COMMITTEE ON FINANCE
Representative Marcus Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

LATE TESTIMONY

Date: Wednesday, February 24, 2010
Time: 12:30 P.M.
Place: Room 308, State Capitol

Testimony: HB 2902, HD 2 RELATING TO PUBLIC EDUCATION GOVERNMENT TV

Aloha Chair Oshiro and Members;

My name is DeGray Vanderbilt a 30-year resident of Molokai.

I am a board member for Akaku Maui Community TV and Molokai Akaku Media Center.

I heard about this hearing last evening and flew over to share my thoughts with you this morning.

I didn't arrive at the Capitol until 10:45 so I didn't have time to put detailed written testimony together.

So for today's hearing I have attached some documents, and with your indulgence I will refer to these in my oral testimony.

I have wish to comment on the intent of the bill, specifically in light of many legislative initiated reports and numerous audited financial statements that are done annually by DCCA for Olelo Community TV , as well as, as for the other community access facilities serving communities throughout the state.

I also want would like to clarify some statements in the Standing Committee Report 386, statements that I feel do not accurately reflect the efforts of Olelo and other community access operations, such as Akaku Community TV.

Furthermore, I would like to note share with you today the availability of alternative funding sources which the Legislative Management Committee has stated it is hoping to find to assist to enhance coverage of government hearing by providing equal access to the hearing impaired and deaf community, without reducing the valuable services Olelo and the other community access centers to communities statewide.

And lastly I would like to give you a quick overview on the overwhelming support the public has shown for the community access centers, year after year, and their support for the legislature to provide the valued community assets with some sense of certainty so their existence can be sustained and they can continuing doing what they do best....serve the public and leveraging their abilities through continuous community building with those they serve.

It has worked well for 20 years and our state should be proud of the accomplishments.

2008 audited figures DCCA files	1	2	3	4	5
Community Public Media Access Facilities (PEGs)	Time Warner Revenues subject to franchise fees	Franchise fees Available to Community Based PEGs	Franchise Fees paid to Hawaii PBS	Franchise Fees Paid to accredited Ed. facilities	Franchise Fee Paid to DCCA for Admin work
Island of Oahu OLELO	208,026,047	3,412,273 1.6%	2,080,264	1,137,424 from Olelo	1,252,511
Islands of Maui, Molokai and Lanai AKAKU	37,073,121	834,145 2.3%	370,731	278,048 from Akaku	233,811
Island of Hawaii NA LEO O HAWAII	33,750,110	1,012,503 3.0%	337,501		217,644
Island of Kauai HOIKE	16,555,912	496,677 3.0%	165,559		109,634
Totals	295,405,620	5,555,598 1.9%	2,954,055 1%	1,415,472	1,813,600

1% to DCCA	2,954,056
.64% to DCCA	-1,813,600
New funding	**1,140,456**
	See Note #1

Note 1: DCCA's director has te right under the state's franchise agreement with Time Warner to commence formal or informal proceedngs for purposes of future PEG access issues and may take ANY action the Director deems necessary and appropriate.

Inpast years, DCCA has collected the full 1% for administrative needs.

To increase DCCA fee to provide additional funds as noted in Stand, Committee Report 386
would cost subscribers 25 cents on their monthly bill, or less than one penny a day
On Oahu the full 1% would generate $827,754 in added funds divided by 274,333 subscribers
which Olelo has according to DCCA testimony means each subscriber would pay $3/yr, 25 cents/month

