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TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER
PROTECTION AND AFFORDABLE HOUSING

THE TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Friday, February 8, 2008
9:00 a.m.

TESTIMONY ON S.B. 2618 -- RELATING TO PUBLIC ACCESS

TO THE HONORABLE RUSSELL S. KOKUBUN, CHAIR AND MEMBERS OF THE
COMMITTEE:

My name is Clyde Sonobe, Cable Television Administrator, Department of
Commerce and Consumer Affairs ("Department"). The Department takes no position on
whether an audit by the Legislative Auditor of the PEGs is warranted; however, the
Department stands ready to cooperate to the extent required.

In Section 1 of the bill, vague generalized allegations of wrongdoing by the
Department are mentioned without any specific information as to the charges and the
source of such accusations. While the Department considers many of the remarks in
the bill's prefatory section to be unfounded and specious, it is difficult to respond to the
accusations without more detailed information on each of the allegations.

In addition, suggestions of self-dealing between the cable operator, Department and access organization boards are not only unclear but appear to be based on erroneous, out-dated information. Since September 2006, the Department no longer appoints directors to boards of the PEG access organizations, and the access organizations are free to determine, after consultation and discussion with the cable operator, their own policies with regard to any directors appointed by the cable operator.

Lastly, regarding the Office of Information Practices' opinion that PEG access organizations should be considered agencies of the State for purposes of the Uniform Information Practices Act, chapter 92F, HRS, Olelo, the PEG access organization on Oahu, brought a declaratory judgment against OIP. On December 21, 2007, the Hawaii Supreme Court determined that Olelo was not an agency subject to the UIPA.

Thank you for the opportunity to provide comments on this measure.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Commerce, Consumer Protection, and Affordable Housing

From: Paul T. Tsukiyama, Director

Date: February 8, 2008, 9:00 a.m.
State Capitol, Room 229

Re: Testimony on S.B. 2618
Relating to Public Access

Thank you for the opportunity to submit testimony on S.B. 2618.

The Office of Information Practices ("OIP") takes no position on the substance of this bill, but would like to clarify the status of the public, educational, and governmental access organizations ("PEGs") under the public records law, chapter 92, HRS, the Uniform Information Practices Act (Modified) (the "UIPA").

The Hawaii Supreme Court has recently ruled that Ōlelo: The Corporation for Community Television, the PEG for the island of Oahu, is not subject to the UIPA because it is not a "government agency" as defined under the UIPA. See Olelo v. Office of Information Practices, 173 P.2d 484 (2007). Applying the same reasoning of the Supreme Court, the remaining PEGs do not fall within the definition of "government agency" and thus are also not subject to the UIPA. Accordingly, the Supreme Court's decision effectively overturns OIP's 2003 opinion referenced in this bill.

Thank you for the opportunity to testify.

**Testimony on S.B.2618
Relating to Public Access
Senate Committees on Commerce, Consumer
Protection and Affordable Housing and
Ways and Means
Keali'i Lopez, President and CEO of 'Ōlelo Community Television
February 8, 2008**

Senator Kokubun, Senator Baker, Senator Ige, Senator Tsutsui. Members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing and the Senate Committee on Ways and Means. Aloha. I'm Keali'i Lopez, president and CEO of 'Ōlelo Community Television, and I am here to testify on S.B.2615. We have concerns regarding this bill for two reasons.

First, we believe that audits already in place make this measure unnecessary. These include annual audits that have always been required by our contract with the Department of Commerce and Consumer Affairs, and additional audits which the DCCA can, and has, implemented. Second, the premise that PEG access organizations are State Agencies for the purpose of UIPA is inaccurate.

Let me begin by saying that we are a non-profit 501(c)3 organization that has been under contract with the DCCA since January 19, 1990. Under those contracts, we provide Public, Educational and Governmental access to the cable system on O'ahu. An annual audit and a report to the DCCA have been contract requirements from the very beginning.

The audits are done by an independent auditing firm, and they are rigorous. I want to point out that after each audit; we received an "unqualified" opinion by those independent auditors. An "unqualified" opinion means that the auditors performed an extensive examination of our financial records and had no reservations regarding the accuracy and fairness of our presentation, as well as the application of generally accepted accounting principles.

