

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

**MINUTES OF MEETING**

Date: February 24, 2005, Thursday  
Time: 10:00 a.m. – 12:30 p.m.  
Place: Queen Liliuokalani Conference Room  
Department of Commerce and Consumer Affairs  
335 Merchant Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96813

CAC MEMBERS Present: Sam Aiona, Jenny Fujita and Gay Porter

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, as required by Hawaii Revised Statutes §92-7(b).

I. CALL TO ORDER --The meeting was called to order at 10:14 a.m.

II. ANNOUNCEMENTS

Gerry Silva resigned effective December 31, 2004. D. Mele Carroll was appointed to the House of Representatives and will be resigning. Director Recktenwald thanked Mr. Silva and Ms. Carroll for their dedicated service. Mayors Mufi Hanneman and Alan Arakawa will be asked for recommendations to fill the 2 seats.

III. MINUTES OF DECEMBER 9, 2004 MEETING

Minutes of the December 9, 2004 CAC meeting were duly posted, and there being no questions or comments about the minutes were accepted.

IV. Update on Pending Matters

A. Neighbor Island Franchise Fee Reports – Notice of Findings of Fact are being prepared for posting on DCCA web site. Director Recktenwald stated that TWE is preparing a plan to refund the over-collected amounts (\$483,000) to Oahu subscribers for DCCA review. Neighbor island franchise fee review reports have been completed and posted online, and findings of fact are being prepared. Mr. Sonobe stated that DCCA would work with TWE to ensure that subscribers are provided proper credits on

their invoices. For the neighbor island franchises, Mr. Sonobe reported the following over-collected/(under-collected) amounts: Kauai – \$ 110,000; Maui – \$120,000; Lahaina – (\$6,000); Hilo – \$42,100; and Kona – (\$85,000). Mr. Sonobe reported that the Merina Report showed that all beneficiaries were paid the amounts owed.

- B. Maui Capital Funding Issue – Pending mediation between Akaku and Time Warner. Mr. Sonobe reported that TWE and all PEG entities, except for Akaku, have reached agreement on their capital fund payment schedules. Akaku and TWE are presently scheduled for mediation on March 11, 2005.
- C. Status of Independent 3<sup>rd</sup> Party Reviews of PEGs – Reports being prepared by consultant. Mr. Sonobe reported that DCCA consultant, Merina and Company, is reviewing all of the PEG entities. The on-site visits were completed last fall, and draft reports will soon be delivered to the DCCA.
- D. 'Olelo Request for a 6<sup>th</sup> Access Channel – Pending a DCCA decision on request. Mr. Sonobe reported that all PEG entities have the use of 5 access channels provided by TWE. 'Olelo requested use of a 6<sup>th</sup> access channel, the first request for an additional channel since 1995. At this time DCCA is reviewing the information received from 'Olelo and TWE and will then be finalizing a decision on the issues.
- E. Status of PEG Contract Negotiations. Mr. Sonobe reported that DCCA delivered a draft contract to 'Olelo as the lead entity for the negotiations and is awaiting comments from the PEGs. The present contracts for all PEGs have been extended to May 31, 2005.

V. Legislative Session 2005

A. DCCA/CATV Administration Bills Introduced

- 1. H.B. 636/S.B. 745 – Provides DCCA with explicit statutory authority to make available additional funding to support PEG access in underserved areas of the state. Director Recktenwald stated that if this bill becomes law, the DCCA would ask CAC members for advice on policies and priorities to fund underserved areas. This would result in additional monies to PEG access over the 3% in fees which are currently paid by cable subscribers to support PEG access.

