

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

MINUTES OF MEETING

Date: January 10, 2007
Time: 2:00 p.m. – 4:00 p.m.
Place: Mo'ikeha Building
Meeting Rooms 2A/2B
4444 Rice Street
Lihue, Hawaii 96766

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

OTHERS: Mark Recktenwald, 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 2:03 p.m. The Director introduced Clayton Yugawa, Data Systems Director of the County of Hawaii, as the new CAC member from the County of Hawaii.

II. MINUTES OF AUGUST 10, 2006 MEETING

There were no questions about the minutes, which were then accepted by the CAC.

III. Update on Pending Matters

A. RFP for PEG Access Services Contracts – Results of public comment meetings and Status of RFI/RFP

Mr. Sonobe summarized the background of the RFP for PEG access contracts since the last CAC meeting. DCCA is working collaboratively with SPO to issue a Request for Proposal (RFP). A Request for Information (RFI) was issued on November 22, 2006. In December 2006 DCCA held 6 public comment meetings on Oahu and on neighbor islands on the RFI. DCCA initiated these public meetings to afford the public a chance to provide comment on the RFI and these meetings were not normal practice for SPO. Mr. Sonobe clarified that SPO was not required to attend the public comment meetings and it chose not to send a representative. Mr. Sonobe reported that persons with existing

relationships to the PEG access organizations generally wanted to retain the present structure. For Educational institutions and supporters, written comments supported separating out educational access.

Mr. Sonobe stated that most commentators favored keeping a separate PEG entity in each county. Director Recktenwald stated that the DCCA would seek a 2nd round of written comments on a revised RFI. A second RFI would be issued soon, and thereafter, a RFP would be issued depending upon the number of comments received. Director Recktenwald indicated that if the schedule looked unworkable due to the June 30, 2007 deadline then the Department would approach SPO and request more time. There are outstanding issues as what assets are going to be made available by some PEGs to the bidders who are selected in the RFP process.

Mr. DeLeon stated that because the PEG process deals with a fundamental constitutional right, the First Amendment, Freedom of Speech, he did not believe the PEG service can be appropriately considered in a RFP context. This amounts to forcing a square peg into a round hole. Mr. DeLeon stated that Maui believes in home rule and Maui residents would not accept centralization of PEG services into one statewide agency. Mr. DeLeon stated that Molokai may have the ability to stand alone, but Lanai and Hana need to remain with the island of Maui. He indicated that the State Procurement Policy Board (SPPB) would need to resolve Akaku's petitions at the January 18, 2007 meeting. Staff Attorney Wong summarized the 4 petitions before the SPPB which essentially called for exempting the PEG access services contracts from the competitive procurement process. Mr. DeLeon stated that PEGs should not have to comply with the Sunshine Law, HRS ch. 92 and that he was disappointed that SPO was not present at the public comment meetings. He stated that the concept that all PEG assets go back to the State does not provide incentives to the contractor to build up an agency if it has to turn over the assets to the State after 3 years.

Director Recktenwald stated that RFI/RFPs are usually developed by governmental agencies, but DCCA felt that situation was unusual and therefore asked for public comments. Regarding the Sunshine Law, Director Recktenwald indicated that some people felt strongly that the PEG access organizations should follow these requirements, and although the rules may be a burden on the PEGs, the 1st RFI draft included them.

Mr. Aiona stated that he could understand why SPO was not present during the public comment meetings because of potential bid protests. Mr. Aiona stated that if the priority-listed offerors submitted questions to SPO, it would be good to make these questions known to everyone.

Other bidders would then have a chance to revise their bids based upon the questions and responses. Mr. Sonobe stated that the bidders' conference would be open to interested parties. Ms. Fujita stated that there may be interest in having a bidders' conference on each island.

Mr. Rollman expressed that for the RFP process to be finished by June 30, 2007, there would have to be severe time compression. Mr. Aiona suggested that the evaluation committee interview the top 3 finalists and ask the same questions of all 3. Mr. Sonobe stated that CAC members may be sitting on the evaluation committee along with CATV staff. There was further discussion on revising the scoring criteria in the RFI and reporting requirements in the PEG contracts. Ms. Fujita asked if the DCCA was certain that there would be bidders on each island. Director Recktenwald indicated that one might assume that the existing PEG entities would bid on the RFP.

Mr. Yugawa asked whether the incumbent access providers were prohibited from bidding on the RFP. Mr. Sonobe stated that SPO had included a restriction on using incumbent PEG funds and staff time to work on bid proposals so that there would be a level playing field for all bidders. Mr. Sonobe stated that the RFP was not intended to be a low bid contract. It was anticipated that a bidder would come in with a bid to provide the current level of services plus more in exchange for the funds provided. A bidder does not have to provide exactly the same services as the current PEG operator but must provide at least substantially similar services.

