

Department of Commerce and Consumer Affairs
State of Hawaii

HCR 358 TASK FORCE MEETING

Date: Wednesday, November 5, 2008
Time: 8:00 a.m. – 11:30 a.m.
Place: The following State of Hawaii Video Conference Centers:

Big Island:
Hilo State Office Building
75 Aupuni Street, Basement
Hilo, HI 96720

Kauai:
Lihue State Office Building
3060 Eiwa Street, Basement
Lihue, HI 96766

Maui:
Wailuku Judiciary Building
2145 Main Street, Room 120
Wailuku, HI 96793

Oahu:
Kalanimoku Building
1151 Punchbowl Street, Room B10
Honolulu, HI 96813

Members of the public may attend the meeting at any of the specified above locations and for their convenience are asked to take note of the meeting chronology set forth in the Agenda. No food or drinks (including water) are allowed in the video conference centers.

AGENDA

1. Call to Order (Chair)
2. Approve Agenda (All)
3. Accept Minutes from October 22, 2008 Meeting (All)
4. Public Testimony (Public)
5. Old Business (All)
6. Reconsider the Issue that DCCA use Rulemaking Similar to Cable Franchise Renewal (All)
7. Selection Process of Board of Directors of PEG Access Organizations (All)
8. Discussion of 1st Amendment Rights of PEG Access Organizations (All)
9. Report to Legislature
10. New Business
11. Preparation for Next Meeting
 - a. December Meeting Date to Be Set
 - b. Agenda
12. Adjournment

Depending upon time considerations, each speaker may be limited to a specific time for public comment. Written comments may be emailed to catv@dcca.hawaii.gov or mailed to DCCA-CATV, P.O. Box 541, Honolulu, HI 96806, Attn: HCR 358 Task Force or faxed to 808-586-2625. Persons with special needs for this meeting may call CATV at (808) 586-2620 at least seven (7) days prior to the meeting to discuss accommodation arrangements.

HCR 358 TASK FORCE
FINAL ACCEPTED MINUTES OF MEETING

Date: November 5, 2008
Time: 8:00 a.m.
Place: The following State of Hawaii Video Conference Centers:

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The Agenda for this meeting was filed with the Office of the Lieutenant Governor.

I. Call to Order (Chair) (Meeting Rules)

A. Roll

i. Present

1. Eric Knutzen
2. Jay April (arrived after Old Business)
3. Roy Amemiya
4. Shelley Pellegrino
5. Gregg Hirata
6. (Gerald Tekase) (left during franchise discussion)
7. David Lassner
8. Clyde Sonobe
9. Geri Ann
10. Gilbert Benevides (arrived during Franchise discussion)

ii. Excused

1. MaBel Fujiuchi

iii. Absent

1. Keith Rollman

B. Approve Agenda

1. Approved as transmitted

II. Accept Minutes from October 22, 2008 Meeting (Task Force)

A. Accepted unanimously

III. Public Testimony (Public)

A. Rules

B. Linda Poppolo

- i. Covered election on Maui. Event that happened last night was what was supposed to happen with community television. Can postpone report. Should not vote without visiting station and reading material. Community supports Akaku and says that it is a community asset and a treasure. Urges DCCA to work with PEGs, they are fulfilling intent, slow down and read documents. Member Amemiya asks about evidence that they are rushing, very little done

Final Minutes
HCR 358 Task Force
November 5, 2008 Meeting

in first four (4) meetings and no experts called in, missing something, have not delved into issue, need more information.

C. Lance Collins

- i. Likes that Task Force is winding down. Can ask for more time if people think that they cannot make an appropriate decision by next meeting. Public access TV will be transformed on a national level, federal government will regulate after January 20, 2009. This is all part of a bigger issue of the regulation of cable television. Believes that Task Force is correcting past mistakes and hopes that report will be fair. Thinks that Olelo's suggestion is like Akaku's suggestion and hopes that a decision will be made with adequate time.

D. Ed Coll (***see written testimony***)

IV. Old Business (Task Force)

- A. DCCA comments re Lance Collins letters (August 26, September, and October 10) from Clyde Sonobe. DCCA is not going to respond to all arguments. Did respond on August 25, lack of comments should not be construed as agreement to any of Mr. Collins' points. DCCA is reserving comment on Mr. Collins proposal for Akaku. DCCA disagrees that there is no contract between DCCA and Akaku. DCCA and Akaku have been working together for years and Mr. Collins Akaku has previously referred to it as a contract. Regarding rulemaking, DCCA believes that there is no illegal delegation of authority to the SPO or the PPB. The Court ruling proposed rule only indicates that they will follow code, implementing law. SPO is assisting in the process but DCCA is still responsible for selection.

- i. Note: Member Sonobe requested in writing that the minutes be amended as noted in the attached December 5, 2008 email from Glen Chock for Member Sonobe, Member April objected to the amendment (***see attached email of December 5 and December 7 and Member Lassner's comments***). At the December 8, 2008 meeting there was discussion and the minutes were accepted as amended, reflecting Mr. Sonobe's request.

V. Reconsider the Issue that DCCA use Rulemaking Similar to Cable Franchise Renewal (All)

A. Discussion of Olelo submittal

i. Member Lassner

1. Believes that the document goes to rules but believes that the job of the Task Force is to validate the assumptions which led to the creation of the Resolution. For example, no state wide program for P or G, be up front on competition, need to be accountable. The draft does not address public accountability. Agrees that process would be ok but need to look further and clarify assumptions.

ii. Chair

1. Appreciates Member Lassner's thoughts, who will review performance, etc.

iii. Member Amemiya Discusses Submittal

1. Chair asks to discuss accountability, would PEGs continue on as is? Member Amemiya says tried to address controls that were missing or unstated elsewhere, here audits taken, expression of free speech rights. Document gives DCCA the responsibility to review PEG and put controls into the contracts. Chair directs to Pg. 7 of the submittal and asks if the review is enough.
2. Member Sonobe refers to the DCCA letter of November 3. DCCA believes that this should be addressed in statute and not rule. DCCA believes it necessary to ensure that statute be amended before rule proposed. Statute needs to be more comprehensive. Member April – indicates that the statute precludes procurement. He is surprised that the rule making process is being noted by DCCA, and he believes that state-wide is in violation of law which also does not address his earlier stated goal of “localism”. He also sees accountability. Per Member Sonobe, DCCA not opposing work, just submitting comments.
3. Chair notes time for review and public hearing requirements. Suggests we look at Submittal and see if this is the way we want to go. Member Lassner questions whether the outcome is to come up with another process re 440G. Member April says that no change in 440G is required, the resolution does not specify rewriting or suggesting changes to 440G, the rules mirror the process in place, allows for more open and public process.
 - a. Member Sonobe – Not disregarding the work of the Task Force, DCCA is moving forward with rulemaking as it is required by law and any rule cannot conflict with State law. Reflects amendment requested by Mr. Chock on behalf of Member Sonobe; initially objected to by Member April who withdrew his objection at the December 8, 2008 meeting.
 - b. Member Amemiya asks if the Olelo rule is ok in place of current rulemaking. Member Sonobe says that the Statute needs to be changed, first. DCCA suggests a statutory approach with subsequent rule making, he has some concerns with this approach.
 - c. Member April – Says that procurement is not yet recognized as the “law”, clarify and make recommendations, Task Force is considering recommending that PEG be exempt from procurement and then that PEGs be subject to these rules. Member Sonobe indicates that the SPO found bound by Code, State AG also has opinion. Chair asks, why not take us out of 103D and then have

rulemaking process in 440G? Member April does not believe it is necessary, covers all of the bases.

- d. Member Amemiya – Asks if DCCA is ok with exemption from Code with rules specifying renewal. Member Sonobe sees changes to 440G with subsequent rulemaking. Member Amemiya asks if can change 103D? Member Sonobe indicates yes.
- e. Member Lassner – can propose the same law as before which explains framework and asks DCCA to make rules with some suggestions.
- f. Member Tekase – Does not think that passing an exemption from 103D is dead, would support it.
- g. Member Sonobe – DCCA suggests that 440G be amended to provide for or mention rulemaking in the selection of PEG organizations.
- h. Member April makes motions leaving it up to the Legislature to decide whether 440G is changed.
- i. Member Hong – everyone believes should be exempt and she believes that should be done within the Statute, concerned about ending up in Court again.
- j. Member Pellegino – prior Bill was an exemption from 103D, incorporate the Rules Member Amemiya suggested under 440G.
- k. Member Lassner – not our job to be too specific, be general and attach proposed rule.
- l. Chair – suggests taking motion and checking for agreement, DCCA or others could take what is recommended and make adjustments to the Law. Sonobe – if the legislature exempts PEG, then DCCA requests that 440G be amended to have rules put in place.
- m. Member Amemiya – would DCCA use current hearings to review these new rules? Member Sonobe – position is that currently required to comply with the Code, if not required then DCCA suggests 440G be amended and rules promulgated, current rules relate to Code as required. Member April – No ruling yet that subject to Code.
- n. Chair – everyone gets a chance to talk, Legislature can run with this.

