

SB 1680

Subject: SB 1680 SD1 03/02/09 9:30 a.m.
From: jeff garland <jg@hawaiiintel.net>
Date: Mon, 02 Mar 2009 04:11:54 -1000
To: WAMTestimony@Capitol.hawaii.gov

Aloha Chair Kim and Vice-Chair Tsutsui,

I support the intent of SB 1680 SD1 but do not believe it should be used as a vehicle to provide even less accountability for 'Olelo: The Corporation for Community Television !

I am deeply concerned that 'Olelo may be lobbying and not registering with the Ethics Commission and not reporting it in their 990 income tax returns. Akaku **is** registering a lobbyist and reporting it in their 990 income tax returns. You legislators have access to more services than your constituents do, which sure looks like lobbying to me. You can use all the services available to your constituents, and in addition you **mandate** (quo warranto) 'Olelo provide equipment, maintenance, and channel time to put you on television with no agreement in place, and now you have the special service of "Capitol Commentary" and a new "Studio@Capitol". 'Olelo has a new board legislative ad-hoc committee with 2 of the 3 members being corporate lobbyists whom you are likely familiar with, Roy Amemiya and Melissa Pavilcek. In addition, Ms. Lopez is providing half-truths and disinformation in testimony and DVDs she is distributing to legislators which I wish you would not just accept at face value. The following is her current testimony to WAM with my comments in **bold, underlined, red, extra large text**. Please take the time to properly educate yourself regarding this purported Free Speech provider. After all, you did take an oath to uphold the U.S. & Hawai'i Constitutions.:

Testimony on S.B. 1680, SD1
Relating to Technology
Senate Ways And Means Committee
Keali'i Lopez, President and CEO of 'Olelo Community Television
Thursday, February 26, 2009

Chair Mercado Kim, Vice-Chair Tsutsui and members of the Senate Ways and Means Committees.

Aloha. Thank you for an opportunity to provide written comments on S.B. 1680 S.D.I. 'Olelo supports the goal of the Bill, which is to provide advanced broadband services to all sectors of our community. We recognize that greater and faster connectivity has the potential to increase civic participation, and that is an integral part of 'Olelo's mission as O'ahu's public, educational and governmental (PEG) access organization. Such Broadband deployment would allow 'Olelo to enhance and expand our ability to deliver broadband services for Public, Educational and Governmental access purposes. **(why have they not expanded their access purposes to do it yet? many centers did so a decade ago!)** A good example would be the Broadband stream of Senate legislative proceedings which were launched on Monday, February 2, 2009. **(it really started in 2007, before 'Olelo's clients were provided the stealth service.)** Broadband capability was a significant component of 'Olelo's input to the DCCA regarding Oceanic Time Warner Cable's franchise renewal for O'ahu. **(they did so in 2008 but not in 1999 for the O'ahu franchise. It was a significant component of CMPA's in 2008, & in 1999, when 'Olelo had no input at all, even though their board directors were following it and had inside information which resulted in over a million dollar loss of PEG funds!!)** The availability of Broadband would allow 'Olelo to leverage present and future technology to

increase 'Olelo's ability to meet current and future needs of the community. (they're still working on leveraging 10 year old technologies, don't hold your breath!) We look forward to the DCCA's effective negotiation of these public benefits.

(I fear it will have minimal positive effect for PEGs with deals negotiated by ex law partners John Komeiji & Jeffrey Watanabe with Clyde Sonobe & potentially in the presence of his Time Warner Telecommunications employee wife. 'Olelo's 3 Time Warner appointed board directors are likely no help for obtaining public benefits during negotiations either, as noted by their lack of testimony)

'Olelo has been engaged in delivering Public, Educational and Governmental access services on O'ahu for almost 20 years. We manage six community access channels on the Oceanic Time Warner Cable system. Educational institutions, government agencies, non-for-profit organizations, and public citizens delivered almost

6,000 hours of programming in 2008 on four of the six channels alone. (not to be confused with the actual number of first run locally produced shows. Perhaps you should ask her if that includes the many nonlocal programs which includes 520 hours a year of "Democracy NOW", and imported religious programming [among others]) We have seven Community Media Centers throughout O'ahu and are considered a national role model for community access. (They keep saying that, but even their highly paid consultant Sue Buske doesn't have a link to 'Olelo on her website. Please ask her who considers 'Olelo a model, 'Olelo &/or other NON-MEMBERSHIP PEGs? Perhaps they mean a model to avoid?) The services that we provide to the community are seen as very valuable in our ability to provide access to technical training, quality production resources and valuable airtime on Oceanic cable. (valuable airtime made available on a case by case basis not "on a first-come, nondiscriminatory basis" as HAR 16-131-32 would have you believe it should be made available). We know the members of the Senate Ways and Means Committee are aware of this value (yup, even more than their constituents, because 'Olelo does more outreach to and services for you!) and we appreciate the support PEG access has received from the Hawaii State Legislature. (code for the legislative mandate for DCCA to require Time Warner (TW) to pay for the use of the public right of way which DCCA allows TW to pass on to subscribers to pay for 'Olelo, a NON-MEMBERSHIP corporation. In essence, we the people pay for TW to use our public right of way.)

