

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

MINUTES OF MEETING

Date: January 9, 2008

Time: 10:00 a.m. – 11:30 a.m.

Place: NELHA Hawaii Gateway Center
73-4460 Queen Kaahumanu Hwy, #101
NELHA Compound Conference Room
Kailua-Kona, HI 96740

CAC MEMBERS Present: CAC members Sam Aiona, Keith Rollman and Clayton Yugawa
Excused: Dave DeLeon and Jenny Fujita

OTHERS: Lawrence Reifurth, Director; Clyde Sonobe, CATV Administrator; Laureen Wong, Staff Attorney CATV; and Glen Chock, 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 10:03 a.m.
- II. Minutes of July 12, 2007 Meeting --There were no questions about the minutes, which were then accepted.
- III. Update on Pending Matters
 - A. RFP for PEG Access Services Contracts issued on July 30, 2007
 1. Protests filed — no further action on RFP until protests resolved
 2. Pending lawsuits filed by Akaku in Circuit Court on Maui
Mr. Sonobe reported that the State Procurement Office (SPO) was considering the protests, and there would be no further action on the RFP until the protests were resolved. In an Akaku lawsuit against DCCA, Judge Joel August denied Akaku's Motion for Preliminary Injunction but recommended that DCCA promulgate a rule on the designation and selection of access organizations. Pursuant to Judge August's strong suggestion, DCCA is undertaking rulemaking for such a rule.

B. PEG Access Services Contracts with Incumbent Access Organizations

1. Extended to 6/30/08 by Supplemental Agreement
2. PEG Access Operating Fees and Capital Fund Payments in January 2008

Mr. Sonobe reported that SPO granted DCCA another extension from the procurement code, to July 15, 2008, for the PEG access contracts. By Supplemental Agreements, the PEG contracts have been extended to June 30, 2008. Mr. Sonobe stated that DCCA will be instructing the cable operator Time Warner Entertainment Company, LP (**TWE**) to pay the access organizations 50% of the 2008 access operating fees and 50% of the capital fund payments by January 31, 2008.

C. Proposed Amendments to Hawaii Administrative Rules – regarding selection of access organizations

1. Small Business Regulatory Review Board Meeting on January 10, 2008
2. Public Hearing on Proposed Rule – anticipated to be scheduled after the end of February or March

Mr. Sonobe stated that DCCA drafted and submitted the proposed rule change to the Small Business Regulatory Review Board (**SBRRB**). The next meeting for the SBRRB is on January 10, 2008. Once SBRRB reviews the proposed rule, DCCA will be setting up public hearings. Mr. Reifurth requested that CAC members review the proposed rule and consider the factors or criteria set forth in the amendment. Mr. Reifurth stated that DCCA was complying with SPO determination that the access contracts were subject to the public procurement code. The CAC members expressed no disagreements with the substance of the rule as proposed. Mr. Sonobe stated that even if the RFP protests are addressed, SPO may not be able to proceed with the RFP because of the lawsuits and ongoing rulemaking procedure. DCCA is proceeding with rulemaking and SPO's actions on the protest are not dependent upon DCCA's actions.

D. Olelo's 6th Access Channel – DCCA has directed Time Warner to continue designation and activation of the 6th Access Channel until June 30, 2008. Mr. Sonobe stated that Olelo was granted temporary use of a 6th access channel to June 30, 2008. Under the RFP there may be an issue of channel requirements, and depending upon the bids proposals submitted to the RFP, there may be different requirements for use of access channels.

- E. Status of Hawaiian Telcom Services Company, Inc. Application for Cable Franchise (island of Oahu)
Mr. Sonobe reported DCCA granted Hawaiian Telcom Services Company, Inc. (**HTSC**) 15th request for an extension of time (to January 31, 2008) for final action. The parties have reached a tentative agreement and are working on draft wording to finalize the franchise order. He was hopeful that the granting of the franchise would be completed by the end of January 2008, or at the latest February 2008.

