete the application process. Mr. DeLeon questioned why after the 20th extension, the Department did not pull the plug on the application. Mr. Sonobe stated that HTSC wants to keep the application on the table. Director Reifurth also stated that the Department wants to see competition for cable services and keeping open HTSC's application does not cause harm. HTSC can always withdraw its application. Mr. Yugawa suggested that the Department could check with HTSC as to when it anticipates that it will fulfill its Application.

V. New Business

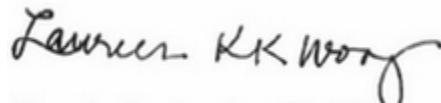
- A. House Concurrent Resolution 358 Task Force (TF) – Director Reifurth thanked Mr. Rollman for attending the August 4, 2008 TF meeting. Mr. Sonobe reported that during the 2008 Legislature, S.B. 1789 passed out of the Senate and was under consideration by the House. S.B. 1789 would have exempted PEG access contracts from the Procurement Code. When S.B. 1789 did not pass out of the Legislature, HCR 358 was adopted instead. HCR 358 calls for a Task Force to look at alternatives to the Procurement Code for PEG access services contracts. HCR 358 calls for the Department to establish a TF, and the Department determined that it would be best to have a facilitator to manage the TF and selected David Franzel as Facilitator. TF meetings are held via video conferencing since the resolution does not appropriate any funds for TF operations. There are 12 TF members: 1 from each PEG access organization (4); 1 from each County (4), University of Hawaii representative; Department of Education representative; CAC representative and DCCA representative. The first meeting was held on June 30, 2008 and was purely logistical. Muriel Taira, then a CAC member, was appointed to the TF and attended the June 30, 2008 meeting. She resigned 2 days after the first meeting and Mr. Rollman was selected to serve on the TF as the CAC member. Mr. Rollman reported that the August 4, 2008 meeting was also largely organizational. One of the goals of the TF is to solicit public input and prepare a report to the Legislature. TF is to evaluate policy and oversight of PEGs and to look at options to the Procurement process. Director Reifurth asked when the deadline for the CAC to provide input into the report was. Mr. Rollman stated that the sooner the better since the report must be completed by the end of the year. Mr. Rollman stated that he would be submitting a written report to the CAC on TF meetings. Director Reifurth stated that the next CAC meeting would be held in early November so CAC members would have a chance to discuss the TF report. Mr. Gibo asked if the CAC should work on proposed legislation now and submit it to the TF. Director Reifurth expressed that it may be presumptuous to assume that the TF wanted CAC involvement and requested that Mr. Rollman and Mr. Sonobe inquire about this. Mr. Rollman reported that the TF report is due December 20, 2008 and that the TF would accept all input. Mr. Sonobe invited all public and CAC members to the next TF meeting on August 27, 2008, 1 p.m. in the various state video conference center rooms in each county. Mr. DeLeon asked about the term “PEG advisory board” and Mr. Sonobe indicated that there were terms in the resolution that were not precise, but when he met with

Representative Yamashita who introduced the resolution, Rep. Yamashita indicated that he meant PEG advisory board to be the Boards of Directors of PEGs (not the CAC) and that the term "Cable Access Committee" meant CAC.

VI. Public Comment

- A. Jay April – Mr. April expressed that PEG is a local phenomena and that we are losing this. The RFP is a move down the wrong road. Mr. April passed out a CD which contains interviews of several individuals regarding PEG access. Mr. April stated that HCR 358 was hastily written and that even he did not know what some of the terms meant. Mr. April expressed interest in the Oahu franchise renewal since the Maui franchise will undergo the same in a couple of years. Mr. April stated that cable franchises should have the "most favored nation" clause – get the best deal as found in other franchises across the nation. Mr. April stated that he believes the RFP is illegal and does not apply to PEG access contracts. He asked the Department to share the AG opinion.
- B. Kealii Lopez – She asked what is the CAC's role in the franchise renewal process. Olelo is still waiting for SPO to address its protests to the RFP. She does not know how SPO can move forward when the asset issue is still in question. Ms. Lopez stated that the proposed rule amendment is contrary to the TF efforts.
- VII. Announcements – next CAC meeting to be scheduled in early November
- VIII. Adjournment – The meeting was adjourned at 11:28 a.m.

Taken and recorded by:



Dated: September 22, 2008