4. Motion

- a. The Task Force determines that based upon testimony received and its analysis of the regulatory and legislative framework it is its recommendation that the designation of PEG access organizations not be subject to the Procurement Code. Furthermore, the Task Force recommends that if PEG access organizations are found by law to be subject to the

Code, that PEG access organizations be exempted on the grounds that Procurement is not practicable or advantageous to the State. The Task Force recommends that the DCCA use a rulemaking process similar to the cable franchise renewal process in determining the designation of PEG access organizations provided that the process is public and interested parties can intervene. Draft SAMPLE rules set forth for consideration as attached Exhibit "".

- i. Member Lassner – does not feel that “practicable and advantageous” language is necessary especially given this is the language within the Code (withdrawn); believes that the contracts or issuance of the contracts are exempt (Member April, does not think that they are contracts, Accepted as noted); lastly, lots of detail in draft rules, refer to them as sample or draft, not the recommendation (Accepted)
 - ii. Member Sonobe – cites intervention and fact that cable franchise is not a “process”; Member April cites intervention already discussed.
- b. The Task Force will work up draft language regarding the above by November 21, 2008 for discussion at the December meeting.

VI. Preparation for Next Meeting (Task Force)

- Call to Order (Chair)
- Approve Agenda (All)
- Accept Minutes of November 5, 2008 Meeting (All)
- Public Testimony
- Old Business (All)
- Re-consider the Issue that DCCA use Rulemaking Similar to Cable Franchise Renewal (All)
- Selection Process of Board of Directors of PEG Access Organizations (All)
- Discussion of 1st Amendment Rights of PEG Access Organizations (All)
- Report to Legislature
- New Business
- Preparation for Next Meeting
 - Will there be one?
- Adjournment

VII. Adjourned at 11:30 am

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER _____

SUBCHAPTER 1

GENERAL PROVISIONS

- §16-____ - 1 Definitions.
- §16-____ - 2 Application or proposal for designation of access organization.
- §16-____ - 3 Designation of access organizations; criteria; content.
- §16-____ - 4 Requirement for adequate service; terms and conditions of service.
- §16-____ - 5 Complaints; violations; revocation, alteration, or suspension of access organization designation; penalties.
- §16-____ - 6 Renewal of access organization designation.
- §16-____ - 7 Transfer of access organization designation.
- §16-____ - 8 Oversight of access organization.
- §16-____ - 9 Reports.
- §16-____ - 10 Time.

SUBCHAPTER 2

PROCEDURES FOR NEW AND TRANSFER APPLICATIONS

- §16-____ - 11 Filing of application or proposal.
- §16-____ - 12 Requests for additional information or documentation.
- §16-____ - 13 Investigations, examinations, and audits.
- §16-____ - 14 Public hearing.

§16-____ - 15 Approval or denial.

§16-____ - 16 Request for reconsideration.

§16-____ - 17 Contested case hearing.

§16-____ - 18 Construction.

SUBCHAPTER 3

PROCEDURES FOR RENEWAL APPLICATIONS

§16-____ - 19 General.

§16-____ - 20 Initiating the renewal process.

§16-____ - 21 Alternative renewal procedures.

SUBCHAPTER I

GENERAL PROVISIONS

§16-____ - 1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Access organization" means any nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any public, educational and governmental ("PEG") channels obtained under section 440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization.

"Applicant" means a nonprofit organization which initiates an application or proposal.

"Application" means an unsolicited filing.

"Cable advisory committee" means the cable advisory committee established pursuant to Haw. Rev. Stat. §440G-13.

"Cable franchise" means a nonexclusive initial authorization or renewal thereof issued pursuant to Haw. Rev. Stat. Chapter 440G, whether the authorization is designated as a franchise, permit, order, contract, agreement, or otherwise, which authorizes the construction or operation of a cable system.

"Designation" means selection of a PEG access organization as referenced in Haw. Rev. Stat. §440G-3 including an initial selection by application or proposal as well as selection on a renewal basis.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental agency.

"Proposal" means a filing solicited by the director.

"PEG access facilities" means (1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for the use of that channel capacity.

"Service area" means the geographic area for which an access organization has been designated to provide services.

§16-____ - 2 Application or proposal for designation of access organization.

(a) No access organization shall be initially designated except upon written application or proposal therefor to the director, and following public hearing upon notice, as provided in this chapter.

(b) An application or proposal for designation shall be made in a form prescribed by the director and shall set forth the facts as required by the director to determine in accordance with this chapter whether an access organization should be designated, including facts as to:

- (1) The management and technical experience of the organization, and its existing or proposed staff;
- (2) The ~~applicant's~~ public media, community media, and/or PEG access experience of the organization and its existing or proposed staff;
- (3) The applicant having among its missions/purposes (as demonstrated by its articles of incorporation, bylaws, or similar corporate documents) to provide training, education and outreach to permit individuals and

organizations the ability to use communication tools to effectively convey their messages;

- (4) The ability of the organization, and its existing or proposed staff, to provide the PEG access services requested by the director;
- (5) The organization's short-term and long-term plans for PEG access services for a designated county;
- (6) The financial capacity of the organization;
- (7) Whether the organization agrees to expand the marketplace of ideas, and is committed to allowing members of the public to express their First Amendment free speech rights;
- (8) The ~~demonstrated~~ ability of the organization, through the use of electronic media tools, to foster and engage in civic and cultural development and engagement in communities it has served;
- (9) Any other matters deemed appropriate and necessary by the director.

(c) A proposal for designation of an access organization shall be accepted for filing in accordance with this chapter only when made in response to the written request of the director for the submission of proposals.

§16-____ - 3 Designation of access organizations; criteria; content.

- (a) The director is empowered to designate access organizations upon the terms and conditions provided in this chapter.
- (b) The director, after a public hearing as provided in this chapter, shall designate an applicant as an access organization when the director is convinced that it is in the public interest to do so. In determining whether to designate an access organization, the director

shall take into consideration, among other things, the content of the application or proposal, the public need for the services, the ability of the applicant to provide PEG access services, the suitability of the applicant, the financial responsibility of the applicant, the technical and operational ability of the applicant to perform efficiently the services for which designation is requested, any objections arising from the public hearing, the cable advisory committee established by this chapter, or elsewhere, and any other matters as the director deems appropriate in the circumstances.

(c) In determining the area for which an applicant is to be designated, the director shall take into account the cable franchise and local needs within each county.

(d) There shall be no more than one entity designated to provide PEG services in each county during any specified time period.

(e) The period of an initial designation shall be not less than five nor more than twenty years.

§16-____ - 4 Requirement for adequate service; terms and conditions of service.

(a) Every access organization shall provide safe, adequate, and reliable service in accordance with applicable laws, rules, and contract requirements.

(b) The director shall require each access organization to enter into a contract containing a statement of services to be provided, performance standards for such services, fees for such services, and all terms and conditions of service, in the form and with the notice that the director may prescribe. Prior to finalizing the terms of the contract, the director or his/her designee shall seek input from the cable advisory committee regarding the appropriate terms.

(c) The director shall ensure that the terms and conditions upon which PEG access services are provided are fair both to the public and to the access organization, taking into account the appropriate service area, input received during the designation process and the resources available to compensate the access provider.

(d) If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon mutual agreement of the PEG access organization and the director, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The director makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for stated reason(s) to include but not be limited to the inability to execute a new contract by the time the contract expires; and
- (3) The terms and conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.

§16-____ - 5 Complaints; violations; revocation, alteration, or suspension of access organization designation; penalties.

(a) Complaints regarding the operation of an access organization may be made orally or in writing to the director. The director shall resolve complaints informally when possible.

(b) Any designation issued hereunder may be revoked, altered, or suspended by the director as the director deems necessary on any of the following grounds:

- (1) For making material false or misleading statements in, or material omissions from, any application or proposal submitted to the department;
- (2) For any sale, lease, assignment, or other transfer of contract without consent of the director;
- (3) For material breach of the terms of the access services contract, following notice and reasonable opportunity to cure;
- (4) For repeated failure to comply with this chapter or any rules or orders prescribed by the director; and
- (5) For engaging in any unfair or deceptive act or practice as prohibited by Haw. Rev. Stat. § 480-2.

(c) In lieu of or in addition to the relief provided by subsection (b), the director may fine an access organization for violations of subsection (b)(1) through (5) in an amount not less than \$50 nor more than \$1,000 for each violation. Each day's continuance of a violation may be treated as a separate violation pursuant to rules adopted by the director. Any penalty assessed under this section shall be in addition to any other costs, expenses, or payments for which the access organization is responsible under other provisions of the law.

§16-____ - 6 Renewal of access organization designation. The designation of any access organization pursuant to this chapter may be renewed by the director as provided in subchapter 3 herein. The periods of renewal shall be not less than five nor more than twenty years each.

§16-____ - 7 Transfer of access organization designation.

(a) No access organization designation or contract therefor, including the rights, privileges, and obligations thereof, may be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any access organization, whether by change in ownership or otherwise, except upon written application to and approval by the director.

(b) A transfer of an access organization designation shall authorize the new access organization to provide services for the remainder of the term of the existing contract.

§16-____ - 8 Oversight of access organization.

