

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

MINUTES OF MEETING

Date: June 9, 2005, Thursday
Time: 10 a.m. – 12 p.m.
Place: Na Leo 'O Hawaii
91 Mohouli Street
Hilo, Hawaii 96720

CAC MEMBERS: Present: Sam Aiona, Keith Rollman, Gay Porter
Excused: Jenny Fujita, David DeLeon

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 10:07 a.m.
- II. INTRODUCTION OF NEW CAC MEMBERS: Keith Rollman is the Information
Technology adviser to Mayor Hanneman. David DeLeon is the senior executive
assistant to Mayor Alan Arakawa. He was not able to attend today's hearing as
he was traveling out of state.
- III. MINUTES OF THE FEBRUARY 24, 2005 MEETING

Minutes of the February 24, 2005 meeting were duly posted, and there being no
questions or comments were accepted.
- IV. UPDATE ON PENDING MATTERS
 - A. Time Warner Refund to Oahu Subscribers -- Mr. Sonobe reported that
Merina & Company reviewed the accuracy of the assessment, collection
and payment of franchise fees by Time Warner. The review determined a
cumulative over-collection of franchise fees from Oahu cable subscribers
from 1995 to 2002. Mr. Sonobe also reported that TWE issued a refund
credit of \$1.92 to each cable subscriber on Oahu in May 2005. Mr.
Sonobe noted that the over-collection was not an error by TWE, but came
about as a result of how fees were collected and the timing of collections
and payments. In addition the DCCA changed the method of calculation
and payment during this time period.

- B. Franchise Extensions for Kauai, Maui, and West Hawaii – Mr. Sonobe reported that TWE was required to upgrade these neighbor island systems after receiving approval for the transfer of cable franchises. Upon completion of the upgrades, the franchise terms of the systems would then be extended. D&O 317, D&O 318 and D&O 319 are available on CATV department's web page. Director Recktenwald stated that the completion of the Maui and Kona upgrades involved some complexity concerning the provision of broadband services. TWE agreed to provide the higher level of services to the outlying areas of Hana and Kohala, which necessitated the re-engineering of the cable system and caused some delay in the completion of the upgrades for the two areas. However, given those circumstances and because a higher level of service was provided to these outlying areas, Director Recktenwald stated that the delay did not provide a basis for denying the franchise extension.
- C. Status of neighbor island franchise fee reports – Consultant's reports are posted on the DCCA's webpage. The DCCA is reviewing the reports and will be preparing findings of fact. CAC Member Gay Porter asked if the refunds to Kauai, Hilo, and Maui subscribers were being held up by the under-collection of franchise fees in Lahaina and Kona. Mr. Sonobe indicated that the decision and orders for each of the franchise areas could be issued separately. Director Recktenwald stated that some of the under collected amounts go back a long way, even as far back to 1995, and the Department needed to determine whether it was appropriate to authorize collection of those amounts from current subscribers. Director Recktenwald stated that he would appreciate any thoughts the CAC members had on that issue. Mr. Sonobe reported that the under collected amount in Kona was approximately \$85,000, and the under collected amount for Lahaina was approximately \$6,000. Mr. Sonobe also reported the beneficiaries of the franchise fees received the correct amount due.
- D. Status of independent Third Party Review of PEGs
- Mr. Sonobe reported that the independent third party reports were sent to each PEG, and the DCCA requested comment from each PEG. Director Recktenwald stated that the DCCA wanted each PEG to provide comments about the reports, and whether or not it accepted the recommendations, and to develop an action plan.
- E. Status of Olelo's Requests for a 6th Access Channel -- Mr. Sonobe reported that in D&O 320, Olelo was granted the use of a 6th access channel for a one-year period. After nine months Olelo is to report to the Department as to the utilization of its channels and viewership numbers. The DCCA will then determine whether to grant use of the 6th channel on

a permanent basis. Mr. Aiona asked what the channel would be used for and whether it be used by the Legislature during the session. Gerry Silva, COO of Olelo, stated that although there was increased demand for governmental programming during the Legislative sessions and for neighborhood board meetings, he did not see a channel limited to just governmental programming. Mr. Silva reported that there would be blocks for governmental programming and public programming on the new 6th channel.

- F. Status of PEG Contract Negotiations -- Mr. Sonobe reported that existing contracts were extended for another three months and that the DCCA and Olelo had met recently and were continuing to negotiate contract terms.

V. STATUS OF BILLS INTRODUCED DURING LEGISLATIVE SESSION 2005

- A. Mr. Sonobe reported that the two administration bills introduced in the 2005 Legislative Session did not pass out. Technically, these bills are still alive for the 2006 Legislative Session.
- B. Regarding other legislation, the bill on HI-SCAN did not pass. Senate Bill No. 959, which sought to divide up the Maui PEG access fees, also did not pass. Director Recktenwald reported that an agreement had been reached between Akaku, MCC and MDOE and addressed the issue of sharing of Maui access fees. Director Recktenwald also reported that there were some Akaku board members who had expressed concern about the Maui educational agreement.
- C. Mr. Sonobe informed the CAC members that House Bill No. 865, relating to requirements in the PEG contracts to include open access to meetings did not pass out of committee. Mr. Silva reported that Olelo had filed a friendly lawsuit against OIP regarding the Sunshine Law requirements. Mr. Silva also reported that on June 9, 2005, Judge Victoria Marks ruled that Olelo was a nonprofit entity and not a state agency. Director Recktenwald indicated that the DCCA will review Judge Marks' written decision by the next CAC meeting and report back to the committee.