In addition, the DCCA has elected to have additional reviews of our operations done by firms with specific experience in PEG functions. In November 2004 we underwent such a review by Merina and Company, an auditing firm based in Oregon. The extensive review was conducted to assess our financial and operational management policies as well as our procedures and practices.

It included a review of our compliance with the DCCA contract, the accuracy of our financial statements, the degree to which we adhered to our operational and technical procedures and standards, and a variety of other assessments.

Last year, the DCCA again engaged Merina to do a 100 percent physical inventory of our assets. Clearly, the State has exercised its option to review our unique operations and has done that by contracting a firm with particular expertise in PEG functions.

Now, let me turn to the premise that PEGs are state agencies. This is based on a 2003 opinion by the State Office of Information Practices. That opinion was challenged by 'Ōlelo in the First Circuit Court. On January 9, 2005, Judge Victoria Marks ruled in 'Ōlelo's favor that we were not a State agency. The ruling was appealed and on December 21, 2007, the Hawaii State Supreme Court affirmed the circuit court's judgment.

In summary, let me say that we support reasonable oversight--to include audits. They have always been a part of our contracts, and we believe that they are a valuable form of accountability. Finally, court decisions in the past three years make it clear that we are not a state agency. It is our opinion that this bill is not necessary and that the State already has the authority to hold PEGs accountable through existing means of audits. That concludes my testimony.

testimony

From: Jay April [jay@akaku.org]
Sent: Thursday, February 07, 2008 12:50 AM
To: testimony
Subject: TESTIMONY IN SUPPORT OF SB2618 RELATING TO PUBLIC ACCESS

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair
Commerce, Consumer Protection, and Affordable Housing Committee
Senate of the State of Hawaii

Jay April
President and CEO
Akaku: Maui Community Television

Friday, February 8, 2008

TESTIMONY IN SUPPORT OF SB2618 RELATING TO PUBLIC ACCESS

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice-Chair
Committee on Commerce, Consumer Protection and Affordable Housing (CPH)

Jay April

February 6, 2008

Testimony in Support of SB2618 RELATING TO PUBLIC ACCESS

My name is Jay April and I am the President and CEO of Akaku, Maui Community Television. I welcome the opportunity to testify today on the subject of audits of PEG access. I can't speak for the other PEGs but on Maui we are known for our transparency and our integrity. All of our Board of Director's Meetings are televised and open to the public, all our committee meetings are open and we attempt to follow the sunshine law even though we are not required to by law. We are an independent non-profit agency charged with an awesome responsibility, Empowering our Maui Nui Communities access to media and as Maui's only real media identity, we do a pretty good job of it. If you don't believe it, come on in, walk in our door, get in front of our cameras, ask our Maui people what they think. Watch our channels or check out our website (www.akaku.org) We had a pretty rough time for a couple of years there which I don't need to go into but you can read all about on our website: www.akaku.org. The document is entitled "The Rise and Fall of Akaku" It tells a sad tale of how this little beacon of free speech once characterized as one of the best public access stations in the nation by our own Governor was brought to it's knees following a round of successful PEG programming about

2/7/2008

land development issues in 2004. An influential developer group declared Akaku a threat to their profits and enlisted the State to cut Akaku's funding. Instead of supporting independent community based PEG providers, the State responded by diverting millions of dollars in cable franchise benefits away from Akaku and directly to State education agencies. Sadly, the behavior of a standardless and arbitrary DCCA was central to the perpetuation of the dispute. I am happy to report however that that debacle is far behind us and we are experiencing a veritable PEG access renaissance on Maui. Unfortunately the regulatory environment has not progressed but has retrenched itself and I have to say we have made great strides without support or encouragement from the DCCA. As far as financial audits are concerned, we have had at least three in the past year and if this unwise and unhealthy RFP process now being touted by DCCA is allowed to continue we will see harassment in the guise of many more audits at the whim of the cable television division.

