

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

MINUTES OF MEETING

Date: January 31, 2014

Time: 9:00 a.m. – 12 noon

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

CAC MEMBERS: Austin Vali, Beth Tokioka, and Gerry Silva

OTHERS: Kealii Lopez, Director; Catherine Awakuni, CATV Administrator; Laureen Wong, CATV Staff Attorney; Glen Chock, CATV Staff; Ji Sook Kim, CATV Staff Attorney; and Lynn Suekawa, CATV Secretary

AGENDA: The agenda for this meeting was filed with the Office of the Lieutenant Governor.

- I. Call to Order – The meeting was called to order at 9:00 a.m.
- II. Introduction of new CATV Staff – Catherine Awakuni, CATV Administrator; Ji Sook Kim, CATV Staff Attorney; and Lynn Suekawa, CATV Secretary
- III. Minutes of the November 13, 2012 meeting – There were no questions about the minutes, which were then accepted by the CAC.
- IV. Update on Pending Matters
 - A. Oceanic Time Warner Cable’s (“OTWC”) Renewal of East Hawai`i and West Hawai`i Cable Franchises – Extended to February 19, 2014

Director Lopez stated that the Cable Television Division of the Department of Commerce and Consumer Affairs (“DCCA”) was still working with OTWC on finalizing the remaining issues for the renewal of the Hawai`i Island franchises, which had been extended to February 19, 2014. Mr. Silva inquired whether there will be one or two franchises issued for the Big Island. Director Lopez stated that DCCA was considering OTWC’s request for a single consolidated franchise.

B. Oceanic Time Warner Cable's ("OTWC") Renewal of Maui County and Lahaina Cable Franchises – Extended to June 30, 2014

Ms. Awakuni informed CAC members that public hearings were held on Maui, Molokai, Lanai, and Lahaina in October and November 2013 and that the allpublic comments were being reviewed. Director Lopez added that DCCA will be considering State and County INET needs. Mr. Silva expressed concerns regarding high speed Internet access in rural areas and whether anything can be done to improve speeds. Mr. Vali commented that internet access in rural areas should be on par with non-rural areas.

C. OTWC Petitions for Effective Competition – Hawai'i Island Petitions granted by FCC

Director Lopez stated that OTWC filed two petitions (Big Island and Oahu) for effective competition with the FCC. Ms. Awakuni stated that on December 3, 2013, the FCC granted OTWC's Big Island petition for effective competition on Hawai'i Island but that OTWC's Oahu petition was still pending.

D. Decision & Order No. 346, OTWC's Oahu Cable Franchise, Deputy Director's Final Order Regarding the Amount of Capital Fund Payments for 2012 to 2014 for Government PEG Access Programming Facilities and Equipment at the Hawai'i State Capitol and for the City and County of Honolulu Administration – Contested Case Proceeding

Ms. Awakuni stated that DCCA is working with OTWC, `Ōlelo and the City and County of Honolulu on a possible settlement of this matter, and noted that if there was no settlement the evidentiary hearing will begin in April 2014 with motions due in March 2014. Ms. Tokioka questioned whether the settlement could impact the Neighbor Island PEGs or whether it would only impact Oahu. Ms. Awakuni stated that she was not certain what the reach of the settlement will be at this time. Director Lopez added that she was unable to go into the details of the settlement due to confidentiality issues. Ms. Tokioka commented that if the settlement impacted Neighbor Island PEGs, the Neighbor Island PEGs should be allowed to participate.

E. Set Top Box Distribution to Subscribers to View PEG Access Channels – Report by Oceanic Time Warner Cable

Director Lopez commented that this matter dealt with the migration of access channels from analog to digital.

Bob Barlow, President of OTWC, stated that he currently did not have island specific numbers and that, to date, approximately 2,000 free set top boxes were distributed. He noted that Channel 49 was changed from analog to digital and that the educational channels had migrated to digital format as well. Mr. Barlow stated that subscribers could request a set top box (known as a digital transport adapter or DTA) and that there is no charge for these set top boxes at this time. Mr. Silva commented that during the last CAC meeting OTWC stated that they would provide figures by franchise and requested that OTWC provide those numbers. Mr. Barlow responded that most of the set top boxes were distributed on Oahu and Maui as opposed to the other islands (*later Mr. Barlow provided more concrete figures by franchise – see Section VI.D, Public Comment, below*).