(a) The director or the director's designated representatives may from time to time visit the places of business and other premises and examine the records and facilities of any access organization to ascertain if all laws, rules, contract provisions, and orders of the director have been complied with.

(b) The director shall conduct a compliance review no less than once every seven years and no more than once every three years, the purposes of which shall be:

- (1) to obtain input from the recipients and/or potential recipients of PEG access services regarding their satisfaction/dissatisfaction with the designated access organization's performance under the contract;
- (2) to review PEG access services provided by the designated access organization in light of previously identified community needs and interests, public input or concerns, whether community media needs of the community are being met by the access organization in light of the resources available within the community and the existing technology's

Deleted: evaluate

Deleted: the status of

Deleted: served

ability to meet those needs, including whether the needs, technology or other aspect of services have changed in any material respect since the start of the contract;

- (3) any other compliance matter the director deems appropriate; and/or
- (4) to determine, based on any of the information obtained in the course of the compliance review, whether the terms of the then-current contract should be modified.

(c) The process for each compliance review shall include, at a minimum, a public hearing to afford interested persons the opportunity to submit views, data, or arguments, orally and in writing. Notice thereof shall be given as provided in section 16-____-14 herein.

(d) In the event that the director determines, based on the results of a compliance review, that the terms of the then-current contract should be modified, the director shall consult with the cable advisory committee to identify the modified terms. The director shall also consult with the access organization to determine the feasibility and appropriateness of any identified modifications, the resulting costs ~~and appropriate support~~. However, the decision of the contract terms to be modified and the extent of modification shall be the ultimate responsibility of the director. In the event of any contract modification resulting in additional or different services to be provided by the access organization, the compensation paid to the access organization pursuant to the contract shall be adjusted accordingly.

~~Deleted:~~ and

§16-____-9 Reports. Each access organization shall file with the director reports of its financial, technical, and operational condition. The reports shall be made in a form

and on the time schedule as specified in the contract and shall be kept on file open to the public.

§16-____ - 10 Time.

- (a) The computing of any period of time shall be in accordance with section 16-201-14, Hawaii Administrative Rules.
- (b) The time limits set by this chapter may be waived or extended by mutual written agreement between the director and the applicant.

SUBCHAPTER 2

PROCEDURES FOR NEW AND TRANSFER APPLICATIONS

§16-____ - 11 Filing of application or proposal.

(a) Within thirty days of receipt of an application or proposal, the director shall review the application or proposal and notify the applicant in writing that it is acceptable for filing or inform the applicant that it fails to provide certain information. The applicant shall be given at least fifteen days to submit the required information. If the director finds the application or proposal to be complete, the director shall issue notice of acceptance for filing. If no additional information is received or if the application or proposal is still not complete, the applicant's submittals shall be returned, with a statement indicating that the application or proposal as submitted is not acceptable for filing.

(b) The date of the notice of acceptance shall be deemed the filing date of the application or proposal.

§16-____ - 12 Requests for additional information or documentation. To facilitate the review of the application or proposal, the director may informally and at anytime during the process request the applicant to submit additional information or supporting documentation to clarify or supplement the information already contained in the application or proposal.

§16-____ - 13 Investigations, examinations, and audits. In addition to requesting supporting documentation or clarifying information from the applicant, the director may initiate or require any investigation, examination, and audit to be performed as deemed appropriate.

§16-____ - 14 Public hearing. Within thirty days after the issuance of a notice of acceptance for filing, the director shall hold a public hearing on the application or proposal to afford interested persons the opportunity to submit data, views, or arguments, orally or in writing. Notice thereof shall be given to the governing council and mayor of the county and to the holder of any cable franchise in the county in which the proposed service area is located. The director shall also give public notice of the application or proposal and hearing at least once in each of two successive weeks in the county in which the proposed service area is located. The last notice shall be given at least fifteen days prior to the date of the hearing.

§16-____ - 15 Approval or denial. After holding a public hearing, the director shall approve the application or proposal in whole or in part, with or without conditions or modifications, or shall deny the application or proposal, with reasons for denial sent in writing to the applicant. The director has the discretion to require the applicant to attend a show cause hearing after the public hearing but prior to making the decision on the application or proposal.

§16-____ - 16 Request for reconsideration. Within ten working days of issuance of the decision, an applicant may request the director to reconsider its decision. The request shall be in writing, shall specify the reasons why the director should reconsider the decision, and set forth any relevant and substantial information that for good cause was not previously set forth in the application or supplemental information, together with an explanation of why the information was not previously presented. The request may also state specifically what points of fact or law the director may have overlooked or misunderstood, together with brief arguments on the points raised. Only one request for

reconsideration may be filed by the applicant. The director shall make a determination on the request and issue a decision affirming or amending the initial decision.

§16-____ - 17 Contested case hearing. The applicant may petition the director for a contested case review hearing within sixty days following the decision. The director may transfer the petition together with the documents concerning the application to a hearings officer for further proceedings pursuant to sections 16-201-26 to 16-201-47.

§16-____ - 18 Construction. To the extent not inconsistent with the procedures described in this chapter, the procedures described in chapter 16-201, Hawaii Administrative Rules shall apply. Should any provision of this chapter be invalidated, all other provisions shall remain in full force and effect.

SUBCHAPTER 3

PROCEDURES FOR RENEWAL APPLICATIONS

§16-____ - 19 General. To the extent not inconsistent with the provisions of this subchapter, all of the provisions stated in subchapters 1 and 2, with the exception of sections 16-____-2 and 16-____-11, together with the sections in this subchapter shall apply to all renewal applications.

§16-____ - 20 Initiating the renewal process.

- (a) An access organization seeking renewal shall submit to the director a written notice of intent to renew no later than twelve months prior to the expiration of its existing contract.
- (b) Within thirty days of receipt of the notice of intent to renew, the director shall issue a written notice to the access organization stating that the renewal has been either accepted for further processing or rejected. The permissible grounds for rejection shall be limited to those set forth in section 16-____-5 herein and shall, in the event of rejection, be identified in the director's notice. The date of the director's notice shall be the date of filing for the purpose of further proceedings as provided herein.
- (c) If the notice of intent to renew is accepted, the director shall process the request for renewal in the same manner as for applications and proposals, as provided in Subchapter 2 herein.
- (d) If the notice of intent to renew is rejected, the access organization may seek reconsideration and/or review of the decision as provided in sections 16-____-16 and 16-____-17 herein.

§16-____ - 21 Alternative renewal procedures. Nothing in this chapter shall preclude an access organization from submitting an application for renewal at any time. Likewise, nothing shall preclude the director from granting or denying such an application, after affording the public adequate notice and opportunity for comment.

David Franzel

From: David Franzel [davidfranzel@hawaii.rr.com]
Sent: Thursday, November 06, 2008 10:39 PM
To: 'Jay April'; 'keo@keoinc.org'; 'gtakase3@hotmail.com'; 'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov'; 'shelley.pellegrino@co.maui.hi.us'; 'Hirata, Gregg'; 'Geri_Ann_Hong@notes.k12.hi.us'; 'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'
Cc: 'Glen.WY.Chock@dcca.hawaii.gov'; 'Laureen.K.Wong@dcca.hawaii.gov'; 'Patti.K.Kodama@dcca.hawaii.gov'
Subject: HCR 358 - DCCA November 3, 2008 Letter

The letter from DCCA that was discussed at yesterday's meeting is attached.

Thanks.

12/15/2008

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
L.T. GOVERNOR



LAWRENCE M. REIFURTH
DIRECTOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

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November 3, 2008

Via Facsimile Only 808-241-6266

Mr. Eric Knutzen
Chairperson
H.C.R. No. 358, H.D. 1 Task Force
4444 Rice Street, Suite 427
Lihue, Kauai, Hawaii 96766

Subject: Roy Amemiya's October 28, 2008 proposed rule amendment

Dear Mr. Knutzen:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the work of the HCR 358 Task Force, and offers the following observations regarding the draft proposed rule amendment offered by Roy Amemiya, Olelo's representative to the Task Force.

1. The proposal appears to incorporate an unstated assumption that the Legislature will exempt PEG contracts from HRS Chapter 103D procurement. With that assumption understood as a precondition to the proposal, the DCCA offers the following comments:

Overarching Process

2. Presumably, the Task Force is recommending that the proposed rule be adopted by DCCA after the Legislature exempts PEG contracts from HRS chapter 103D procurement. Nothing in the proposal indicates what role the Legislature might play in requiring, supporting or opposing, or causing DCCA to propose, such a rule.
3. It might be a very good idea to have detailed rules of the sort recommended with regard to PEG contracting, but chapter 440G does not presently address the PEG process and does not require that rules be adopted to implement the process.
4. DCCA strongly recommends that, if procurement is not to be followed (SPO's current position), the issue should be first addressed in the law, and that the department then be directed to adopt rules consistent with the law.