Our general concern about the proposed Hawaii Broadband Commission ("HBC") is that it treats the public, educational and governmental (PEG) access organizations in the same manner that it treats the large public utilities and the cable operator. The PEG access organizations are considerably smaller than the public utilities and/or the cable operator. Hoike's annual gross revenues ranging from as low as \$400,000 to as high as \$4.5 million on O'ahu ('Olelo and Hawai'i Educational Network Consortium combined). (the real total budget this year is \$6,065,879.00, \$1,456,924.00 in the RED, which does not include the \$823,000.00 Capital funds they receive for equipment purchases!! [see their attached 2009 minimal Operating plan and budget].) By contrast, the 2008 gross revenue for the cable operator, Time Warner Entertainment, was over \$220,000,000 for O'ahu alone.

The proposed scheme for a new HBC is similar to the current Public Utilities Commission, and requires a much more cumbersome and costly process to address

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administrative and operational issues. To the extent that the PEG access organizations may be required to operate under such a scheme, a large proportion of the PEG access funding will necessarily have to be devoted to administrative costs. **(aka: openness and accountability that they have spent over a million dollars in attorneys fees to get out from under!)** However, unlike the larger utilities, the PEG access organizations simply do not have the resources to pay for such costly processes. **(Oh really? Perhaps because hundreds of thousands of dollars go to Paul Alston & associates every year to sue and threaten to sue the state to get out from openness and accountability laws?)**

As an example, SB 1680, SD 1 sets forth a proposed new Chapter entitled "Hawaii Broadband Commissioner." That proposed Chapter, at section 23 ("Penalties"), provides that cable operators and PEG access organizations shall be subject to a penalty of up to \$25,000 per day for certain types of violations. For a company as large as Time Warner Entertainment, such a penalty would be challenging; for the small PEG access organizations, however, the same penalty could be devastating. **(Devastating if they continue acting like they are above the law. I see penalties as a great incentive to be pono)**

Because the PEG access organizations are all private, non-profit corporations, any requirement for the PEG access organizations to pay for costly administration would result in a dollar-for-dollar reduction from the funds available to deliver PEG access services. **(but less costly than their current method of litigation, etc. Perhaps this is a veiled threat that you could lose your exceptional access?)**

In addition to the general concerns noted above, there are specific concerns about specific subsections of the proposed new Chapter, as drafted in SB 1680 SD 1.

Section 67 ("Cable system installation, construction, operation, removal; general provisions"), subsection (f) contains a paragraph giving authority to the Hawaii broadband commissioner to designate PEG access organizations "consistent with administrative rules to be adopted by the commissioner." I understand this provision to reflect the intention to exempt the PEG access service contracts from the competitive provisions of the State Procurement Code, Haw. Rev. Statutes Chapter 103D. However, the procurement exemption is not clear from the current proposed text. It is my understanding that the Hawaii broadband commissioner would not have the authority to establish a Procurement Code exemption through agency regulations. For this reason, I request that the language be revised to clearly state that the designation of PEG access organizations shall be exempt from the competitive selection requirements of Chapter 103D. **(The Attorney General, Chief Procurement Officer, and Procurement Policy Board have all opined the contracts are required to be competitive. Procurement would not allow 'Olelo to litigate so often, making Paul Alston & associates the biggest beneficiary of O'ahu's franchise fees)**

Section 67, subsection (f) also contains a paragraph about "PEG assets," of which the meaning of the paragraph is not clear and, as a result, subject to any number of interpretations. As drafted, it may be interpreted to mean that a PEG access organization would be obligated to turn over to a successor contractor all resources that it owns, including resources purchased with grant funds from private sources. Another interpretation might be that the PEG access organization would be provided upon request, at the start of its contract, all of the equipment, cash, financial assets and instruments, land and buildings that it deemed

necessary provide all PEG access services within its designated geographical area, without limitation. I know that neither interpretation is the intended meaning of this paragraph. In any event, to the extent that this paragraph attempts to identify the specific terms of a contract between the State and the PEG access provider, such terms are properly contained in the contract, rather than in the statute.

(they may be contained in the contract, but certainly not properly at this time, or for the past 20 years!)

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We understand that it is not the intent of this bill to adversely affect PEG access but rather ensure effective deployment of broadband technology and services. We appreciate that the intent of including PEG access in the bill is based on the value of the services to the community as well as PEG access being tied specifically to Cable Franchising. We look forward to the reassurance that the proposed legislation will not significantly change the way in which the PEG access contracts are managed and services are provided. **(even though it should!)**

Mahalo.

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Sincerely,

Jeff Garland

P.S. Please preserve the original look and functionality of this document by preserving and making active all color and hyperlinks, and by including all attachments in your PDF conversion for the public record.