F. Hawaiian Telcom Services – System Update of its Video Services

Lester Chu of Hawaiian Telcom Services Company, Inc. (“HTSC”), provided the update of HTSC’s Oahu franchise. Mr. Chu disclosed that he is a new board member of `Ōlelo.

Mr. Chu reported that as of the 3rd quarter of 2013, HTSC had 15,800 subscribers of its video service and that 111,000 households on Oahu were enabled to receive HTSC’s service. Fourteen percent of the enabled households are HTSC’s customers. HTSC provides service through an IP-based platform. HTSC customers have access to 130 HD channels (an increase from 100 channels).

Mr. Chu stated that 90% of customers that take HTSC’s TV service also receive broadband service and/or phone service as well – through bundles. Mr. Chu informed the CAC that while HTSC was looking to expand to the neighbor islands in the future, there are no plans at this time. Mr. Silva asked generally which areas of Oahu are enabled. Mr. Chu responded that, while initially HTSC had focused on certain neighborhoods, HTSC is now trying to rollout the service to all areas as soon as possible. Director Lopez noted that HTSC’s Oahu franchise required build-out of HTSC’s infrastructure to provide video service in all areas of Oahu, but that the timetable for full build-out was the life of the franchise. Director Lopez stated that the amounts HTSC pays in franchise fees and fees to the Oahu PEG access organization would be provided to CAC members.

V. New Business

A. PBS Hawai'i – Presentation by Leslie Wilcox on programming update and new building facility

Leslie Wilcox represented PBS Hawaii and provided a video (with audio) presentation and distributed copies of PBS Hawai'i's program guide (February 2014, Vol. 32, No. 2) .

Ms. Wilcox expressed gratitude on behalf of PBS Hawai'i for the receipt of 1% of cable franchise fees. She noted that PBS Hawai'i is the only broadcast station that provides statewide quality programming for children and other non-commercial programs (i.e., Downton Abbey, Frontline) and that PBS Hawai'i is the only member within the state of the national Public Broadcasting Service. Ms. Wilcox also noted that PBS Hawai'i has the nation's first statewide student news network, Hiki No, with participation of 50% of neighbor island schools, and the station also provides traditional Hawaiian music, Hawaiian cultural programming, and quality programs on local events and stories.

When asked about viewership numbers, Ms. Wilcox stated that while she did not have Hawaii specific numbers, national viewership of PBS programming was experiencing gains (i.e., 20% increase in some areas). Ms. Tokioka commented that she was impressed with the PBS Hawai'i's program on transgender students. Ms. Wilcox noted that the program was produced by Waianae students who were also winning national awards for other productions. Ms. Wilcox informed the CAC that franchise fees represent more than 40% of PBS Hawai'i's revenues, and that fundraising was increasing each year.

Ms. Wilcox mentioned that PBS Hawai'i has requested state funds to help in its capital campaign, and Director Lopez acknowledged that there was a measure before the Legislature which would allocate \$2 million for PBS Hawai'i's building fund.

B. 'Ulu'ulu: Henry Ku'ualoha Giugni Moving Image Archive of Hawai'i – Presentation by Heather Giugni, Funding for the State's official Moving Image Archive

Heather Giugni spoke on behalf of 'Ulu'ulu and during her presentation video slides of 'Ulu'ulu's works and efforts were shown.

Ms. Giugni stated that `Ulu`ulu was physically located at the UH-West Oahu campus. She noted that `Ulu`ulu is a community effort and that it was designated by the Legislature as the official State archive for moving images; and that `Ulu`ulu preserves images digitally and moves them online to make them assessable to the public at no cost. Ms. Giugni noted that much of Hawaii's moving images have been lost or are no longer available (estimates of up to 80%). Ms. Giugni stated that `Ulu`ulu has partnered with KITV, KGMB and other organizations to collect footage, catalog, clean, digitize and backup the images in an effort to preserve them. She noted that the images are on `Ulu`ulu's website (Uluulu.hawaii.edu) and that individuals are able to access information and conduct research on various topics on its site without costs (no password needed). According to Ms. Giugni, the difference between `Ulu`ulu and YouTube is the metadata.

