

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
CABLE ADVISORY COMMITTEE (CAC)
State of Hawaii**

MINUTES OF MEETING

Date: October 13, 2005, Thursday

Time: 10:00 a.m. – 12:00 p.m.

Place: Queen Liliuokalani Conference Room
Department of Commerce & Consumer Affairs
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

CAC MEMBERS: Present: Sam Aiona, Keith Rollman, Jenny Fujita, David DeLeon
Excused: 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 Section 92 – 7 (b).

- I. CALL TO ORDER -- The meeting was called to order at 10:05 a.m.
- II. MINUTES OF THE JUNE 9, 2005 MEETING -- Minutes of the June 9, 2005 meeting were duly posted, and there being no questions or comments were accepted.
- III. UPDATE ON PENDING MATTERS
 - A. Rule Change to HAR §16-132-2 – Fees to be paid by Cable operators, effective September 30, 2005.

Mr. Sonobe reported a rule change to HAR §16-132-2 which allows the Director to reduce the fees paid by the cable operator to the Department. By D&O 323 Time Warner (TWE) is directed to stop collecting the annual fees from cable subscribers. DCCA ordered a decrease in the annual fee payment because the DCCA accumulated enough funds to administer cable regulation. It is anticipated that this reduction in the annual fee payment will be for approximately a one-year period and would result in savings of at least \$1 million to cable subscribers.

Director Recktenwald stated that under state law, DCCA can collect fees to administer cable regulation, but it is not allowed to use these moneys to fund PEG access services. In 2004 and 2005, DCCA sponsored bills in the Legislature to fund PEG access services in underserved areas, but these bills did not get out of committee. DCCA then undertook to change

the administrative rule to be able to reduce the amount of its reserve and to be able to provide savings for consumers. While the actual amount of savings is small to each subscriber, in the aggregate, there is a savings of at least \$1 million to cable subscribers statewide. TWE is required to pass on this savings to consumers.

B. Status of Neighbor Island Franchise Fee Refunds/Collections

Mr. Sonobe stated that consultant's reports on the neighbor island franchise fee assessment, collection and payment to beneficiaries were being currently reviewed and a decision and order would be forthcoming. Director Recktenwald stated that for some of the neighbor island franchise areas, the cable operator collected less money than it should have. DCCA must determine how to deal with this situation. One possibility is to offset the under-collected amount with the over-collected amount. Director Recktenwald stated that he appreciated any thoughts of the CAC on this matter since some of the under-collections go back 10 years. If the Department were to require that the cable operator assess franchise fees from existing customers, current subscribers could end up paying for under-collected amounts from 10 years ago. There may be another option in which the cable operator would not be able to collect any under-collected amounts but would have to refund any over-collections.

Mr. Sonobe indicated that none of the beneficiaries were harmed by this under-collection.

C. O'lelo 6th Channel -- Status of TWE's Motion for Reconsideration

Mr. Sonobe stated that 'O'lelo was awarded a 6th analog channel by D&O 320 on June 8, 2005. Time Warner subsequently filed a Motion for Reconsideration. 'O'lelo and Time Warner are presently in discussions to resolve their differences over the issuance of another analog channel. The Department has provided latitude for the parties to discuss this matter. Mr. Sonobe invited Kealii Lopez, President/CEO of 'O'lelo, to provide an update on the discussions. The problem arises in that there are 78 analog channels and 1000 digital channels. It would be easier for TWE to provide another digital channel to 'O'lelo than to provide a 6th analog channel. However, only 50% of cable subscribers have digital TV. 'O'lelo prefers to have a 6th analog channel, but the parties are also discussing other alternatives. With a digital channel there would be a large volume of programming available, but it may require additional staffing at 'O'lelo.

Director Recktenwald indicated that he would like to see resolution of this situation soon. Ms. Lopez reported that parties have exchanged information and were arranging a time to get together and meet. Ms. Lopez expressed that 'O'lelo would like a 6th channel or alternative by

opening day of the 2006 Legislative Session. Mr. Aiona asked what would happen if the parties were not able to come to an agreement. Director Recktenwald stated that the DCCA would issue an order to address TWE's motion for reconsideration.

Mr. Sonobe stated that TWE's analog channel line-up was full, and if the D&O 320 were affirmed, one channel of programming would be replaced by 'Ōlelo's 6th access channel. In discussions with the parties, there was mention of cable subscribers losing CSPAN programming, but it was up to the cable operator to decide which channel would be replaced.

Ms. Fujita asked when analog channels were to be phased out to digital. Mr. Sonobe reported that TWE is willing to swap a digital box for an analog box at no charge to the cable subscriber. Ms. Fujita stated that there was not a general awareness that switching to a digital box would be the same cost as having an analog box. Mr. Sonobe stated that with a digital box, a cable subscriber would be able to see the PEG channels without an extra charge.