Ms. Fujita asked if there had been public meetings in which neighbor island demands for access funding were made known. Director Recktenwald stated that during the PEG Plan public comment meetings held on Oahu and the neighbor islands, Windward Oahu and Molokai were identified as areas where there were insufficient services. There was also strong support for 'Olelo's successful neighborhood access centers in Waianae and Palolo. Ms. Porter asked how the funding amount for underserved areas would be determined. Director Recktenwald indicated that the DCCA is suggesting that \$500,000 be allocated for FY 05. Senate CPH committee recommended that DCCA should consider providing funding to all appropriate entities that provide access programming, including those that provide educational access programming. Ms. Fujita asked if any additional monies went to PEGs, would the PEGs be able to subcontract with the libraries. Director Recktenwald stated that PEGs may be able to do so, but DCCA would want to know this up front.

2. H.B. 660/S.B. 769 -- Provides DCCA with explicit statutory authority to order a rebate to cable subscribers if the annual fee collected from subscribers and deposited in the compliance resolution fund exceeds the costs of cable regulation. Director Recktenwald stated that if this bill passes, DCCA could order TWE to provide a credit on subscribers' bills for the amount of the rebate. To avoid the accumulation of excessive reserves, DCCA wants the ability to rebate funds to cable subscribers who paid the fees in the first place. Ms. Porter asked if the amount of the franchise fees was set. Director Recktenwald stated that the 1% fee going to cable administration was established by administrative rule.

B. Other 2005 Legislative Measures Relating to Cable Television

1. H.B. 865/ S.B. 625 – Requires DCCA to include requirements for public access to meetings and records of PEGs in organization contracts. Mr. Sonobe reported that the DCCA draft contract proposal presently contains language requiring open access by the PEGs. If this bill passes, public access to meetings and records of PEGs will be required by law (as opposed to contract or by OIP opinion).
2. H.B. 406/ S.B. 630 – Authorizes DCCA to develop a statewide public affairs programming system (HI-SCAN). Mr. Sonobe explained that this bill calls for a programming system analogous to C-SPAN. DCCA's testimony encourages PEGs to work with

proponents of HI-SCAN and create more "Governmental" programming. DCCA opposes the legislative mandate to create HI-SCAN since it could be duplicative to have 2 separate systems (the PEGs and HI-SCAN) generating the same type of programming.

3. H.B. 784/ S.B. 959 – Requires cable franchise fees paid in connection with the provision of cable service in Maui County to be distributed to Maui Community College (MCC); DOE, Maui County and Maui's PEG access entity. Historically, DCCA's position has been to let each county decide for itself and this position is memorialized in the PEG plan. In December 2004, Mayor Alan Arakawa initiated a Task Force based upon Akaku Board member's suggestion. The Task Force with members for Akaku, MCC/MDOE and the County, has not yet met. A new development has taken place in that Akaku and MCC/MDOE are meeting to resolve their differences on funding. Maui County has deferred to DCCA to initiate mediation if the negotiation fails. Ms. Fujita asked if there was a deadline for the parties to reach agreement to avoid the dragging out of the negotiations. Director Recktenwald indicated that DCCA has not yet required any deadline since it was positive development that the parties were negotiating. Director Recktenwald reported that Senator Rosalyn Baker expressed the view that DCCA should help facilitate resolution among the parties. He expressed that it was good idea to impose a deadline on the negotiations. Ms. Fujita asked how PEG funds were distributed on the neighbor islands. Director Recktenwald explained that on Oahu, HENC received 25% of 'Olelo's franchise fee funding which goes towards support of educational programming. On the neighbor islands, the franchise fees go to the PEG entity on the island, and the DCCA relies upon each PEG entity to use its judgment and best efforts to make sure all sectors are being supported, and the needs of the community are also being met.

- VI. HENC – Presentation by Marlon Wedemeyer, Education Program Manager. Hawaii Educational Network Consortium (HENC), which was created in 1994, is a project of the Research Corporation University of Hawaii. Educational access was present since the beginning of PEG access. In 1989, a DCCA needs assessment found that 42% of those surveyed said that they would be interested in educational programming, and almost 1/3 would be willing to pay cable franchise fees if educational access courses were available on cable. In December 1998, an agreement was reached between 'Olelo, the University of Hawaii, the DOE, and Hawaii Association of Independent Schools (HAIS) for channel oversight, and funding of educational access on Oahu. Under this agreement, HENC was tasked with the oversight of educational access on Oahu.