Ms. Giugni clarified that while access to the images are free, `Ulu`ulu does not own the images and that if any organization or persons wanted to use the images they would need to contact the original contributors (i.e., owner) of the images. Mr. Vali noted that it was a very expensive public endeavor and asked about `Ulu`ulu's community outreach. Ms. Giugni also noted that `Ulu`ulu works with the public to educate them on the importance of preserving their footages and stated that they also help members of the public to digitize their images. Ms. Tokioka asked whether the images on `Ulu`ulu's website were captioned, to which, Ms. Giugni stated that they were working towards it. Mr. Silva asked how `Ulu`ulu identifies the people on the images. Ms. Giugni responded that they are working to get input from the public and that they have plans to capture metadata of the images.

C. `Ōiwi TV -- Nā'alehu Anthony, Funding Request

Nā'alehu Anthony spoke on behalf of `Ōiwi TV and passed out a one-page, double sided informational sheet regarding the organization. Mr. Anthony began his presentation with greetings and introductions in the Hawaiian language.

Mr. Anthony stated that there are many things that make Hawai`i special and stressed that the Hawaiian people and their language are unique. Mr. Anthony noted that partnerships with other organizations are important and that they have worked with `Ulu`ulu and that they have had programs on PBS Hawai`i. According to Mr. Anthony, with the Hawaiian language revitalization there has been growth in native speakers to 15,000. Video-on-demand made it possible to have a Hawaiian TV channel. He reported that `Ōiwi TV provides the views and perspectives of Hawaiian, and

content that depicts positive views of the communities of Hawaii by Hawaiians.

Mr. Anthony noted that `Ōiwi TV will be a media partner with Hōkūle`a this coming May. He stated that media is important and noted the importance of building content that provides positive views of Hawai`i and its culture. He stated that `Ōiwi TV began in 2009 with federal and state grants and that this is an opportunity to see if `Ōiwi TV belongs within the perspectives of the DCCA. He stressed the importance of partnerships and stated that `Ōiwi TV is working with `Ōlelo to share content.

Ms. Tokioka stated that the presentation was amazing and that `Ōiwi TV was worthy of sustained/dedicated funding. She encouraged Mr. Anthony to put a funding request together for the DCCA to consider. Mr. Anthony noted that with dedicated funding `Ōiwi TV can be leverage for more funding from other sources. Director Lopez commented that `Ōiwi TV has gotten funding from the Office of Hawaiian Affairs ("OHA"). In response, Mr. Anthony clarified that they got funding for two years (\$500,000 each year -- \$250,000 from OHA and \$250,000 from the Legislature).

Mr. Silva questioned whether the DCCA was still collecting less than 5% in franchise fees. Director Lopez stated that federal law allows the collection of up to 5% of a cable operator's gross revenues as franchise fees. Director Lopez stated that the current cable operators provide 3% of franchise fees to PEGs, 1% to PBS Hawaii and 0.64% to the DCCA. She reported that Letter Orders were recently issued to OTWC and HTSC to collect the full 5% from the cable operators. She noted that the increase is needed for expanded broadband activities the DCCA oversees, and for the DCCA's financial and management reviews of the PEGs. Director Lopez also stated that there are more organizations and projects that are requesting funding and that there is a need to figure out how funding should be allocated to different organizations. She stated that the increase will appear on OTWC's and HTSC's April 2014 bills which will result in a \$0.20 to \$0.30 increase to each subscriber's bill on an ongoing basis. Director Lopez stated that criteria needed to be developed to decide upon the various funding requests, and stated that she wants assistance from the CAC on reviewing and the developing the criteria.

D. PEG Supplemental Contracts to June 30, 2014 and 1st Payment of 2014 Fees

Director Lopez commented that the legislation regarding the designation of PEGs would have ended (i.e., sunset) as of June 2014. She noted that new legislation was introduced this session to repeal the sunset provision of the legislation. Director Lopez also noted that PEG contracts have

been extended to June and that the PEGs were given 50% of their funding for this year. She noted that through the Oahu proceeding, the DCCA attempted to address matters that were important to the State, namely requiring that one channel be dedicated to State programming for each of OTWC's franchises and that OTWC similarly dedicate one channel for each County government. The DCCA decided to address it during the Oahu proceeding rather than wait until each neighbor island franchise came up for renewal. Director Lopez noted that the Oahu franchise services would not bind the neighbor island PEGs, but she noted the matters may be part of the discussions during each of the PEG designation proceedings. She recognized that each PEG has unique aspects to their PEG designation.

Director Lopez stated that she is targeting to hold the next CAC meeting during late February 2014 or early March 2014 and asked each member to check their availability. She indicated that the next meeting will be dealing with PEG designations and stated that she will be soliciting input from members on PEG access performance metrics and what types of areas and outcomes should be reviewed and measured.