Our educational partners in the UH system and the DOE also should be required to provide a proper accounting of PEG funds as should KHET which receives nearly two million dollars in cable franchise fee revenue every year. No rules have ever been promulgated to designate this and two state commissioned studies have questioned the expenditure recommending that these funds might be more better used to fund underfunded neighbor island PEGs

The point I am making here is that what is good for the goose is good for the gander. We can support a financial and management audit of our PEG because we are confident we are now one of the best managed and most transparent PEGs in the nation if you look at what we deliver to our community given what little amount of money we have. What is really needed however is a comprehensive financial, management and performance audit of the DCCA cable division which has never been audited. Neither has DCCA undergone any real scrutiny to the great detriment of our public and to the benefit and financial gain of our monopoly cable TV provider, Time Warner. Public benefit cable and broadband services are being secretly compromised in Hawaii due to lackluster government planning, a laissez-faire regulatory framework, and an unmotivated communications marketplace. This is not just a PEG issue. What is at stake here is our ability to effectively communicate with each other across diverse geographies and communities. If the regulatory status quo is allowed to continue without proper scrutiny or oversight this will result in an economic loss of millions, perhaps billions of dollars in savings for state and local government, business, education and the public.

The short story is that Time Warner (dba Oceanic Cable) is the State of Hawaii's only franchised cable operator. Over the history of cable regulation in Hawaii, the DCCA has preempted the County governments and developed a very close one-to-one relationship with Time Warner. After a bright start in the 1990's, semi-independent PEG access organizations in Hawaii became involved in advocacy efforts seeking to increase franchise obligations - and the State began to clamp down on the PEG organizations. Over the past decade, most of the State cable regulator's efforts have been directed at auditing and micro-managing the PEG providers. Ironically, the monopoly cable operator's franchise performance has NEVER been audited - only provided with cursory "review" by the State regulator. And the State cable regulator's office has never been audited nor independently reviewed. Meanwhile - the local telephone monopoly, Hawaiian Telcom (a subsidiary of Carlyle Group) has applied for a cable franchise and has been granted fifteen extensions by the DCCA. That application is currently pending.

In summary, in recent actions restricting the terms and conditions of their contracts with the PEG providers, the DCCA appears set on neutering PEG access organizations that keep trying to represent the local public interest in video franchising and other matters. The agency is conducting itself in a manner that removes any semblance of local control for PEG access on each island and is not advantageous to the principles of encouraging robust citizen participation in an electronic democracy. If you need to audit us please do so by all means, but it may be wiser to audit DCCA, Time Warner and all franchise fee recipients in order to get a comprehensive view of where we have been, where we are and where we need to go with respect to fulfilling Hawai's 21st century community communications

needs.

Thank you for the opportunity to testify before you today.

Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice-Chair
Commerce, Consumer Protection, and Affordable Housing Committee
Senate of the State of Hawai'i

Lance D. Collins, Esq.
Attorney for Akaku: Maui Community Television

Friday, February 8, 2008

Support of SB No. 2618, Relating to Public Access

I represent Akaku: Maui Community Television, the access organization serving the cable subscribers of Maui County. Akaku supports amending Senate Bill No. 2618, Relating to Public Access which requests a management audit regarding public access.

Cable access regulation in Hawai'i has been marred by unstandardized regulation over the last twenty years. Both the Legislative Reference Bureau and the DCCA have produced reports describing the recurring problems with cable access regulation in Hawai'i. Both reports provide recommendations for effective regulation. These recommendations have, by and large, not been implemented by the administration.

Recently, the Second Circuit Court has ruled that the "designation" of access organizations, pursuant to Haw. Rev. Stat. 440G-1, by the DCCA was a rule within the meaning of Chapter 91, Haw. Rev. Stat. It pointed out that the DCCA had never promulgated a rule and therefore all cable access regulation to that point was unlawful.

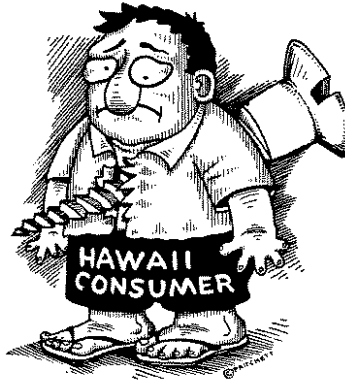
The DCCA has begun the process of promulgating a rule. However, to the dismay of many across the state, the DCCA has proposed to adopt the procurement code as the method of designating access organizations. The use of the procurement process was a controversial decision which Judge August ruled was not required by state law.

Akaku and the other Access Organizations are subjected to independent, outside audits annually as part of its designation with the Department. Additionally, Akaku and other Access Organizations were subjected to a separate audit as part of the DCCA's unlawful attempt to designate by procurement. In the last year, Akaku has gone through four audits. While audits are burdensome and distract the organization from its mission and role in the community, it also has nothing to hide to clear its name of any wrong-doing.