HENC has one employee and 60% of the funding for that position comes from external sources, with the remaining funds provided by member entities. There are 2 access channels allocated to educational access: TEC (Channel 55) and TEACH (Channel 56). TEC channel programming developed by the community colleges and UH Manoa is available statewide. Through TEC programming, students are able to earn their associates degree as well as take other non-credit programming as elder banking, cooking and driving instruction. TEC Channel programming is available 24/7 and local programming has increased by 75% over a 5-year period. UH students are able to register online and able to receive consolidated transcripts.

TEACH Channel 56 provides a mix of credit and non-credit programming for K-12 students. TEACH offers programs for home schoolers, in-service training for teachers and programming on other educational issues. Hawaii Schools Digital Showcase (HSDS) airs monthly student-based video shows from private and public schools. All monies are tied to programming. Educational access receives no capital funding. UH and DOE each receive \$390,000 annually; HAIS receives \$57,000; and \$40,000 goes to HENC for administrative costs. For other than core activities, any funds left over are distributed by 'Olelo based upon recommendation by HENC. DOE and HAIS post the grants and applications are received and reviewed. 'Olelo writes checks directly to schools and individuals. Ms. Fujita asked if there was any similar arrangement on the neighbor islands. Mr. Wedemeyer indicated that it would be difficult to establish since HENC could not view Maui's feed. Director Recktenwald stated that there is nothing precluding a similar arrangement for educational access on each neighbor island.

## VII. Public Comments

- A. Sean McLaughlin – Akaku Community Television. The review by Merina and Company is not an audit but only a review of whether accurate bookkeeping was done. There was no review of customer service requirements and no performance audits.

Regarding the bills to direct additional funding for underserved areas, he applauds the DCCA for trying to direct funds to this end and is supportive of the effort. Mr. McLaughlin asks why not collect more, why not collect up to the full 1%. He claimed that it is a fallacy that the consumer will be burdened with paying the extra fees. As for the other bills authorizing rebates to subscribers, Mr. McLaughlin asked why should the DCCA return funds to subscribers. The DCCA lost positions (i.e., engineer) and the monies should be used to hire staff to audit TWE.

Regarding H.B. 784/S.B. 959, Mr. McLaughlin was shocked that the CAC members do not have copies of the Hassell Report. Mr. McLaughlin

stated that he had asked DCCA to provide the Hassell Report to CAC members a year ago. According to Mr. McLaughlin, the Hassell Report discussed 2 key issues: (1) take over by educational access on Oahu and (2) Maui access funding. Mr. McLaughlin read a portion of the Hassell report on community control, network strengthening, and deterring raids by other governmental entities.

Mr. McLaughlin commended HENC for creating educational programming which is shared statewide.

Director Recktenwald stated that the HENC report would be provided to CAC members. He also stated that it was the DCCA's policy to let each County decide about access funding, and it was unfortunate that the differences on Maui have risen to such an emotional dispute. The independent third party reviews of the franchise fee payments were not intended to be audits and it is anticipated that these are just the first reviews of TWE. Director Recktenwald disagreed with Mr. McLaughlin over the raising of the annual fee to the full 1% since he believes that any increase would be passed on to consumers by TWE. Director Recktenwald expressed that the DCCA is open to suggestions on how to spend any additional monies not required to administer cable television regulation.

Mr. Aiona asked if the third party reviews of the franchise fee collections were superficial. Mr. McLaughlin responded that there had been no evaluation on the next level such as an audit to determine whether TWE reporting of gross revenue was correct.