2009BudgetnPlan.PDF	Content-Type: application/pdf
	Content-Encoding: base64



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Steve Van Ribbink
Gerald Sumida
Vivian Yasunaga

Keali'i S. Lopez
President and CEO

October 31, 2008

Mr. Clyde Sonobe
Cable Administrator
Department of Commerce and Consumer Affairs
P.O. Box 541
Honolulu, HI 96809

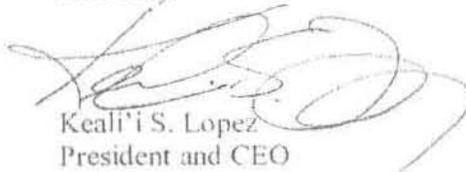
Dear Mr. Sonobe,

I am requesting an extension to submit Ōlelo's Board-approved 2009 annual Operating and Capital Budgets.

The budgets are currently in draft form and will be reviewed when the Board of Directors meets in early November. We would like to submit the final, approved 2009 budgets in condensed form to your office following the Board Meeting and anticipate that we will be able to do so no later than November 30, 2008.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Keali'i S. Lopez
President and CEO

cc: Larry Reifurth, Director



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
GOVERNOR



FILE COPY
LAWRENCE M. REIFURTH
DIRECTOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
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335 MERCHANT STREET
P. O. BOX 541
HONOLULU, HAWAII 96809
(808) 586-2620
FAX (808) 586-2625

VIA FACSIMILE ONLY (836-2546)—HARDCOPY TO FOLLOW

November 3, 2008

Ms. Kealii Lopez
President and CEO
'Olelo Community Television
1122 Mapunapuna Street
Honolulu, Hawaii 96819

Re: 'Olelo's Request for an Extension to Submit Its Operating and Capital Budgets

Dear Ms. Lopez:

This is in response to your October 31, 2008 letter, requesting an extension to submit the 2009 operating and capital budget reports by November 30, 2008. As you know, these reports are due annually on November 1st, and the Department would like to bring to your attention that 'Olelo managed to submit these reports by the due date only once in the last three years.

The Department is concerned that a pattern has developed regarding the delinquent submittals of these reports, therefore the Department denies 'Olelo's request for an extension to submit its reports by November 30, 2008. Furthermore, the Department requests that 'Olelo expedite its internal process to have these reports submitted as soon as possible. Until such time as the Department receives 'Olelo's reports, they are deemed as delinquent.

Should you have any questions, do not hesitate to contact me.

Sincerely,

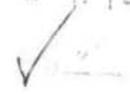
A handwritten signature in cursive script, appearing to read "Clyde S. Sonobe".

Clyde S. Sonobe
Cable Television Administrator

C: Lawrence Reifurth, Director

‘Ōlelo Community Television
2009 Operating Budget Narrative
November 12, 2008

2008 FTM 10 11:14



Overview

Activities planned for 2009 are derived from the 2008 strategic initiatives and the overall strategic plan. The strategic plan is in the process of being updated for Board adoption in early 2009. In the interim, ‘Ōlelo will continue to support on-going projects and initiatives at Mapunapuna and the other community media centers. This includes training and mentoring clients, volunteer incentive programs, channel and program promotion, other client services and staff development. Funds for Youth XChange are also included in the 2009 budget. Projected increases in utility and ground rent costs for 2009 could result in a reduction of some services as expenditures for salaries and wages are reduced to minimize the impact on reserves.

2009 OPERATING BUDGET	
REVENUE	
PEG Franchise Fees	\$ 4,714,972
Less: 25% Educational – HENC	\$ 1,178,743
Net PEG FRANCHISE FEES	\$ 3,536,229
Other Revenue	\$ 1,072,726
Total REVENUE	\$ 4,608,955
EXPENSES	
Grant & Contracts	\$ 55,779
Support & Client Services	\$ 6,010,100
Total EXPENSES	\$ 6,065,879
NET	\$(1,456,924)

'Ōlelo Community Television
2009 Capital Budget Narrative
November 12, 2008

NOV 13 2008 10:10 AM

Overview

The proposed Capital Budget for 2009 will result in an additional \$165,240 in reserves. The capital budget is primarily composed of replacement equipment. However, a number of systems (Featherpacks, camcorders, EFP equipment, etc.) that were scheduled to be replaced in 2009 will not be purchased since the current units are functioning well. It would be in 'Ōlelo's best interest to use this existing equipment until it is no longer serviceable. This decision should not impact current operations because existing items are still in excellent condition. Remaining replacement purchases were forecast in the Five Year Capitol Projections.

These replacement purchases include Apple and PC computers and software, as well as operating system upgrades for existing computers that will remain in service. 'Ōlelo also plans to purchase additional storage capacity for the on-air automation system. This will help keep up with the growing number of client programs being submitted as we migrate away from tape playback.

2009 CAPITAL BUDGET	
2009 PEG Equipment & Facilities Funds	\$ 823,000
2009 Capital Budget Requests	\$ 657,760
Capital Reserve Net Gain(Loss)	\$ 165,240