However, Akaku's position is that the cable television administration is the entity that needs to be audited. The historical problems of cable access regulation have occurred because of the failure of cable television administration to promulgate rules or devise standards within which the administration could exercise its discretion. A management audit of the division will help determine what additional remedial work on Chapter 440G may be warranted or necessary under the circumstances.

Finally, the language making a "finding" that the access organizations are subject to Chapter 92F contradicts the holding in Olelo v. OIP, 116 Haw. 337 . Because the bill does not explicitly amend Chapter 92F, it may create confusion for the courts or may operate to amend Chapter 92F by implication. Such type of legislation goes against the spirit of Chapter 92F.

We urge the committee to amend Senate Bill No. 2618 to require a financial and management audit of the cable television administration and not the access organizations. Thank you for the opportunity to provide testimony.



Advocates for Consumer Rights

C/O George Fox
Honolulu, Hawai'i 96817
(gfox@hawaii.rr.com)

FROM: GEORGE FOX

**To: COMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND AFFORDABLE HOUSING**

RE: SB 2618 RELATING TO PUBLIC ACCESS

DATE: February 8, 2008

TIME: 9:00 a.m.

PLACE: ROOM 229

State Capitol
Honolulu, HI 96813

Aloha honorable Chair, Vice chair, and members of the committee,
Advocates for Consumer Rights **STRONGLY SUPPORT SB 2618** relating
to **PUBLIC ACCESS**.

As a former employee of the world's largest auditing and consulting firm I
have never seen organizations in such dire need of a financial and
managerial audit of the public, education, and government access
organizations. There are at least two important reasons for audits to be
conducted:

1. Directors have been illegally appointed to there organizations Boards since day one! When these Boards want to do something not allowed by their By-Laws leave the public meeting, go into another room, then return, and vote in a amendment to their By-Laws to make their actions legal (according to the Board).

2. Millions of dollars have flowed through these organizations with no public input. Moreover their budgets are discussed out of view of the public meeting and then (just like By-Law changes) they approve a budget never seen by the public.

These organizations could not operate more illegally if they were controlled by organized crime. Please pass out SB 2618 in order to shine light on illegal operations.

Mahalo,

George Fox,
President

FROM: Stan Michaels, Semi-retired private citizen

STATUS: Former Director of Community Partnerships for American Lung Association, Former Executive Director of the Epilepsy Foundation of Hawaii, Former Executive Director of the Diamond Head Theatre, Former General Manager of Consolidated Theatres-Waikiki and IMAX, current public health educator, and 22 year veteran of the television and entertainment industry.

TO: The Committee on Commerce, Consumer Protection and Affordable Housing
Honorable Senator Russell Kokubun, Chair
Honorable Senator David Ige, Vice-Chair

FOR: Hearing, Friday, February 8, 2008
9:00 AM
Conference Room 229

RE: In support of SB2618

Aloha Chair Kokubun , Vice-Chair Ige and members of the committee,

On behalf of 60 to 70 volunteer technicians, and the tens of thousands of Hawaii citizens that benefited from the result of their work and the subsequent broadcasts on Olelo, Akaku, Ho'ike and Na Leo o Hawaii, I am honored to be here. I am a volunteer private citizen speaking on behalf of many of my crew and fellow technicians who could not make it here today. I am not employed by any of these entities or for Public Television however I have been a technician, actor, and producer for both Public Access television and major network affiliates.

As a former Profit and non-profit Director and GM, I always dreaded audits because of the time involved and the concern that I may have incorrectly recorded some aspect of the fiscal or operational records. However, I was also excited to have an independent professional examine my books and the successful results of my hard work. I believe it is the intent of this legislation to examine the records of these wonderful public access organizations to determine once and for all if they are doing what is intended by their charters. If Marion Higa supervises the audit I would be doubly comfortable.

I am also pleased that the Office of Information found "that these organizations should be considered agencies of the state." This goes a long way towards confirming their validity, and their independence to continue to be able to give voice to communities, constituencies, cultures, and concepts.

Please pass this bill through.

Sincerely and thanks for the opportunity to testify.

Stan Michaels