- B. Glen Booth – Capitol TV. He represented that both the Speaker of the State House of Representatives and President of the State Senate support 'Olelo's request for a 6<sup>th</sup> Channel. The Legislature broadcasts some hearings and proceedings live, and these programs are often repeated. Since there is limited channel capacity, often times programs are bumped off the air, and information in these programs can become stale when they are aired later.
- C. Sadao Yanagi – ex-officio Member of Akaku's Board of Directors, Kids' Science Advisor. Mr. Yanagi explained that the production studio at Maui High School was set up by PEG capital funds. Maui Department of Education (MDOE) could not allocate monies for the Maui studio but funded the teacher's position. Since 1999, when Akaku stopped educational access funding to MCC/MDOE, the school has had to beg or borrow equipment so that the students could continue to produce their work. MDOE has not received any capital funds from Akaku, and he

wants access funds payments restored to MDOE. He believes that there was misinformation provided about the Big Island and Kauai's experience on educational access. Schools on the Big Island and Kauai did not want anything to do with PEG. On Maui, it was different and the MDOE said yes to access funding. On the West side of Maui, Lahaina has a separate allocation for capital funds. Lahaina is rural and isolated and has not received any capital funds. He requests that MDOE receive share of PEG access funds.

Ms. Porter asked whether MDOE received any capital funds from Akaku over the past 10 – 11 years. Mr. Yanagi confirmed that no capital funds were received for a long time, and consequently, MDOE was requesting a long list of equipment to be funded (he could not recall the exact amount requested).

Ms. Fujita asked what the criteria is used to determine whether education needs are being met? Director Recktenwald stated that the DCCA relied upon the PEG entities to see that community needs are met. On Oahu, 'Olelo reached an agreement with HENC to provide funding for educational access, and DCCA ultimately approved of the agreement. On Kauai and the Big Island, 2 channels are provided for educational access. On Maui, Akaku provides two channels and also initially provided some funding for educational access but later terminated funding to MCC, claiming a lack of reports by MCC.

Ms. Fujita asked if any needs assessment had been done recently. Have there been any determinations that the PEGs are meeting the needs of the communities they serve? Mr. Sonobe stated that the proposed PEG contracts require that each PEG conduct a current needs assessment of their customers and update the assessment every 3 years. He was not sure if any of the PEGs had a current needs assessment. Mr. McLaughlin indicated that Maui last conducted a needs assessment in 1997 and constantly talks with the community. J. Robertson from Hoike stated that Hoike had not conducted a formal needs assessment but talked with customers on a personal level. Kealii Lopez of 'Olelo stated that 'Olelo receives informal input from constituents. 'Olelo plans to conduct a formal needs assessment this year which is costly. 'Olelo plans to run the questions past the DCCA and share the questions and results with other PEGs.

Ms. Fujita questioned how to allocate funds if community needs have not been assessed recently. Ms. Porter suggested that if the DCCA last conducted a needs assessment in 1989, perhaps it was time to update the needs assessment.

- D. Kealii Lopez – 'Olelo Community Television. Regarding 'Olelo's request for use of a 6<sup>th</sup> Access Channel, she recognized that channels were a valuable resource that TWE had to give up to PEG use and acknowledged the positive relationship between 'Olelo and TWE. 'Olelo was willing to work with TWE on transferring a 6<sup>th</sup> channel to 'Olelo's control and within a 24 hour period, any fallow time could be given back to TWE. Regarding H.B. 784/S.B. 959, 'Olelo testified in opposition to these bills because of the precedent that they would set. While entitlement to PEG access funding is not a good mind set, the equal funding premise behind the bills is flawed since the needs in each County differ. She believes that everyone can work together to resolve the funding question and commended the DCCA for getting involved in mediation between the parties on Maui.
- E. Suzanne Marinelli – Capitol Public Access Room. She supports use of 6<sup>th</sup> Channel for 'Olelo so that there would be more live government programming.
- VIII. Adjournment --The meeting was adjourned at 12:10 p.m. The next meeting will be in Hilo at the end of May 2005.

Taken and recorded by:

*Patricia K. Kodama*

*for* Laureen K.K. Wong  
Dated: 3/28/2005