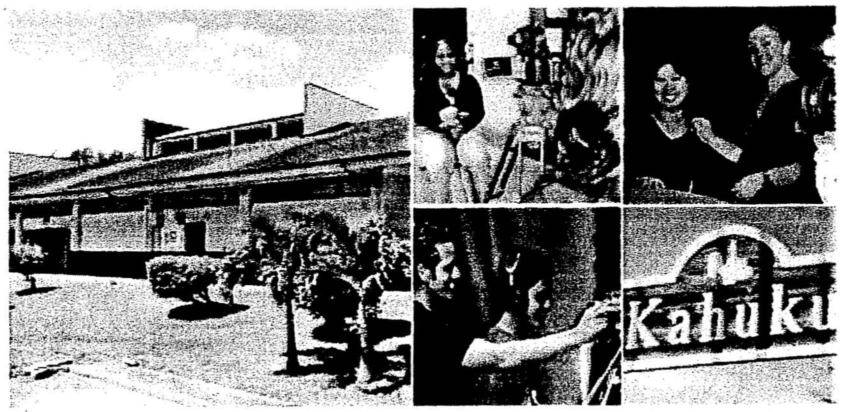
Pālolo/Kaimukī Community Media Center

The Pālolo/Kaimukī Community Media Center is located on the grounds of Jarre Middle School in Pālolo Valley. Our center offers personalized customer servic a relaxed learning environment and opportunities to network with othe community members. We train, mentor and guide clients toward cablecastin their programs on ʻŌlelo's channels. Along with all of ʻŌlelo's Community Med Centers, we enthusiastically provide all community members the opportunity t share their stories.

Waipahu Community Media Center

Waipahu evolved from an ancient native Hawaiian community with lo'i, fish ponds, gushing springs and friendly people. When sugar began to dominate the landscape, many laborers came to work the fields and plantations. Today, the community hosts many diverse ethnicities, with over 20,000 people living within a one mile radius of the Waipahu Community Media Center. Our CMC offers a place to learn media technology and develop the skills to help you tell your story. It's a place to celebrate differences and develop a shared understanding of our strengths and challenges so we can all participate in building a strong community.

Kahuku/North Shore Community Media Center

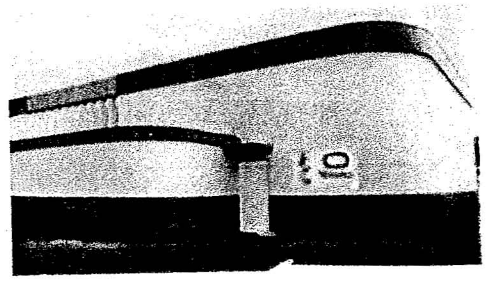


The Kahuku/North Shore Community Media Center proudly serves the North Shore from Waialua to Ka'a'awa. Our dedicated volunteers, community partners and quiet rural living make this CMC a special place to create your own programs to share with the community. Call or stop by for a visit to learn more!

Wai'anae Community Media Center

Wai'anae means Water (wai) and Mullet ('anae). Located between Kamaile and Pokai Bay is the mouth of Kaupuni Stream. Here, the fresh water meets the salt water, producing just the right mixture to produce limu and opae which in turn entices the 'anae, resulting in an abundance of mullet in the fishpond. The Wai'anae Community Media Center has the right mixture of ho'oma'ama'a (training) and ho'ole'a (pleasing) resulting in an abundance of empowered television producers to sustain today's community in television media. The staff at the Wai'anae CMC are welcoming, friendly, and active participants in ho'okukulu (building and establishing) the community. We seek to bridge differences by using media and technology as a common ground with the goal of strengthening our community.

Wai'anae CMC

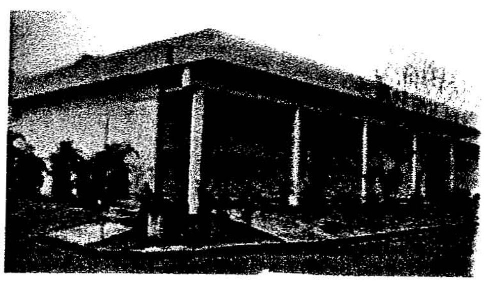


Wahiawā CMC
@ Leilehua High School

Wahiawā Community Media Center

'Ōlelo's newest Community Media Center is located at Leilehua High School in Wahiawā. Surrounded on three sides by Lake Wilson, Wahiawā is a welcoming gateway to O'ahu's North Shore. The Wahiawā district is rich in history stretchi back before the islands were united, continuing through the Plantation Era to today. Wahiawā's diverse population today is a result of this important history and 'Ōlelo looks forward to empowering this community with video production tools, facilities, training and mentoring to better enable Central O'ahu residents document and share their stories and views.

Windward Community Media Center



Windward CMC
@ King Intermediate School

`Ōlelo's Windward Community Media Center has relocated to King Intermediate School! We look forward to working in partnership with the students, teachers and administration at King Intermediate and serving our Windward clients from this new location.

Our heartfelt mahalo goes to Angela Meixell and Windward Community College for hosting `Ōlelo and its clients on the beautiful WCC Campus for the past 4 years.