VI. NEW BUSINESS

- A. Review/audit Activities for Time Warner and PEGs

Mr. Sonobe reported that DCCA will be conducting further franchise fee reviews of the cable operator. DCCA has a current contract with Merina & Company who will be conducting the next set of reviews. If the reviews are conducted every two years, the time and effort entailed for the reviews should not place a burden on the cable operators. Mr. Sonobe indicated

that the DCCA would be open to increase the scope of the reviews if the reports determined that other procedures are required.

Mr. Sonobe stated that the DCCA would be continuing to review the PEGs since the DCCA wanted to evaluate the PEGs' comments pertaining to the present reports before establishing a schedule. Mr. Sonobe was asked to report back at the next CAC meeting regarding further reviews of the PEGs. Director Recktenwald stated that the PEGs would be requested to identify which of the report's recommendations they are willing to implement, and identify those that they are not willing to implement and explain why not. Mr. Sonobe stated that in the new contract, the department is asking that each PEG access organization conduct a current community needs assessment and update it every three years.

Mr. Sonobe reported that the DCCA will also conduct compliance reviews of the cable operator. These reviews will look at whether the cable operator is in compliance with the DCCA's Decisions and Orders. Compliance reviews are recommended procedures in the franchise renewal process. The first franchise to expire is on Oahu and is set to expire in 2009. The renewal period begins 36 months prior to the expiration of the franchise period. DCCA will start a compliance review either late 2006 or in early 2007.

Mr. Sonobe also stated that the DCCA will conduct technical reviews of the cable operator's equipment and system. This review will examine TWE's compliance with electrical and building codes and would begin in late 2006 or early 2007. The Department anticipates contracting with consultants pursuant to the Procurement Code to assist in the review of the technical specifications.

Mr. Sonobe stated that PEGs would be an active player in the renewal process. Since franchises can extend 10 to 15 years, renewals are important. The DCCA needs feedback from the PEGs as it considers the franchise renewal period

- B. Rule change to HAR 16-132-2 -- to allow Department to decrease annual fees paid by cable operator when there are sufficient funds available to cover the costs of cable regulation by the Department.

Mr. Sonobe stated that the proposed rule change would apply specifically to the 1% Annual Fee received by CATV from TWE who in turn collects this amount from cable subscribers. The money received by the DCCA goes into the Compliance Resolution Fund and presently exceeds the amount needed to fund the administration of cable regulation by the DCCA. Under the proposed rule amendment, the Director could

determine that if CATV had a reasonable level of reserves, TWE could pay less money for the Annual Fee, and in turn collect less from subscribers. Director Recktenwald indicated that the rule change would allow the DCCA to decrease the annual fee on an expedited basis. Mr. Sonobe reported that the rule change was presently at the Governor's Policy Office for consideration and approval to hold a public hearing. The DCCA would then schedule public hearings on the proposed rule amendment.

VII. PRESENTATION BY NA LEO O HAWAII -- JURGEN DENECKE, EXECUTIVE DIRECTOR

Mr. Denecke described the success story of two Na Leo clients who went through the production training and were producing terrific programs. Mr. Denecke stated that Na Leo moved in to its present location in 2001 after it constructed its new facilities. Programming at Na Leo has gone to digital and there is no analog or tapes the deal with. Na Leo has six edit bays and 106 producers use its facilities.

VIII. PUBLIC COMMENTS

Dr. Keola Downing stated that he used to be Na Leo producer and expressed concern about the underserved areas as in Puna where cable service was not available or too expensive. He urged the DCCA to use access fees to provide web casting programs to outlying areas. Director Recktenwald indicated that an administrative bill providing additional funding for underserved areas for equipment and video production for access services to outlying areas did not pass the Legislature. In addition it was up to the PEGs to decide how to serve its community and whether it will provide web casting.

Mr. Silva indicated that Olelo has web streaming of all channels, but a viewer can only see the programming that is being aired at that time. Olelo is working on having hearings cablecast on demand. Mr. Silva reported that Olelo sees a future not only in cable casting but also in web casting programming.

Leilani Andrade Stolpe stated that she is the producers' elected representative on Na Leo's board. She wanted Na Leo's board to consider putting up a web site. She also requested that there should be one access channel for Hilo and another access channel for Kona, and that there should be more locally produced programming on Na Leo's channels. She also requested that a computer be available for producers' so that they could check their email. Ms. Stolpe also asked that Na Leo's board meetings be cablecast. Director Recktenwald indicated that the

issues she has identified were internal matters for Na Leo's board to consider and not matters for DCCA.

- IX. ANNOUNCEMENTS -- the next board meeting will be held in early fall.
- X. ADJOURNMENT – The meeting was adjourned at 11:55 a.m.

Taken and recorded by:



Laureen K.K. Wong

Dated: July 11, 2005