Specific Procedure

5. The proposed rule applies the existing cable franchise award and renewal process to PEG entities, but adds a public hearing, formal reconsideration process, and a contested case hearing process on top of that model.
6. PEG contracts and cable franchises are different in several important respects, which might make application of an enhanced form of the franchise award/renewal process awkward:
 - a. Cable franchises, by definition, are not exclusive (see Hawaiian Telcom's current application for Oahu); the proposed rule would make PEG contracts exclusive within each county (why?);
 - b. Cable franchises are an authorization to do business and to utilize the public rights of way; PEG access to the cable system and PEG funding are requirements upon the franchisee (why require an even more extensive process for the derivative contract than we require of the underlying contract?);
 - c. Cable franchise services are paid for by those who wish to subscribe to their service; PEG services are paid by franchisee subscribers whether they utilize the PEG services or not; and
 - d. Cable franchisees pay "franchise fees" under federal law (currently approximately 4.5% of gross revenues, collected from franchisee customers) in return for authorization to do business and to use the rights of way; PEG contractors do not pay, but rather are paid out of, those fees.
7. It is unclear what principle is being advanced or encouraged by making PEG contract awards and renewals even more protracted than the cable franchise renewal:
 - a. One PEG has recently taken the position that these contracts are not "contracts", but "permits" or "licenses":
 - i. DCCA issues tens of thousands of permits/licenses; none go through a process resembling the proposed process; and
 - ii. DCCA enters into hundreds of contracts; none go through a process resembling the proposed process.
 - b. Transparency can be accomplished without public hearing and contested case processes, which are better designed for cases involving "due process rights":

- i. Incumbent PEG entities have no due process right to continued contracts or funding;
 - ii. The public's interest in a public explanation of the PEG application/renewal decision making can be accomplished without resorting to protracted and multiple public hearings; and
 - iii. It is unclear why these contracts should have such a significantly different process applied than any other government contract.
8. In addition to concerns relating to the proposed procedure, DCCA is concerned with, among other things, the following specifics of the proposal (or the proposal's failure to address):
- a. Length of the PEG contract; proposal: 5 – 20 years; no apparent reason that PEG contract should track the franchisee's contract;
 - b. Fees paid to PEG contractors can not be fixed in view of the funding source, and certainly can not be guaranteed; and
 - c. Need to address ownership of assets purchased with franchise fee revenues.

Thank you for this opportunity to comment on this proposal being considered by the Task Force.

Very truly yours,



Clyde S. Sonobe
Administrator

c: Lawrence M. Reifurth, DCCA

David Franzel

From: Jay April [jay@akaku.org]
Sent: Wednesday, November 19, 2008 4:39 PM
To: David Franzel; Eric Knutzen; David Franzel
Subject: HCR358 Task Force - Attorney General Opinion



akaku ag op ltr
081118.pdf (32...

Aloha David and Eric,

Yesterday Hon. Joel August of the Hawaii Second Circuit Court released to Akaku the Attorney General's "secret opinion" regarding Procurement. It is attached for Task Force members to review. Please distribute.
Thank You.

COPY

FILED NOV 14 2008

AT 2:10 O'CLOCK P M
/s/ Annette L. Hoopii

Clerk, Second Judicial Circuit

CONFIDENTIAL

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

AKAKU: MAUI COMMUNITY
TELEVISION,

Plaintiff,

VS.

MARK BENNETT, ETC., ET AL.,

Defendants.

) CIV. NO. 07-1-0280(1)
)
) OCTOBER 12, 2005 LETTER FROM
) THE DEPARTMENT OF THE
) ATTORNEY GENERAL TO THE
) DEPARTMENT OF COMMERCE
) AND CONSUMER AFFAIRS
) REGARDING THE APPLICABILITY
) OF THE STATE'S PROCUREMENT
) CODE TO DCCA CONTRACTS
) WITH THE PEG ACCESS
) ORGANIZATIONS SUBMITTED
) FOR IN CAMERA REVIEW
)
) FILED/SEALED UNDER SEPARATE
) COVER

OCTOBER 12, 2005 LETTER FROM THE DEPARTMENT OF THE ATTORNEY GENERAL
TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS REGARDING THE
APPLICABILITY OF THE STATE'S PROCUREMENT CODE TO DCCA CONTRACTS
WITH THE PEG ACCESS ORGANIZATIONS SUBMITTED FOR IN CAMERA REVIEW

FILED/SEALED UNDER SEPARATE COVER

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
COMMERCE AND ECONOMIC DEVELOPMENT DIVISION
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1180

November 13, 2008

The Honorable Joel E. August
Circuit Court of the Second Circuit
2145 Main Street, Suite 4D
Wailuku, Hawaii 96793

Dear Judge August:

Re: *Civil No. 07-1-0280(1); Akaku vs. Mark Bennett and Lawrence Reifurth*
October 12, 2005 Letter from the Department of the Attorney General to the
Department of Commerce and Consumer Affairs

Pursuant to your September 29, 2008 Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment in the Akaku v. Bennett, Civil No. 07-1-0280(1), case, enclosed please find a copy of the October 12, 2005 letter from the Department of the Attorney General to the Department of Commerce and Consumer Affairs ("DCCA") regarding the applicability of the State's Procurement Code to DCCA contracts with the PEG access organizations.

Defendants Mark Bennett and Lawrence Reifurth provide this letter to the Court while reserving and without waiving any rights, privileges, and/or immunities they may have regarding that letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rodney J. Tan".

Rodney J. Tan
Deputy Attorney General

Attorney for Defendants Mark
Bennett and Lawrence Reifurth

c: Lance D. Collins, Esq.

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

October 12, 2005

CONFIDENTIAL-ATTORNEY/CLIENT MATERIAL

Honorable Mark E. Recktenwald
Director
Department of Commerce and Consumer Affairs
State of Hawaii
335 Merchant Street
Honolulu, Hawaii 96813

Dear Director Recktenwald:

Re: Applicability of HRS Chapter 103D to State Contracts for PEG Access Services

This is in response to your August 25, 2005 letter and inquiry regarding the applicability of the State of Hawaii ("State") Procurement Code in Hawaii Revised Statutes ("HRS") chapter 103D to the Department of Commerce and Consumer Affairs' ("DCCA") contracts with public, educational, and governmental ("PEG") access organizations in the State.

I. Issue

Specifically, you asked whether DCCA's contracts with PEG access organizations are subject to the State's Procurement Code?

II. Short Answer

We answer this question in the affirmative, unless the exemptions in the Procurement Code apply. In our opinion, based on what you have told us, it does not appear that any of the exemptions are currently applicable.

III. Facts

According to your letter, DCCA established PEG access in the State through the franchise orders it issued to cable operators under HRS chapter 440G, and the contracts with the PEG

CONFIDENTIAL-ATTORNEY/CLIENT MATERIAL

Honorable Mark E. Recktenwald

October 12, 2005

Page 2

access organizations. In these franchise orders, DCCA recognized the benefit that PEG access provides to the public and required cable operators (as one of the conditions to obtain cable television franchises in the State) to provide channels for PEG use and to pay annual PEG access fees for facilities and equipment.

To assist the public (i.e., producers and the viewing public) with PEG access, DCCA entered into separate contracts with four PEG access organizations to provide PEG access services in their respective counties.¹ The four PEG access organizations are Olelo: The Corporation for Community Television ("Olelo") on Oahu, Akaku - Maui County Community Television, Inc. ("Akaku") on Maui, Na Leo O' Hawaii, Inc. ("Na Leo") on Hawaii, and Ho'ike: Kauai Community Television, Inc. ("Ho'ike") on Kauai. Under the PEG access contracts, these organizations provide (among other things) the following services: managing and operating the PEG access channels, training the public to use the PEG facilities, providing equipment to create programs, and cablecasting the programs created and submitted by the public on the cable operator's channels.

DCCA appointed or assisted in appointing the initial board of directors of each of the PEG access organizations and, pursuant to the organizations' bylaws, continues to have the authority to appoint and remove a majority of the directors of the PEG access organizations. Despite the fact that DCCA appoints directors to PEG access organizations, DCCA does not consider these organizations to be State or government agencies because they are private, non-profit corporations that are run independently of government, and have filed articles of incorporation and registered with your Business Registration Division.

The PEG access organizations are funded primarily from the annual PEG access fees that the cable operator is required to pay pursuant to DCCA's franchise orders. The cable operator pays these annual PEG access fees directly to the PEG access organizations, and is allowed to pass these fees on to cable television subscribers under federal law. The cable operator has elected to pass these fees onto subscribers and assesses subscribers on a monthly basis. The PEG access organizations do not receive any governmental monies from either the general fund or DCCA's Compliance Resolution Fund.

Up until 2004, the PEG access contracts were automatically renewed annually. After 2004, DCCA began re-negotiating these contracts and has been extending them in approximately three-month intervals until the negotiations are completed. The PEG access contracts are

¹ We understand that the current contract with Olelo was entered into on December 24, 1998, the current contract with Akaku was entered into on June 17, 1999, the current contract with Na Leo was entered into on June 17, 1999, and the current contract with Ho'ike was entered into on August 25, 1999.