IV. New Business

- A. Future Supplemental Agreements for PEG Access Services Contracts with Incumbent Access Organizations.
Mr. Sonobe stated that on the issue of ownership of PEG assets, 2 current access organizations have taken contrary positions to the State's stance that all PEG assets should be returned to the State upon the termination of the access services contracts to support the continuation of PEG services irregardless of who the contractor is. If a new access organization is selected, DCCA's position is that PEG access services are to continue and resources currently being used by an existing PEG would be used by the subsequent organization to ensure continuation of services. The DCCA views PEG assets to be public assets for the public benefit to ensure that PEG services will continue seamlessly. Commencing with the July 1, 2008 contract, DCCA is considering making the PEG contracts automatically renewable every six months, subject to SPO's approval of an exemption, with the same termination clause. Second, any assets provided to the PEGs commencing with the July 1, 2008 agreement would have conditions associated with them. First, access organizations would accept franchise fee payments and capital payments with the understanding that those financial assets will revert to the State in the event their contracts are terminated or expire, which would establish a demarcation point on assets that PEGs may currently claim ownership to and future assets that they may receive. Second, funds provided to the PEGs subsequent to July 1, 2008 can only be used once all their current assets are depleted. Any financial assets provided to the PEGs will be kept in separate financial accounts so to delineate monies provided after July 1, 2008. DCCA would ask for documentation from the PEGs before they would be allowed to use the July 1, 2008 funds. Mr. Sonobe stated that putting condition on the funds received after July 1, 2008 does not affect, nor does the State concede, its position that assets currently by the PEGs for PEG purposes belong to the State. These conditions are in the public interest and would be protecting public assets. After further discussion, CAC members expressed their support for the DCCA proposed conditions.

- B. Status of Time Warner Oahu Franchise Renewal – within renewal period. Mr. Sonobe stated that DCCA should be receiving final action plan by its consultant within a week or two. The final plan would be reviewed with the Director and once approved, DCCA will start the activities to meet all the requirements of the renewal process. DCCA plans to complete the required activities in 2008 which would leave 2009 for discussions with Time Warner. A public hearing will be scheduled so that the public will have an opportunity to comment on the renewal.
- C. Time Warner's Annual Fee Payment to DCCA – adjustment from 0% to 1% commencing December 2007. Since the DCCA had sufficient reserves to fund the operation of CATV, DCCA ceased assessment of the annual fee from Time Warner in October 2005. At the end of 2007, the DCCA restarted collection of the annual fee. Mr. Aiona asked whether consumers would have to pay for the under grounding of cable lines in leeward Oahu. Mr. Sonobe stated that rate regulation is a federal issue, and the FCC has allowed franchising authorities only limited responsibility over the maximum permitted rate for basic service (i.e., broadcast channels, PEG channels, and other channels that the cable operator includes in the basic service tier). The cable operator completes a FCC form based on historical rates for the franchise area and the franchising authority reviews the form for accuracy. Once the maximum permitted rate is verified as accurate, the cable operator can charge subscribers up to the maximum permitted rate. For premium channels such as HBO and Cinemax, the cable operator is free to charge what the market will bear.

V. Public Comment

- A. J Robertson asked if the Hawaiian Telcom draft franchise order contained PEG provisions and if they were similar to those for Time Warner. Mr. Sonobe responded in the affirmative. Mr. Robertson expressed concern that PEGs would have to exhaust all current funds before receiving any further assets and that monthly payments impact long range planning. Mr. Sonobe explained that it was not the intent to pay the PEGs only when they had no funds left. PEGs would receive the July payment but would have to put these funds in separate accounts and not use the monies until after exhausting prior assets. Mr. Sonobe stated that monthly payments were still under consideration.
- B. Juergen Denecke raised the Hawaii Supreme Court opinion on Olelo v. Office of Information Practices, December 21, 2007. Director Reifurth stated that the court concluded that Olelo is not a public agency under the UIPA, but distinguished DCCA's position on PEG assets. Mr. Denecke

asked about HTSC's video programming service. Mr. Sonobe stated that the DCCA was confident that HTSC would be offering a competitive product. If HTSC's product was not competitive, then its business would fail. Mr. Sonobe stated that DCCA has always encouraged and advocated for competition.

- C. Kealii Lopez asked whether public hearings are going to be held on each island for the proposed administrative rules. Mr. Sonobe stated that a final decision had not yet been made on this. Ms. Lopez asked whether DCCA understood the FCC's Second Report and Order regarding incumbent cable operators to apply to statewide franchises. Mr. Sonobe stated that it is the Department's understanding that the Second Report and Order was consistent with the First Report and Order, which exempted states with statewide franchising from its conditions. The DCCA position is that the FCC has maintained that states with statewide franchising still maintain their jurisdiction. Ms. Lopez asked whether there will be a community needs assessment as part of the franchise renewal process of Time Warner's Oahu franchise. Mr. Sonobe said yes. Ms. Lopez voiced her concern about Olelo having to spend down all of its assets before being able to spend the July funds because it was helpful for it to have some form of a reserve in the event of unanticipated expenses. Mr. Sonobe stated that DCCA would not be constraining the PEGs on the total amount of funds available to it but would require that the PEGs have mirror image accounts for funds received after July 1, 2008.

VI. Announcements – none

VII. Adjournment --The meeting was adjourned at 11:25 a.m.

Taken and recorded by:

Lauren KK Wong

Dated: February 7, 2008