When Director Lopez asked CAC member what other matters should be discussed during the next meeting, Ms. Tokioka responded that the meeting should include an update of the 2014 legislative session. Director Lopez stated that DCCA provided testimony on a bill which would remove the sunset provision of Act 19, the PEG designation statute. With respect to this measure, Director Lopez noted that the DCCA has requested that the Legislature also remove the requirement that DCCA conduct annual financial audits of the PEGs given that the PEGs are already required to submit audited financial statements to the DCCA on an annual basis.

VI. Public Comment

- A. J. Robertson – Ho`ike. Mr. Robertson acknowledged the extension of Ho`ike's PEG contract and the release of 50% of the funding was piecemeal funding, making it difficult to develop an annual budget. Mr. Robertson noted that Ho`ike had submitted its application for PEG designation in 2012. Mr. Robertson stated that the funds Ho`ike receives are adequate and that they have a good working partnership with the cable operator on Kauai.
- B. Jay April – Akaku. Mr. April focused his comments on Decision and Order No. 346 ("D&O"), regarding OTWC's Oahu cable franchise renewal (*see above for a discussion*), and related matters. According to Mr. April, the D&O was badly drafted. He commented that `Ōlelo's arbitration

proceeding with OTWC resulted in `Ōlelo spending over \$250,000 in attorneys' fees. He noted that the draft stipulation perpetuates the dysfunction of the past and that the stipulation was harmful to the Neighbor Island PEGs. Given this, Mr. April stated that Akaku will be intervening into the proceeding and that the DCCA should expect filings for intervention by Akaku and the other PEGs. There were no questions or comments from CAC members.

Director Lopez stated that Mr. April was referring to a confidential draft stipulated agreement that had not been released to the public. Director Lopez stated that DCCA and the Governor want to keep P-E-G together. She noted that there was miscommunication occurring with respect to the contents of the document and that the settlement discussions that were occurring are confidential.

- C. Roy Amemiya – `Ōlelo. Mr. Amemiya mentioned the capital fund arbitration proceeding and how much funding `Ōlelo would be provided by OTWC for government equipment and facilities. `Ōlelo submitted its application for PEG designation in November 2011 and that it is awaiting a decision on the application, but noted that the PEG designation proceeding was contingent on the settlement proceeding concluding.

Mr. Amemiya stated that `Ōlelo was governed by a fifteen member board and that a representative from HTSC and OTWC were recently named to the board. He noted that `Ōlelo's service model included Community Media Centers ("CMC") that are located at six schools around Oahu. Mr. Amemiya stated that there was some confusion with respect to running the CMCs. He noted that the schools provide space to `Ōlelo rent free, and stated that the schools also provide parking and other amenities free of charge. Mr. Amemiya mentioned that `Ōlelo only pays \$100/month for electricity to one school (with five of the six schools waiving this expense). There were no questions or comments from CAC members.

Director Lopez stated that the development of the template that was mentioned early was delayed. She noted that with respect to the PEG designations, the scope of work and various terms may vary and that the term (or length) of the designation will be part of the negotiations. She acknowledged that the PEG designation processes have been delayed and stated her intent to address these matters as quickly as possible.

- D. Bob Barlow – OTWC. As a follow-up from his earlier statement (*see Section IV.E, above*), Mr. Barlow took this opportunity to provide CAC members with the number of set top boxes distributed by OTWC by franchise. Based on information he received, at that time, Mr. Barlow

reported that 2,368 free set boxes were distributed throughout the State: (1) 1,680 on Oahu; (2) 281 on Maui; (3) 246 on the Big Island; and (4) 161 on Kauai.

Mr. Silva asked that the next CAC meeting be held during a Legislative recess period. In response, Director Lopez stated that while it may be difficult, the DCCA will try to schedule the next CAC meeting during a legislative break.

[After the CAC meeting, via e-mail to the DCCA, Mr. Barlow updated the information he provided during the CAC meeting since these figures included free set boxes that were part of another promotion. He clarified that OTWC distributed a total of 1,413 free box sets: (1) 1,046 on Oahu; (2) 141 on Maui; (3) 115 on the Big Island; and (4) 111 on Kauai. This updated information was forwarded to CAC members via e-mail dated January 31, 2014.]

VII. Announcements – None.

VIII. Adjournment – The meeting was adjourned at 10:59 a.m.

Taken and recorded by:

Ji Sook Kim

Date: _____