CONFIDENTIAL-ATTORNEY/CLIENT MATERIAL

Honorable Mark E. Recktenwald

October 12, 2005

Page 3

terminable at will by DCCA, and are automatically terminated whenever the applicable cable operator's franchise is terminated. Once a PEG access contract is terminated, the PEG access organization is required to relinquish all claims to the PEG access fees, and PEG facilities and equipment. Thereafter, the PEG access organization is required to transfer the balances in its accounts and all PEG facilities and equipment to DCCA. Thus, DCCA has a continuous claim to the funds it requires the cable operator to pay the PEG access organizations and the PEG facilities and equipment.

While reviewing the PEG access contracts, your Department raised a question about the applicability of the State's Procurement Code to these contracts.

IV. Analysis

HRS § 103D-102 (Supp. 2004) sets forth the scope of the Procurement Code and provides in relevant part as follows:

"(a) This chapter shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which the State receives or is owed; in-kind benefits; or forbearance; provided that nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any other grant, gift, bequest, or cooperative agreement."
(Emphasis added).²

HRS § 103D-104 (Supp. 2004) defines "procurement" and "contract" as follows:

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of

² Prior to 1995, HRS § 103D-102 provided in pertinent part as follows:

"(b) This chapter shall apply to every expenditure of public funds irrespective of their source by a governmental body as defined herein, under any contract; provided that the expenditure of federal assistance moneys shall be in accordance with federal requirements."

In 1995, the Legislature amended this subsection by deleting the reference to and definition of "public funds", and clarifying that the Procurement Code "applies to all procurement contracts made by governmental bodies unless otherwise exempt". See, Act 178 (1995) and House Standing Committee Report No. 811, House Journal 1333 (1995).

CONFIDENTIAL-ATTORNEY/CLIENT MATERIAL

Honorable Mark E. Recktenwald

October 12, 2005

Page 4

contract administration.”

“‘Contract’ means all types of agreements, regardless of what they may be called, for the procurement or disposal of goods or services, or for construction.”

The PEG access contracts are agreements between DCCA, a governmental body, and PEG access organizations that are private, non-profit corporations. Under these contracts, DCCA is acquiring services to manage and operate the PEG channels DCCA requires the cable operator to provide under the franchise orders, train the public to use the PEG facilities and equipment to create programs, and cablecast the programs submitted by the public on the cable operator’s channels. Thus, the PEG access contracts are “procurement contracts” under HRS § 103D-102.

Although not defined in the Procurement Code, “consideration” is an essential component of all contracts, and has been defined as a bargained for exchange whereby the promisor receives some benefit or the promisee suffers a detriment. Shanghai Inv. Co., Inc. v. Alteka Co., Ltd., 92 Haw. 482, 496, 993 P.2d 516, 530 (2000) (citations omitted). In exchange for providing the PEG access services, DCCA allows the PEG access organizations to receive PEG access fees and capital fees for facilities and equipment the cable operator is required to provide under DCCA’s franchise orders. According to the franchise orders, the PEG access fees are approximately three percent (3%) of the cable operator’s annual gross revenues. In 2005, Olelo received approximately \$4,088,000 in PEG access fees and \$823,000 in capital fees, Akaku received approximately \$812,000 in PEG access fees and \$105,000 in capital fees, Na Leo received approximately \$690,000 in PEG access fees and \$125,000 in capital fees, and Ho ‘ike received approximately \$335,000 in PEG access fees and \$75,000 in capital fees.

Both parties benefit from these contracts. In general, states and other governmental bodies are not required to provide PEG access in their respective jurisdictions. Federal law allows, but does not require, a local franchising authority to establish requirements in a franchise with respect to the designation or use of channel capacity for public, educational, or governmental use. See, 47 U.S.C.A. § 531 (2001). As explained in your letter, the local franchising authority (i.e., DCCA) established PEG access in the State through its franchise orders issued to the cable operator. Under the Hawaii Cable Communications Systems Law in HRS chapter 440G, a cable operator is required to designate three or more channels for public, educational, or governmental use. See, HRS § 440G-8.2.³

³ Although HRS chapter 440G does not have any substantive provisions pertaining to PEG access organizations, an “access organization” is defined as follows:

“[A]ny nonprofit organization designated by the director to oversee the development, operation, supervision, management, production, or broadcasting of programs for any channels obtained under section 161783_1.DOC

CONFIDENTIAL-ATTORNEY/CLIENT MATERIAL

Honorable Mark E. Recktenwald

October 12, 2005

Page 5

DCCA and the State collectively benefit from the PEG access contracts because they do not have the resources to operate and manage these PEG access channels, and have contracted with the PEG access organizations to provide these services to the public. The PEG access organizations assist DCCA in implementing DCCA's policy to provide PEG access in the State, and benefit from the contracts because they are compensated for their services through the fees DCCA requires the cable operator to pay under the franchise orders. Thus, the benefit DCCA receives in having the PEG access organizations provide the contracted services to the public and the fees the PEG access organizations receive in return are the consideration for the contracts under HRS § 103D-102.

V. Conclusion

Based on the foregoing, under HRS § 103D-102, the PEG access contracts are procurement contracts made by a governmental body and the consideration for the contracts is the PEG access fees that DCCA allows the PEG access organizations to receive in exchange for providing PEG access services to the public. Accordingly, the State's Procurement Code applies to these contracts, unless the exemptions in HRS chapter 103D apply. None of the specific exemptions in HRS § 103D-102(b) encompass contracts such as those between DCCA and the PEG access organizations. However, we note that the exemption in HRS § 103D-102(b)(4)(L) allows the procurement policy board to determine in its rules or the chief procurement officer to determine in writing that a particular good or service is exempt from the Procurement Code even though such good or service is available from multiple sources, because procurement by competitive means is either not practicable or not advantageous to the State. Because the procurement policy board or the chief procurement officer is responsible for making this determination, we cannot express an opinion on whether such an exemption would be approved for the PEG access contracts.

440G-8, and any officers, agents, and employees of such an organization with respect to matters within the course and scope of their employment by the access organization."

Haw. Rev. Stat. § 440G-3 (1993). HRS chapter 440G further defines "public, educational, or governmental access facilities" as "(1) channel capacity designated for public, educational, or governmental uses and (2) facilities and equipment for use of that channel capacity." *Id.*

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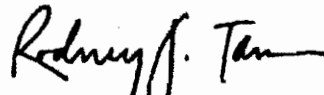
Honorable Mark E. Recktenwald

October 12, 2005

Page 6

If you have any questions on the above, please do not hesitate to contact us.

Very truly yours,



Rodney J. Tan
Deputy Attorney General

APPROVED:



Mark J. Bennett
Attorney General

-----Original Message-----

From: Jay April [mailto:jay@akaku.org]

Sent: Sunday, December 07, 2008 6:50 PM

To: David Lassner

Cc: David Franzel; Eric Knutzen; David Franzel; keo@keoinc.org;
gtakase3@hotmail.com; Roy Amemiya; gbenevides@co.hawaii.hi.us; Shelley
Pellegrino; Gregg Hirata; Geri Ann Hong; krollman@honolulu.gov; Clyde
Sonobe; Glen.WY.Chock@dcca.hawaii.gov; Laureen Wong;
Patti.K.Kodama@dcca.hawaii.gov

Subject: Re: HCR 358 - November 5, 2008 Draft Minutes

Aloha David,

I agree with you that there is no need for an apology and that we need to focus on our main task without spending an unwarranted amount of time on correcting minutes. I also need to point out that these minutes are part of the official record. You are also quite correct when you say the Task Force is not like most groups. The Task Force is somewhat unusual in that it has as a member who: has hired the facilitator based on an SPO recommendation; is in charge of state regulation of cable as well as PEG oversight; implements cable policy and may very well be charged with implementation of some aspects of Task Force recommendations, i.e. rulemaking. For these reasons, changes to the comments of Mr. Sonobe as noted in the minutes deserve scrutiny before Task Force members to ensure that the minutes reflect the most inclusive and accurate account of what was actually said at the meeting.

Best,

Jay

-----Original Message-----

From: David Lassner [mailto:david@hawaii.edu]
Sent: Saturday, December 06, 2008 8:19 AM
To: David Franzel; Eric Knutzen; Jay April
Cc: David Franzel; keo@keoinc.org; gtakase3@hotmail.com; Roy Amemiya;
gbenevides@co.hawaii.hi.us; Shelley Pellegrino; Gregg Hirata; Geri Ann Hong;
krollman@honolulu.gov; David Lassner; Clyde Sonobe;
Glen.WY.Chock@dcca.hawaii.gov; Laureen Wong; Patti.K.Kodama@dcca.hawaii.gov
Subject: Re: HCR 358 - November 5, 2008 Draft Minutes

No need to apologize DavidF. I have never been part of any group that did not permit members to clarify the way their own remarks were summarized in draft minutes and treat that as a routine matter with the preparer of the draft. All minutes, including proposed changes, are subject to discussion and approval of the Task Force.

But then I remind myself that this Task Force is not like most groups:-)

So in the spirit of forward progress, I'd like to propose that at our next (final) meeting we amend our agenda to discuss the draft final report before discussion of the minutes. My understanding is that we have a hard stop on the availability of the VTC facilities. So I hope we can allocate the highest priority for our precious and limited time together on getting to consensus, or at least a majority vote, on some form of a final report.

