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

MINUTES OF MEETING

Date: December 9, 2004
Time: 10:00 a.m. – 12:00 noon
Place: State Office Building
Conference Rooms A,B & C
3060 Eiwa Street
Lihue, Kauai Hawaii 96766

CAC MEMBERS Present: CAC members Sam Aiona, Gerry Silva and Jenny Fujita
Excused: D. Mele Carroll 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 10:05 a.m.

II. ANNOUNCEMENTS

CAC members D. Mele Carroll and Gay Porter were traveling and unable to attend the meeting.

III. MINUTES OF OCTOBER 13, 2004 MEETING

Sean McLaughlin remarked that in his opinion, the minutes did not accurately report his statements at the last meeting. Mr. McLaughlin stated that while there were a few instances that needed correction in the minutes, he believed that the staff had good intentions in taking minutes and apologized for the tone of his comments in an email regarding the minutes. Mr. McLaughlin pointed out that on page 5, Section III, he was referring to Molokai and not Maui as the PEG facility with the highest level of activity in the state and the nation on a per capita basis. Director Recktenwald clarified that the minutes are only a summary of what is said at the meeting and were recorded in good faith. Mr. McLaughlin stated that he would be submitting his comments in writing. There were no other questions about the minutes, which were then accepted by the CAC.

IV. Update on Pending Matters

A. Franchise Fee Reports by Merina & Company and Public Knowledge for Franchise Areas of Kauai, Kona, Hilo, Maui and Lahaina. – Mr. Sonobe reported that DCCA was finalizing the decision and order for a refund to Oahu subscribers by Oceanic. The Notice of Findings of Fact would be posted on the DCCA's web page shortly. The consultants' reports for the Neighbor island franchises were completed and posted on the DCCA's webpage. The reports indicate that except for the Lahaina franchise, there was an over-collected balance for each Neighbor island franchise. This result was attributable to the timing of the collection of the franchise fees from subscribers and the later remittance to designated recipients and also to the subscriber bill itemization methodology. He further added that the report concluded that all recipients of these fees were correctly paid. The DCCA is planning a refund to neighbor island subscribers similar to the one being planned for Oahu.

B. Emergency Alert System – Mr. Sonobe explained that he was working with Maui County civil defense and Time Warner so that the County would be able to override the cable channels and put a crawl at the bottom of the screen to be able to inform residents of an impending emergency. Mr. Sonobe stated that Mayor Arakawa would have the final signoff authority as to what would be put on the EAS crawl and that Maui County could then override the system on its own. Director Recktenwald commended Mr. Sonobe on the innovative solution to a problem.

V. New Matters

A. Upcoming 2005 Legislative Session – Director Recktenwald notified the members that the 2005 legislative session is soon approaching. The Governor's Policy Staff is reviewing draft proposals for the Governor's package, and there was no final decision on the bills as of the meeting date. However, one bill under consideration would authorize DCCA to provide additional support for PEG access in underserved areas. Sam Aiona asked when the next CAC meeting will be, as he would like a briefing on the bills and suggested that CAC members could provide supporting testimony on the bills, if needed. Director Recktenwald stated the next meeting could be in a couple of months when more issues would be defined.

B. Maui Capitol Funding Issue -- Mr. Sonobe explained that on each island, the cable operator and designated PEG entity work on a schedule of capital payments and present the schedule to DCCA. With the exception of Akaku, the other PEG access organizations have reached agreements with Time Warner. Akaku and Time Warner have been asked to attempt mediation by December 21, 2004. If mediation is not successful, then the parties are asked to submit a list of issues and a position statement with documentation to the Department. DCCA will then make a decision on the issue.

C. Update on Independent Third Party Reviews of all PEGs – Mr. Sonobe explained the process and what Merina & Co had accomplished so far. After three weeks of on-site interviews and reviews, and an inventory tabulation, Merina & Co was preparing their reports of findings and had the goal of completing the reports by the end of the year, or if not, then sometime in January. There should be one report for each PEG access organization. Jenny Fujita asked him what were the goals of these reviews. Mr. Sonobe replied that this was the first review by DCCA at least since he started work with DCCA in 1995. The review may help assist DCCA in focusing on major issues such as the contract compliance, how monies were spent, sources of revenues, etc. She further asked how often would these reviews take place, and Mr. Sonobe responded that reviews would possibly take place once every 1 to 3 years. Reviews were valuable activities since they would help ensure that PEGs are meeting the needs of their communities. The separate franchise fee reviews will be done annually. Mr. Sonobe also described Merina & Company's expert level of knowledge of PEGs, which included a nationally known financial expert, PEG access CEO, and academic professor. Director Recktenwald explained that the reports were intended to ensure that the PEGs were complying with their contracts with DCCA and to make helpful suggestions for improvement, and indicated that the CAC would be consulted as to the frequency of the reviews. Gerry Silva asked if baselines were used, how were the factors developed. Mr. Sonobe responded that CATV worked collaboratively with Merina & Company to develop the scope of work. For this first effort, it was not possible to do everything so a reasonable amount of factors were developed.