D. Independent 3rd Party Reviews of PEGs – Report on comments and action plans of PEGs; further reviews of PEGS

Mr. Sonobe reported that the reports and PEG comments were posted on DCCA's webpage. DCCA plans to implement the comments and incorporate them into the PEG contracts. In addition the PEG access organizations may voluntarily comply with some of the suggestions of the consultant and this would expedite implementation of the reports' recommendations.

E. PEG Contracts – Status of Negotiations

Mr. Sonobe stated that 'Ōlelo has been taking the lead for the other PEGs in the negotiations. An issue arose as to whether DCCA must issue a Request for Proposal (RFP) and follow the State's competitive bidding process for the contracts with the PEGs. Director Recktenwald indicated that DCCA was researching the question and hoped to have a decision on whether DCCA had to put out to bid the contracts to provide PEG services.

F. 'Ōlelo v. OIP – Status of Appeal

Mr. Sonobe stated that the Office of Information Practices (OIP) determined that 'Ōlelo and Hoike were subject to the Uniform Information Practices Act (UIPA). 'Ōlelo brought a lawsuit in circuit court contesting this determination. The circuit court judge found that 'Ōlelo was not an agency for UIPA purposes, and OIP filed an appeal to the Hawaii Supreme Court. Ms. Lopez informed the CAC that the parties would be

filing their briefs before the end of the year. Ms. Lopez stated that in the meanwhile, 'Ōlelo is voluntarily complying with the UIPA. Ms. Lopez reported that 'Ōlelo received eleven UIPA requests since June 9, 2005 and has filled all requests except for one (for which it provided a summary of the requested information).

IV. NEW BUSINESS

- A. Franchise Fee Reviews of Time Warner – Merina & Associates on site visit September 2005.

Mr. Sonobe reported that the DCCA continues to conduct franchise fee reviews of TWE for all franchise areas and will be updating the reviews every 2 years. Ongoing franchise fee reviews are being conducted for Oahu, for 2003-04 and for neighbor island franchise areas for 2004. The draft report is expected out by the end of 2005. The review will look at the assessment and collection of the fees and the allocation to beneficiaries.

- B. Commercial programming in programs submitted to PEGs

Ms. Lopez was asked to comment on 'Ōlelo policy regarding commercial programming. Ms. Lopez stated that per a franchise requirement, commercial programming is not permitted on access channels. Producers are not permitted to promote a product in their programs and cannot receive funds directly for productions. 'Ōlelo has specific rules regarding sponsors and credits. 'Ōlelo, however, does not prescreen the 5000 tapes it receives each year. If staff becomes aware of possible commercial programming, that tape is flagged and a program manager will view it. If 'Ōlelo finds a minor violation, a producer is warned not to repeat the violation, and the tape may still run after it is fixed. If a major violation of the rule occurs, a producer may be suspended. Director Recktenwald expressed that a wide range of conduct can be found to be commercial. Mr. Rollman asked whether there was a written policy statement on commercial programming so that producers could avoid big pitfalls? Ms. Lopez stated that 'Ōlelo has an operating statement and provides training producers on how to avoid commercial programming.

Mr. DeLeon brought up an example under the 1st Amendment. He asked whether a developer could have a show produced and taped by commercial producers and have it run on an access channel in response to anti-development videos which were cablecast on the access channel. Mr. DeLeon expressed that what was shown on the PEG channel was a one-sided viewpoint with no contra position aired. Ms. Lopez did not express a direct response to Mr. DeLeon's question, but she cited an example of a program on air ambulance that was pulled for commercial content.

C. Policy for Airing of Programs by 'Ōlelo

Ms. Lopez stated that 'Ōlelo provides one first run airing and then 3 repeats, and local programming has priority during prime time (6:30 p.m. -- 11:00 p.m.). Series are given time slots for a one year period. For a weekly series or a one time special, 'Ōlelo allows one to two prime time airings. The problem arises because prime time hours are overly full, and local programming has had to wait 2 to 3 months before being cablecast. During non-prime time hours, there are many time slots available and programs are used to fill up time slots. 'Ōlelo also looks at the general subject area and length of a program, whether it was recently submitted and the number of airings. For prime time hours, 'Ōlelo encourages ½ hour programs since it is almost impossible to schedule programs which are 1 ½ hours long. Mr. Rollman asked if there was a demand for equal time on an issue. Ms. Lopez indicated that there were not many such requests, and 'Ōlelo was not required by the Fairness Doctrine to implement equal time. Mr. Rollman asked if some programs end up with more showings because of public requests. Ms. Lopez explained that staff was not supposed to cablecast programs based on content, but that certain types of programs are grouped together for showing as part of a block.