Once we finish that task we can consider the substantive concerns over the draft minutes and delve into the procedural details of how we treat draft minutes, whether our minutes are intended to be transcript-like records, and whether someone has to listen to tapes to produce a new draft for the Task Force to consider and/or delegate the Chair to approve them on our behalf since we have no future meetings planned. I'm sure we will use whatever time is left for this conversation.

tnx, david

On Dec 5, 2008, at 9:18 PM, David Franzel wrote:

> Jay and other members of the Task Force,
>
> My apologies for making what I thought was a straight forward
> decision. I was trying to expeditiously address the issue so that
> the Task Force could concentrate on the crux of the Report.
>
> It appeared to me from the email that Member Sonobe was attempting
> to clarify his own comments based upon something that I perhaps did
> not catch given the speed at which I was being compelled to type
> given the number of comments and the fast speaking cadence of the
> meeting.
>
> I withdraw my comments regarding the revisions and defer to the
> Chair and the Task Force to direct me to the result that they feel

> is most appropriate.

>

> I look forward to seeing you Monday and to the ultimate completion
> of the report.

>

> David.

>

>

>

>

David Franzel

From: Jay April [jay@akaku.org]
Sent: Friday, December 05, 2008 6:22 PM
To: David Franzel
Cc: keo@keoinc.org; gtakase3@hotmail.com; roy.amemiya@centralpacificbank.com; gbenevides@co.hawaii.hi.us; eknutzen@kauai.gov; shelley.pellegrino@co.maui.hi.us; 'Hirata, Gregg'; Geri_Ann_Hong@notes.k12.hi.us; david@hawaii.edu; krollman@honolulu.gov; Clyde.Sonobe@dcca.hawaii.gov; Glen.WY.Chock@dcca.hawaii.gov; Laureen.K.Wong@dcca.hawaii.gov; Patti.K.Kodama@dcca.hawaii.gov
Subject: Re: HCR 358 - November 5, 2008 Draft Minutes

Eric,

With all due respect I object to this automatic, unilateral, unauthorized revision of the draft minutes because it omits substantive information included in the draft minutes. The proper way to do this is to consult the electronic recording of what was actually said and make any required or necessary corrections at Monday's task force meeting. It is highly improper for DCCA member Sonobe to unilaterally direct DCCA paid consultant Franzel to clarify or revise his comments as represented in the draft minutes without full Task Force involvement in that clarification and revision.

Best,

Jay April

On Dec 5, 2008, at 5:11 PM, David Franzel wrote:

> Task Force,
>
> FYI. The minutes will be revised to reflect Clyde's clarification of
> his comments.
>
> David.
>
> -----Original Message-----
> From: Glen.WY.Chock@dcca.hawaii.gov
> [mailto:Glen.WY.Chock@dcca.hawaii.gov]
> Sent: Friday, December 05, 2008 10:51 AM
> To: David Franzel; eknutzen@kauai.gov
> Cc: Clyde.Sonobe@dcca.hawaii.gov; Laureen.K.Wong@dcca.hawaii.gov
> Subject: Re: HCR 358 - November 5, 2008 Draft Minutes
>
> David and Eric,
> Clyde asked me to submit, on his behalf, the following amended
> language to the HCR 358 draft minutes of the Nov. 5th meeting:
>
> IV.- A.- "DCCA and Akaku have been working together for years and Mr.
> Collins Akaku has previously referred to it as a contract."
> " The Court ruling proposed rule only indicates that they will
> follow code, implementing law."
>
> V.-A.-iii.-3.-a. is confusing. This section needs to be rephrased
> along the lines of: "Member Sonobe-Not disregarding the work of the
> Task Force, DCCA is moving forward with rule making as it is required
> by law and any rule cannot conflict with State law."
>
> Thank you.
> Glen Chock
>
>
>

> Please include the following correspondence/memo for the Nov. 5, 2008
> meeting:
>
> Memo - Monday Nov. 2, 2008
>
>
> TO: HCR 358 Task Force, Chair: Eric Knutzen cabletv@dcca.hawaii.gov
>
>
> FROM: Community Media Producers Assn., Vice President: Ed Coll
> coll@kauai.net
>
>
> RE: Input for the HCR 358 Task Force:
> --qualifying criteria for organizations providing PEG services in
> Hawaii
>
>
> The Community Media Producers Association has researched and
> followed the
> procurement issue with regard to PEG Access television over the
> years. It
> is understood that the source of the funds is derived from state-
> mandated
> franchise fees. It is further understood that, other than a small
> administrative cost, these fees are to be used solely for public,
> education
> and government access services. This CMPA is aware the State
> Procurement
> Code and process may not be applied, and if the open bidding
> process will
> be replaced, then a new process must be defined.
>
>
> Because the services delivered by potential providers have freedom of
> speech implications, criteria should be established.
>
>
> This is a request for the HC R358 Task Force to require any potential
> contract recipient for PEG Access services in Hawaii to be a
> membership-based, nonprofit organization and comply with State Law
> Chapter
> 414D Hawaii Nonprofit Corporations Act. Also in their bylaws,
> compliance
> with open meetings and records are to be defined. To elucidate key
> points,
> please consider the following governance criteria and oversight
> recommendations:
>
>
> a. offer annual, publicly noticed, open elections for electing a
> minimum
> 7-member board using standard, fair nominations and elections
> practices (
> elected, not appointed, directors)
>
>
> c. define a member as any user of Public or Education or Government
> access
> in the service area who pays a one-time, nominal \$1 fee and
> provides and
> maintains an updated U.S. mailing address (annual membership
> drives/outreach documented)
>
>
> d. require candidates for the board to also be members

>
>
> f. require elected board members to complete a training within
> their first
> year after election on the importance of the voluntary application
> of open
> records and open meetings for membership-based nonprofit
> organizations and
> the bylaws that follow these principles (not just the "spirit" of
> sunshine,
> but actual compliance)
>
>
> e. require the PEG access organization conduct an annual member
> satisfaction survey for feedback on the effectiveness of their
> freedom of
> speech services (make document public)
>
>
> f. specify procedures and processes to ensure first-come,
> non-discriminatory access to the public channel
>
>
> g. require that personnel, equipment and services paid for by
> franchise
> fees shall be used solely to fulfill the scope of services of that
> DCCA
> contract
>
>
> Regarding government access, if a funded entity is to provide
> government
> access services only, then all funds received should be applied to
> that
> scope of services, and not diverted to other purposes. The equipment
> purchased and staff paid for by state-mandated franchise access
> fees may
> not be used to compete against other production companies for any
> other
> contracts. In others words, the entire sum received must be
> applied to
> freedom of speech services and not diverted to other purposes.
>
>
> If a funded entity is to provide public, education, and government
> access
> services, then equal resources will be expended equitably for each.
> Annual, independent audits are recommended.
>
>
> It is recommended that the DCCA or local County (whichever is
> designated)
> to continue to require an annual report on the fairness the election
> procedures and effectiveness of freedom of speech services
> provided. This
> awarded contract and any subsequent reports should be public documents
> posted on the DCCA website.
>
>
> (See attached file:
> Proposed_Regulations_PEG_access_designation_KLopezEdit.doc)
>
> <HCR358 Draft Minutes November 5 2008
> Meeting.doc><Proposed_Regulations_PEG_access_designation_KLopezEdit.do
> c>

David Franzel

From: Patti.K.Kodama@dcca.hawaii.gov on behalf of cabletv@dcca.hawaii.gov
Sent: Monday, December 08, 2008 11:38 AM
To: eknutzen@kauai.gov; David@davidfranzel.com
Cc: Glen.WY.Chock@dcca.hawaii.gov; Clyde.Sonobe@dcca.hawaii.gov; Laureen.K.Wong@dcca.hawaii.gov
Subject: Fw: Ed Coll short form Input for the HCR 358 Task Force

Ed Coll <coll@kauai.net>

To: cabletv <cabletv@dcca.hawaii.gov>

12/08/2008 09:59 AM

cc: eric <eric@knutzen.se>

Subject: Ed Coll short form Input for the HCR 358 Task Force

CMPA
1658 Liholiho #506
Honolulu, Hawai'i 96822

808 239-8842

Memo – December 8, 2008

TO: HCR 358 Task Force, Chair: Eric Knutzen

FROM: Ed Coll, , Community Media Producers Association member

RE: Input for the HCR 358 Task Force:

Aloha Task Force members,

A Plain reading of page 1 line 3 - 4 "PEG" is defined as "public, education, and government (PEG)", not "public, education, and government access organizations (PEG)". The legislature meant free speech rights of PEG "sectors" not the free speech rights of PEG "entities". Clearly the legislature meant this Task Force should take the first amendment rights of the public, educational institutions, and government agencies into account, not " (s)"?? It appears that unless something occurs in this final TF meeting the TF has chosen to ignore both their legislative mandate and Judge August's strong suggestion to not exclude the first amendment purpose of PEG Access.

12/8/2008

Public exercise of First Amendment speech was the congressional intent for public access when they passed the 1984 Cable Rights Act and has been the central concern of CMPA for over twenty years, and yet this issue continues to be ignored and violated by practices such as block programming.