VI. Presentation by Ho'ike Community Television – J. Robertson, Executive Director

A. Executive Director J Robertson gave a presentation on Ho'ike, citing background information such as, there are 26, 000 subscribers on Kauai, their producer base has grown and use of equipment is high, they fully utilize their 4 channels, and have an interactive community board which is used by more than 200 organizations. Mr. Robertson is an Alliance for Community Media Western Regional board member and is also on the Salvation Army board. Three years ago in its operational plan, Ho'ike moved into digital programming and equipment. Ho'ike facilitates programming and is expanding its outreach and marketing. It tapes

Chamber of Commerce meetings and produced a training video on green waste by the County. Ho'ike is working to reach students in high schools and has developed special programs for both public and private school students. Ho'ike is also working with the Hawaiian immersion school at Kekaha and training the school staff to produce programming in the Hawaiian language. Mr. Robertson's presentation included a 15 minute video depicting the diversity of voices of their community. They have over 3000 hours of original programming and are presently looking for a new center/location. Mr. Robertson just purchased a state-of-the-art playback system that would allow for a direct cablecast from Ho'ike once the connections are completed. There are nine board members on Ho'ike's Board of Directors.

VII. Public Comments

A. Sean McLaughlin – He will submit written comments on what he believes to be incorrect information to the minutes of the October 2004 meeting. Mr. McLaughlin stated that Hawaii Educational Network Consortium (HENC) has a contract with Olelo to provide educational programming for 25% of the PEG access fees paid to Olelo. The agreement has been mandated by a franchise order, and in his opinion, is not restricted to Oahu. This results in Olelo funding $1 million for statewide benefits. Director Recktenwald stated that the franchise order memorialized the pre-existing contract between Olelo and HENC. Director Recktenwald asked Mr. McLaughlin to put in writing his comments on the minutes of the October 2004 meeting. He stated that the CAC would like to hear from HENC and asked Mr. Sonobe to extend an invitation to it for the next meeting.

Mr. McLaughlin referenced the Merina report for the Maui franchise and pointed out the statement that "in practice, franchise fees passed through to Subscribers have never been included in gross revenues by the cable operator." Mr. McLaughlin stated that he shared this practice with other legal consultants on the mainland who did not agree with this statement. Mr. McLaughlin complained that there were no records, accountability or documentation regarding the DCCA's practice of excluding franchise fees from gross revenues. Mr. Sonobe explained that TWE has never calculated this fee on a fee and then added the additional amount on to subscribers' bills. The prior administration did not want to burden the subscriber with paying a fee upon a fee which would be similar to paying a tax on tax. For example, if a subscriber ordered services of $100, the franchise fee would be approximately $4.64 or 4.64% of $100. Under Mr. McLaughin's proposal of including the franchise fee into the gross revenue, a subscriber would end up paying more for franchise fees ($100

+ 4.64 = $104.64 x 4.64% = $4.85). Since this was an administrative decision, the DCCA could change the definition. Director Recktenwald welcomed the thoughts of CAC members on this matter. Director Recktenwald stated that this issue was raised and explained publicly before so that Mr. McLaughlin knew of this previously. Director Recktenwald stated that in August 2000, D&O 261 incorporated and documented the long standing practice in the gross revenue definition. Mr. McLaughlin brought up the argument that franchise fees are rent paid by cable operators for use of the public right of ways, and that although Time Warner is allowed to pass on these fees to the subscribers, there is no law that says they have to pass on these fees. Mr. Sonobe clarified that Federal law allows Time Warner to pass on franchise fees. Mr. McLaughlin expressed that legislation that deals with the underserved areas should be supported. He also stated that new legislation in New Mexico which sets aside channels should be considered.

B. Carol Bain – Ms. Bain indicated that she would be submitting written testimony but wanted to also summarize her remarks. She was concerned that a state subsidized organization should not be competing with private producers or private enterprises for contracts. Ms. Bain has a private corporation that was under contract with the Kauai County to film and produce tapes on County Council meetings. Ho'ike had originally agreed to back off from bidding for the County contract, but in September 2004, Ho'ike put in a lower bid than her company, so she lost the contract. Ms. Bain stated that Ho'ike is already subsidized with equipment and facilities and therefore has an unfair advantage. She believes that if Ho'ike continues to bid on other video contracts, this would diminish independent production on Kauai, and she wanted to know DCCA's policy on this issue. Director Recktenwald pointed out that at the time of January 2004 PEG Plan, some of the PEGs had ongoing governmental contracts. The Plan left it up to the PEGs' discretion to determine whether they should engage in such activities. Kealii Lopez pointed out that regarding PEGs, there are many models to look at. Each PEG has its own reasons and one model may not be good for all PEGs. Olelo does not compete for such contracts, but it is well funded at the present time and does not have to expand its services for fees.

C. Linda Harmon – She criticized Ho'ike's printed programming schedule published weekly in the local newspaper. She wanted more description of the programs offered as compared to just the name of the program. J Robertson explained that the newspaper determines the amount of space allocated to Ho'ike for the printed weekly programming guide. It was difficult to obtain even that limited space. Ms. Harmon stated that monies received by Ho'ike should go towards promoting those shows and/

or programming. Director Recktenwald indicated that this issue was an internal matter for Ho'ike to handle.

D. Kealii Lopez – She requested notice from the DCCA on any legislative bill that may impact PEG access in the upcoming session. She confirmed that Olelo did enter into a contract with HENC for 25% of Olelo's PEG access funding in exchange for educational programming. The DCCA memorialized the HENC agreement in a D&O, and Olelo has not changed the contract since then. HENC is for Oahu only because funds are from Oahu subscribers only. Director Recktenwald suggested that HENC be placed on the agenda for the meeting.

VIII. Guided Tour of Ho'ike Community Television Facilities

The meeting recessed at 11:50 a.m. and reconvened at Ho'ike's offices, 4211 Rice Street, Lihue, HI 96766.

IX. Announcements -- None

X. Adjournment --The meeting was adjourned at 12:27 p.m.

Taken and recorded by:

Laureen K.K. Wong

Laureen K.K. Wong
Dated: 1-10-05