D. 'Ōlelo Marketing and Promotion

Ms. Lopez stated that most businesses spend funds for marketing and promotion services and typically, a non-profit will typically spend 4—12% of its budget on marketing and promotions. 'Ōlelo wanted its services and benefits known to the community. In 2004 'Ōlelo spent \$247,000 on marketing and promotions which was 4—6% of its budget. This amount included a broad category of items as client relations, incentives to producers, awards ceremonies, screening of 1st time producers work, want ads for staff, print costs and ad buys. 65% of the funds went to a particular vendor for ad buys, creation of ads, graphics, press releases and outreach activities. 'Ōlelo will be examining the long term impact of this marketing and promotions effort. For the future, there will be a decrease in the advertising budget. In 2004 there were reserves to sustain the expense but 'Ōlelo will not be able to sustain these expenses on an ongoing basis.

E. Akaku – Status of Operations

Mr. Sonobe stated that the Akaku Board of Directors is divided on the direction for the organization and that there are 2 groups of board members claiming authority to act for Akaku. One group filed a lawsuit against First Hawaiian Bank who then filed a counterclaim. The other group is seeking to intervene in the lawsuit. DCCA continues to monitor

the situation and has made no decision as to governance of Akaku. DCCA is also evaluating whether the public is impacted by the actions of Akaku's Board. To DCCA's knowledge, there has been no significant impact to the operations or degradation of service to the public. Director Recktenwald explained that there is a dispute among board members regarding which members can sit on the board and the number of seats on the board. The merits of the debate focus on whether the procedure undertaken was valid or not. Mr. Sonobe indicated that the Department was in contact with the Acting CEO, Iris Cober, and continuing to monitor Akaku's operations.

F. Alliance for Community Media (ACM) – Report on conference, July 2005

Mr. Chock reported that at the ACM conference held in Monterey, California, the main issue faced by many PEG access organizations was the lack of funds and the difficulty in trying to raise money. Some PEG organizations are attempting to be as efficient as possible within their current level of funding as opposed to pushing for more funding. George Stoney, an early originator of PEG programming, urged PEGs to be more pro-active, to seek out the needs of the community, and to gear operations towards community needs.

G. National Association of Telecommunications Officers and Advisors (NATOA) – Report on conference, September 2005

Mr. DeLeon reported that the Baby Bell telephone companies are attempting to nationalize cable regulation and want the FCC in charge as opposed to individual communities or states. The focus of the conference was on proposed federal legislation and oversight. NATOA attendees visited members of Congress and there was a lot of discussion on the different federal bills. Emphasis was on maintaining regulatory control at the local level. Cable operators are ready to branch out to provide internet service and telephone service over the internet platform. Telephone companies want to bring broadband services to consumers. Mr. Rollman reported that with the new technology, there will be competition to provide data, video and phone service. The new Telecommunications Act is presently being sorted out by Congress. NATOA is attempting to coordinate the interests of the states and cities and make an impact on the federal level. Director Recktenwald stated that DCCA was in communication with the office of Senator Daniel Inouye, who is the ranking senior minority member on the committee rewriting the legislation. The State of Hawaii has certain unique concerns that must be addressed. DCCA has retained a law firm in Washington, D.C. who is monitoring the federal legislation.

V. Public Comment

- A. Mike Albert – read his written comments on the dispute between Akaku and Maui Community College and Department of Education – Maui District. Mr. Albert stated that Akaku provided little funds to Education and this situation was rectified early this year when the Education Agreement was executed by Akaku, MCC, and MDOE. Mr. Albert presented his views on a recent Akaku Board meeting, where the Education Agreement was repudiated by certain Board members, and four Education Akaku Board members were refused their seats. Mr. Albert stated that MCC and MDOE reiterate that the Education Agreement was a valid, binding and legally enforceable contract.
- B. Jeff Garland – stated that 'Ōlelo's block programming is discriminatory. On weekends, only religious programming is shown. Mr. Garland also voiced his concerns that 'Ōlelo prescreened his video of the last CAC meeting and informed him that the local contact information was not on the end of the video. Mr. Garland criticized that 'Ōlelo's operating procedures were not on the website; that local programming was not given a priority; and that 'Ōlelo was not abiding by UIPA. Mr. Garland stated that there was not enough focus on public access but more emphasis on educational and governmental access.
- C. Kealii Lopez – stated that 'Ōlelo's preference is for a 6th analog channel. When 'Ōlelo made its request for a 6th channel, there was no programming on Channel 77. Since then, TWE has begun to air programming on Channel 77 from 6:00 p.m. to 10:00 p.m. at night. 'Ōlelo does not divide up its access channels by sectors and Hawaiian rights can include native issues such as a program on Alaska. 'Ōlelo does not prescreen a whole program but looks at the end slate to make sure it includes required information. Ms. Lopez noted that there are few states that regulate cable television. It is also relatively rare to have P-E-G access combined in the same entity.

VI. Announcements

- A. Next meeting –beginning of 2006 but will depend upon the 2006 Legislative Session.

VII. Adjournment – 12:15 p.m.

Taken and recorded by:

Laureen K.K. Wong
Laureen K.K. Wong
Dated: 11/10/05