Please correct this multi-year error now by including the following language in your final report;

The Task force recommends the following contractual language to assure the first amendment rights of Hawaii citizens;

1. The service provide shall provide first-come, nondiscriminatory access for the public on designated public access channel(s).
2. The service provider shall specify the rules, methods, and processes that will be used to assure first-come nondiscriminatory access.

Mahalo Ed Coll

David Franzel

From: David Franzel [david@davidfranzel.com]
Sent: Monday, December 08, 2008 8:57 AM
To: 'Jay April'; 'keo@keoinc.org'; 'gtakase3@hotmail.com'; 'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov'; 'shelley.pellegrino@co.maui.hi.us'; 'Hirata, Gregg'; 'Geri_Ann_Hong@notes.k12.hi.us'; 'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'
Cc: 'Glen.WY.Chock@dcca.hawaii.gov'; 'Laureen.K.Wong@dcca.hawaii.gov'; 'Patti.K.Kodama@dcca.hawaii.gov'
Subject: FW: Input for Dec. 8 HCR358 Task Force

Task Force,

Just received.

David.

From: Patti.K.Kodama@dcca.hawaii.gov [mailto:Patti.K.Kodama@dcca.hawaii.gov] **On Behalf Of** cabletv@dcca.hawaii.gov
Sent: Monday, December 08, 2008 8:00 AM
To: eknutzen@kauai.gov; David@davidfranzel.com
Cc: CATV-Staff@dcca.hawaii.gov
Subject: Fw: Input for Dec. 8 HCR358 Task Force

bain kauai net <bain@kauai.net>

12/07/2008 03:26 PM

To cabletv <cabletv@dcca.hawaii.gov>

cc eknutzen <eknutzen@kauai.gov>

Subject Input for Dec. 8 HCR358 Task Force

Memo – December 7, 2008

TO: HCR 358 Task Force, Chair: Eric Knutzen

FROM: Carol Bain, , Community Media Producers Association member

RE: Input for the HCR 358 Task Force:

This Task Force was asked to focus on several areas, including:

1) Solicit Public input

12/8/2008

- 2) Examine methods other than the Public Procurement Code process
- 3) Ensure proper checks and balances
- 4) Examine the selection process for PEG advisory board members
- 5) Recommendations made by the task force should take into account the first amendment rights of PEG
- 6) Submit a report of suggested policy changes

If this list is not complete, please let me know.

It is my understanding both the legislature and Judge August clearly wanted this task force to define how the first amendment rights would be addressed. In my opinion, the judge wanted individual users, particularly the public's first amendment rights, taken into account. Instead, this group decided to interpret the direction as the PEG organizations rights. Though members of this task force could easily have contacted the judge for clarification on this topic, none did.

Government and Education users continue to dominate the services and resources, leaving the Public with little support. From the discussion I have heard at the few task force meetings I attended, current receivers of the sole source funding do not want checks and balances or accountability. They continue to snipe at each other, are not sincerely seeking good alternatives, and only see a threat to their personal cream stream.

Providing PEG access is not a life and death service, such as those that provide the emergency telephone (E-911) communications services in this state. Nevertheless, those service providers comply with the state procurement code and the system serves the community well. Procurement code compliance encourages competitiveness, new solutions and efficient use of technology, especially for communications-related services. The fact remains that PEG services could be provided by others and there is nothing unique about the current service providers.

Please list the number of outreach efforts, press releases, public announcements, etc. other than the website listings. Basically, unless someone was already aware of this issue and using search engines, they would not know about this task force or when and where the meetings were or how this issue may impact their lives. I commend the chair for allowing access to the minutes and for using the website, so that those who were aware could find out about the meetings.

I see this HCR358 Task Force effort as a delaying tactic so the current sole-source receivers of state-mandated access fees are allowed to continue to expend several million dollars annually with little accountability. I have been to some of your meetings and from the minutes I have read and the discussion I witnessed, this task force has not accomplished key issues above. Even so, I think this task force should submit a final report. I do not think the current task force is able to accomplish their tasks. Thank you for including my input today and my Nov. 2, 2008 input.

Carol Bain

12/8/2008

David Franzel

From: David Franzel [davidfranzel@hawaii.rr.com]
Sent: Tuesday, December 02, 2008 4:35 PM
To: 'Jay April'; 'keo@keoinc.org'; 'gtakase3@hotmail.com';
'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov';
'shelley.pellegrino@co.maui.hi.us'; 'Hirata, Gregg'; 'Geri_Ann_Hong@notes.k12.hi.us';
'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'
Cc: 'Glen.WY.Chock@dcca.hawaii.gov'; 'Laureen.K.Wong@dcca.hawaii.gov';
'Patti.K.Kodama@dcca.hawaii.gov'
Subject: FW: For distribution



Document.pdf
(527 KB)

Task Force,

Attached please find correspondence received by me this afternoon.

David.

-----Original Message-----

From: Eric Knutzen [mailto:eknutzen@kauai.gov]
Sent: Tuesday, December 02, 2008 4:10 PM
To: David Franzel
Subject: For distribution

Hi, David

Pls distribute the attached to the Task Force members,

Eric

LINDA LINGLE
GOVERNOR



MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

December 1, 2008.

Mr. Eric Knutzen
Chairperson
H.C.R. No. 358, H.D. 1, Task Force
Kapuli'e Building
4444 Rice Street, Suite #427
Lihue, Hawaii 96766

Dear Chairperson Knutzen,

Re: Your November 12, 2008 Letter

This is in response to your November 12, 2008 letter that was submitted on behalf of the HCR No. 358 (2008) Task Force. According to your letter, the Task Force requests our office to review a proposed process for PEG access organization renewals that is similar to the cable television franchise renewal process, and that the proposed process be adopted by the Department of Commerce and Consumer Affairs ("DCCA") as an alternative to the Procurement Code ("Code") in Hawaii Revised Statutes chapter 103D. Enclosed with your letter was a description of this alternative process and draft rule amendments that the Task Force intends to submit in its report to the Legislature. You subsequently asked whether this approach can be legally accomplished, and what steps are needed legislatively or administratively to effectively complete this proposed process.

As you are aware, DCCA is in the process of amending its administrative rules to specifically state that PEG access organizations shall be designated and selected in accordance with the Code. DCCA amended its administrative rules because of the State Procurement Office's ("SPO") determination that DCCA's contracts with the PEG access organizations are subject to the Code, and Judge Joel E. August's determination that the method and criteria DCCA uses to designate and select PEG access organizations must be set forth in an administrative rule.

Mr. Eric Knutzen
Page 2
December 1, 2008

Although the Task Force is properly exploring alternative methods to oversee PEG expenditures and ensure proper checks and balances in accordance with the mandate of HCR No. 358, H.D. 1 (2008), we believe that the alternative process in the Task Force's proposed rules conflicts with existing law.

We believe that the adoption of any method other than the Code to designate and select PEG access organizations requires a specific statutory amendment or authority. DCCA's proposed rule is based on and is consistent with the Code. The Task Force's proposal does not arise from any interpretation or authorization under the Code but proposes an alternative which must be provided for by statute. Thus, we believe that the Task Force must first draft appropriate legislation to accomplish the intent of its proposed process.

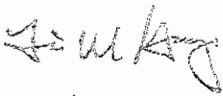
Accordingly, we believe that it is premature to provide comments on the specific provisions in the Task Force's proposed rules. However, we reserve our right to provide comments on these proposed rules if and when specific legislation is passed authorizing a method other than the Code.

Thank you for your letter and inquiry.

Very truly yours,

Rodney J. Tam
Deputy Attorney General

APPROVED:



for Mark J. Bennett
Attorney General

David Franzel

From: Jay April [jay@akaku.org]
Sent: Thursday, December 04, 2008 10:30 PM
To: Eric Knutzen; David Lassner; David Franzel; Shelley Pellegrino
Cc: keo@keoinc.org; gtakase3@hotmail.com; Roy Amemiya; Gilbert Benevides; Gregg Hirata; Geri Ann Hong; krollman@honolulu.gov; Clyde Sonobe
Subject: Final Report Language

Aloha Mr. Chairman, David, Shelley and Members of the Task Force,

Thank you all, especially David Lassner, Shelly, Roy and Keali'i for your thoughtful consideration, hard work and diligence in crafting this. I apologize for getting this out to you later than I would of liked. I have added suggested minor language changes in the attached revision (IN BOLDED CAPS AND UNDERLINED) to incorporate and bolster two PEG Access core values which are localism and diversity of viewpoint I am hoping that you will all have a chance to review and comment if you wish so on Monday we can reach a consensus on the report and on the contents of Exhibit 1.

Best,

Jay April

12/14/2008

Introduction

A Task Force pursuant to HCR358, HD1 was established to solicit public input and examine methods other than the Public Procurement Code to oversee PEG expenditures and ensure proper checks and balances; to examine the selection process for PEG advisory board members; and in so doing, take into account the first amendment rights of PEG. HCR358, HD1 called for the Task Force to submit a report of suggested policy changes to the Legislature no later than 20 days prior to the convening of the Regular Session of 2009.