Mr. Rollman questioned how a RFP could go forward without having the resources to be provided in the contract identified. A potential bidder would be unable to determine whether it would have to lease a facility or not. Mr. Sonobe explained that all PEG organizations had been asked for a list of services and assets for inclusion in the RFP. Na Leo and Hoike responded and did not contest reversion of assets back to State upon termination of the PEG contracts. Akaku and Olelo have not conceded that reversion was appropriate. Olelo's Board of Directors was meeting at the end of January to determine its position on PEG assets. Mr. Sonobe stated that if the DCCA allowed a PEG entity to take over an asset, it would have to explain to the public why this should be. Director Recktenwald stated that the DCCA's position is that assets purchased with cable franchise fees revert back to the State at the end of the PEG access contracts. However, the DCCA wanted to resolve the question of ownership of PEG assets amicably with the existing PEG access providers.

B. Hawaiian Telcom Services Company, Inc. Application for Cable Franchise (island of Oahu) – 5th Extension Request granted to January 31, 2007

Mr. Sonobe stated that Hawaiian Telcom submitted another request for extension (6th request) to March 31, 2007. DCCA is open to discussion and is available to meet with Hawaiian Telcom. The DCCA supports competition in the area of video programming and has aggressively lobbied the FCC for satellite service. Hawaiian Telcom's application for a franchise has not proceeded as quickly as hoped.

Mr. Sonobe reported that the DCCA was involved with proceedings before Congress and the FCC on video franchising. On December 20, 2006, the FCC voted to issue an order limiting to 90 days the time in which a franchising authority could review a franchise application. Other provisions called for a 5% cap on franchise fees (incorporating INET funding in the cap). The full text of the FCC order is forthcoming. Director Recktenwald stated that the FCC had left open the question of how the order would apply to states with statewide franchising authority such as Hawaii. The Department will continue to monitor FCC action and the rulemaking proceeding. Mr. Sonobe stated that if the FCC order applied to the State, it would have significant impact on the INET since the INET benefits received from cable operators total far more than the 5% of gross revenue, more like 10 times this amount. Hawaiian Telcom has agreed to update its franchise application.

C. Olelo 6th Access Channel Report submitted November 17, 2006

Mr. Sonobe stated that Olelo submitted its 9 month report on November 17, 2006 but it still needed to complete reporting requirements as set forth in Decision and Order No. 326. Pending receipt of the requested statistical information in early 2007, the Department directed Time Warner to continue to the designation and activation of the 6th access channel for another 180 days.

IV. New Business

A. Franchise Fee Reviews -- Schedules for TWE Oahu and Neighbor Island Franchise areas

Mr. Sonobe reported that recent Decisions and Orders were issued on the franchise fee reviews for Maui, Lahaina, East Hawaii (Hilo) and West Hawaii (Kona). The franchise fee reviews found that there were overcollections in the Hilo and Maui (excluding Lahaina) franchise areas but that this was the result of timing and methodology and was not purposeful. The Department determined that the fairest action was for

Time Warner to refund the overcollected amounts to current subscribers. The Decision and Order for the Kauai franchise will be issued shortly. The same CPA firm has been hired to conduct further franchise fee reviews. The Department plans to review the Oahu franchise fees collection and payment for the 2003 -- 2006 period, and to review neighbor island franchise fees collection and payment during 2004 -- 2006. After that, franchise fee reviews would be conducted every 2 years.

V. Public Comment

A. Kealii Lopez

Ms. Lopez offered copies of written testimony that she had provided to the State Procurement Policy Board. Ms. Lopez stated that the SPO process is geared towards business, and the RFP removes beneficiaries from participation in the process. For the public, it is impossible to understand the RFP document. If a new non-profit entity is created to bid on the RFP, there is not a level playing field and the existing PEG is at a disadvantage. Ms. Lopez stated that as President/CEO of Olelo, she works 24/7 and as such, she would be prohibited from working on the RFI/RFP. She understands that the intent of the Procurement Code is to promote competition; however, for her, community building is part of PEG services and the RFP would be putting these services at risk. Ms. Lopez stated that it is impracticable and impossible to do a RFP for PEG access services contracts since it was not possible to articulate all services in an RFP. She also stated that the RFP process would foster competition as compared to the present situation where the current PEG entities work more cooperatively together. She expressed that the lack of PEG cooperation would hurt the State in the end and if the RFP process resulted in a monopoly of PEG providers, then this also would not benefit the State. Ms. Lopez stated that the scoring of the RFP must be objective by subject matter experts who understand PEG access.

B. Carol Bain offered the written testimony of the Community Media Producers Association. She welcomed the RFP process for PEG access services contracts. She took issue with the 30% value on experience since this would place any other non-current PEG entity at a disadvantage. She stated that there was a community radio station with broadcast experience that was interested in the opportunity to bid. Director Recktenwald stated that the role of CAC was advisory in nature and that the RFP decision ultimately rests with the Director. The evaluation committee including CAC members and CATV staff ranks the proposals. Ms. Bain expressed concern about present or former CAC members having conflicts of interest concerning the RFP.

VI. Announcements – There were no announcements.

VII. Adjournment --The meeting was adjourned at 4:12 p.m.

Taken and recorded by:

Lauren K.K. Wong

Laureen K.K. Wong

Dated: 2-9-07