Following the Legislative Session, members of the Task Force were appointed in accord with the requirement of the resolution and a facilitator was hired by the DCCA to support the work of the Task Force. The first Task Force meeting was held on June 30, 2008 and the group met continuously and diligently via videoconferencing until its final meeting on December 8, 2008.

The following section sets forth the five policy recommendations of the Task Force. The Task Force is additionally providing all its agendas, minutes, working papers and all written input received from the public as supporting documentation to this report.

Recommendations

Based upon public input received and its own analysis of the regulatory and legislative framework, the Task Force submits the following recommendations.

- (1) The Legislature should exempt the designation of PEG access organizations from the provisions of the State Procurement Code.**
- (2) Should the designation of PEG access organizations not be exempted from the State Procurement Code, the Task Force recommends that the designation of PEG access organizations be exempt administratively from the competitive requirements of the State Procurement Code on the grounds that competitive procurement is not practicable or advantageous to the State.**
- (3) The Task Force recommends that in place of competitive procurement, the DCCA be charged with adopting Administrative Rules that guide a new process for the renewal of the current PEG Access organizations in a manner that is similar to the process used by the DCCA for the renewal of cable franchises, a process that is already well-understood by the DCCA and the public. This process should provide ample opportunity for input by the public FROM EACH ISLAND THAT INCORPORATES LOCAL FRANCHISE AREAS and ALLOW for interested parties TO INTERVENE. A sample set of draft rules is set forth for consideration as Exhibit 1.**

Additionally, the Task Force has reviewed the pertinent sections of the bylaws governing the selection of board members for each of the PEG Access organizations. The Task Force notes that these organizations are required to comply with laws governing non-profit organizations and believes that the DCCA should not have any authority to require a PEG Access organization to change its board selection process as a condition to designation. Therefore, the Task Force recommends that:

(4) The process for renewal of the designation of PEG Access organizations should require each PEG Access organization to provide its processes for selection of board members and any changes proposed. This will be made available for public comment and reviewed as part of the renewal process, but the DCCA should not have any authority to require that an organization's board selection process be changed.

Similarly, the Task Force has engaged in discussion regarding the first amendment rights of PEG and the expectation that non-discriminatory access be provided. The Task Force recommends that:

(5) PEG Access organizations should provide information regarding their past performance and proposed practices for ensuring that PEG Access supports the DIVERSITY OF VIEWPOINTS and non-discriminatory first amendment rights of the diverse members of the LOCAL communities they serve. This will be made available for public comment and reviewed as part of the renewal process.

Task Force Members

(list task force members & affiliations)

Exhibit 1

(Roy's sample draft rules)

Attachments

(agendas, minutes, working papers, bylaws, written public testimony received)

From: David Franzel [mailto:david@davidfranzel.com]
Sent: Friday, December 05, 2008 4:58 PM
To: 'Jay April'; 'keo@keoinc.org'; 'gtakase3@hotmail.com';
'roy.amemiya@centralpacificbank.com'; 'gbenevides@co.hawaii.hi.us'; 'eknutzen@kauai.gov';
'shelley.pellegrino@co.maui.hi.us'; 'Hirata, Gregg'; 'Geri_Ann_Hong@notes.k12.hi.us';
'david@hawaii.edu'; 'krollman@honolulu.gov'; 'Clyde.Sonobe@dcca.hawaii.gov'
Cc: 'Glen.WY.Chock@dcca.hawaii.gov'; 'Laureen.K.Wong@dcca.hawaii.gov';
'Patti.K.Kodama@dcca.hawaii.gov'
Subject: FW: Letter from Clyde Sonobe on Task Force proposal

Task Force,

For your information.

Please confirm your status for Monday's meeting.

Thanks.

From: Laureen.K.Wong@dcca.hawaii.gov [mailto:Laureen.K.Wong@dcca.hawaii.gov]
Sent: Friday, December 05, 2008 4:24 PM
To: eknutzen@kauai.gov
Cc: david@davidfranzel.com; Clyde.Sonobe@dcca.hawaii.gov; Glen.WY.Chock@dcca.hawaii.gov;
Patti.K.Kodama@dcca.hawaii.gov
Subject: Letter from Clyde Sonobe on Task Force proposal

Eric,

Here is a copy of a letter to you from Clyde Sonobe on the HCR 358 Task Force proposals along with the attached exhibit.

Laureen Wong



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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Fax Number: 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

December 5, 2008

Via Facsimile 808-241-6266

Mr. Eric Knutzen
Chairperson
H.C.R. No. 358, H.D. 1 Task Force
4444 Rice Street, Suite 427
Lihue, HI 96766

Re: Draft Recommendations from November 5, 2008 Task Force Meeting

Dear Mr. Knutzen:

The Department of Commerce and Consumer Affairs ("DCCA") submits the following comments on the draft recommendations from the November 5, 2008 Task Force meeting (as prepared and offered by David Lassner on November 17, 2008), and the proposed rules prepared by Olelo and offered by Roy Amemiya at the November 5, 2008 Task Force meeting:

Recommendation #1: DCCA has previously supported the exemption of PEG access organization contracts from the state procurement code, before both the State Procurement Office and the Legislature. DCCA expects to maintain this position. If the Legislature exempts PEG access services contracts from the Procurement Code as called for in Recommendation #1, and if the Legislature wishes to influence or direct DCCA to follow some other specific process, DCCA recommends that the Legislature state its preference for a specific process in the law.

Recommendation #2: Insofar as the recommendation is made to the Executive Branch, it is contrary to the lead Executive Branch agency's determination on the subject (the State Procurement Office has declined, on several occasions, to exempt PEG contracts from the procurement code).

Recommendation #3: DCCA previously expressed its concerns over the draft rules in its comments dated November 3, 2008. A copy of that communication is

attached as Exhibit A to this letter. In particular, DCCA is concerned over (1) adopting a process that is designed for a competitive service (cable franchises are not exclusive) upon a service that the Task Force proposes be made non-competitive (the draft rules would make the existing PEG organizations the only organizations allowed to provide PEG services within their respective jurisdictions); and (2) incorporating into the PEG renewal process various duplicative and cumbersome forms of public challenge (e.g., contested case hearings) that appear designed to discourage change and better ensure the monopolist position of the incumbent PEG service providers. As noted above, DCCA recommends that if the Legislature wants the department to apply any particular form of process in conducting the renewal process, that it so designate that form in the law.

Earlier today, amendments were offered to Recommendation #2, which would allow interested parties to intervene in an access organization's renewal. DCCA is not clear as to exactly what is intended by this amendment. As stated previously in the November 3, 2008 letter, the proposed rule applies the existing cable franchise award and renewal process to PEG entities and includes a public hearing, formal reconsideration process and a contested case hearing process. DCCA does not agree that a contested case proceeding is an appropriate process for the renewal of the designation of access organizations especially if interested parties are allowed to intervene. A renewal process envisioned by the proposed Olelo rule could conceivably result in a protracted, cumbersome, costly process with multiple parties, diverting resources away from the incumbent access organizations, potential access organizations and the Department.

With regard to the issue of PEG organization board member selection, DCCA removed itself entirely from this process several years ago. Even before that, DCCA's role was minimal as it received membership suggestions from the boards themselves and selected only among the candidates nominated by the boards. Nevertheless, if the Task Force considers the issue to be significant enough to warrant addressing in the law, DCCA agrees that it should have no role in selecting access organizations' board members.

Recommendation #4: DCCA has no objection to the concept addressed in the proposal (apart from noting as we did above that it may not be an issue that needs to be addressed in the law), but would recommend that if the issue of board member selection is to be "reviewed as part of the renewal process," that some guidance be provided as to what the goal is, and against which a PEG organization's board membership selection process can be measured. Without that guidance, neither DCCA nor the public will know how to determine whether a PEG organization's membership selection process is good or bad. In addition, DCCA recommends that the Legislature provide guidance as to the sanction to be imposed for failure to adopt a satisfactory board membership selection process.

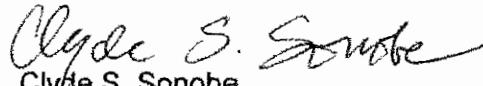
Mr. Eric Knutzen
December 5, 2008
Page 3

Recommendation #5: DCCA again has no objection to the underlying concept, but notes that the recommendation is equally as vague as the prior recommendation. Without further guidance as to goals and remedies, DCCA and the public will have no realistic way to evaluate or act upon information to be provided.

DCCA strongly recommends that if the Legislature adopts legislation that exempts access organization from the Public Procurement Code, the Legislature also express its intent as to the process for the designation of access organizations. However, while DCCA recognizes the work of the Task Force in the development of the proposed rules, the Department must promulgate rules consistent with applicable law. As DCCA has indicated previously, we have concerns about the basic premise of the proposed rules for the renewal of access organizations and specific procedures. Without further legislative guidance, the Department will apply its own judgment in adopting appropriate administrative rules for the designation of access organizations consistent with applicable law.

Thank you for your consideration and the opportunity to comment.

Sincerely,


Clyde S. Sonobe
Cable Television Administrator

Enc.

c: Lawrence M. Reifurth