Public, Education, and GovernmentCable Television Access in Hawai'i:Unscrambling the Signals

SUSAN EKIMOTO JAWOROWSKI Researcher Report No. 4, 1995

Legislative Reference BureauState CapitolHonolulu, Hawaii

FOREWORD

This study was prepared in response to Senate Resolution No. 65, Senate Draft 1 (1995). The Resolution directed the Legislative Reference Bureau to study the nonprofit public, education, and government cable access organizations in Hawai'i to determine whether their operations provide the type of access and programming intended by federal and state law. The Bureau was also directed to answer specific issues related to their management, funding, and operation.

INTRODUCTION

Nature of the Study

The Senate of the Eighteenth Legislature of the State of Hawaii, Regular Session of 1995, adopted Senate Resolution No. 65, S.D. 1, entitled, "Requesting the Legislative Reference Bureau to study Hawaii's non-profit cable public access corporations to ensure that their operations are consistent with PEG access goals."

Objective of the Study

S.R. No. 65, S.D. 1, requests the Bureau to determine:

(1) If local cable access corporations provide that type of access and programming intended by federal and state law;

(2) Whether the methods of choosing the local cable access corporations' board members should be changed to include the votes of local cable subscribers;

(3) How the money is allocated to each of the three PEG elements (public, education, and government), and how that money is budgeted for production, overhead, and administration;

(4) Whether the current training requirements meet the demand for training and personnel; and

(5) Any guidelines necessary to ensure that public officials do not abuse access.

This study represents an examination of the philosophy behind public access, whether the access organizations are fulfilling their mission, and answers specific questions requested by the Legislature.

The Players

There are four entities involved in this topic.

The Federal Government

The federal government, through the Federal Communications Commission (FCC), regulates the cable industry. Between 1972 and 1979, the FCC required PEG (public, education, and government) programming for the larger franchise areas. That requirement was struck down in 1979. In 1984, Congress passed the Cable Communications Policy Act of 1984 (1984 Act), in which the franchising authorities of the cable companies were permitted, but not mandated, to require their franchisees (i.e., the cable companies) to provide PEG access.

The State

In most locales, the franchising authority is at the county level or lower. In Hawaii, the State has taken on that function.

Under chapter 440G, Hawaii Revised Statutes, the State requires its franchisees, the cable companies, to provide PEG access as a condition of granting the franchise. The Department of Commerce and Consumer Affairs (DCCA) is the state agency that handles the franchise agreements.

Disputes over PEG Resources

Splitting the Baby is NOT the Solution

Prepared for
The Cable Television Division,
Department of Commerce and Consumer Affairs,
State of Hawaii
by
Constance A. Hassell

June, 1997

FOREWORD AND ACKNOWLEDGEMENTS

This report was prepared for the State of Hawaii, Department of Commerce and Consumer Affairs, Cable Television Division. This analysis identifies and discusses the issues underlying disputes over resources allocated to community access cable television. It is also intended to be used as a starting point for wide ranging discussion about those issues. Some matters need airing only, others require resolution.

While background material is included, the target audience is the reader with more than a passing knowledge of community access cable television. There are other recent studies that review basics and take a comprehensive look at this subject, such as that done by the Legislative Reference Bureau in 1995, to which the reader is referred for further background.

This report is made possible by the overwhelming cooperation of many people, whose knowledge of and dedication to quality community access is both enlightening and inspiring. I thank all for their candor and enthusiasm.

Constance A. Hassell
Honolulu, Hawaii
June, 1997

January 2004

Department of Commerce and Consumer Affairs' ("DCCA") Plan For Public, Education, and Government ("PEG") Access

In exchange for the use of valuable public rights-of-way, cable franchise holders are required to set aside channels for public, education and government uses ("PEG"). Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They contribute to an informed citizenry in many ways, whether through giving a voice to those who might otherwise not have one, through bringing educational opportunities to our homes, or by showing our local and state governments at work.

In the spring of 2003, DCCA decided to reassess the State's policies on PEG access, and to create a plan to guide the future development of PEG access television in Hawaii. To that end, the DCCA developed a discussion document that identified 16 issues relating to PEG access, and set forth possible policy options for many of those issues. The public was invited to comment on the issues identified in the document, as well as any other issues that they believed should be addressed. In order to facilitate that process, public comment meetings were held in Hilo, Kona, Honolulu, Kahului and Lihue.

The response received by the DCCA reflects a strong public interest in cable access. 187 individuals and entities submitted written comments in some form. A total of 224 people attended the public comment meetings, and 100 spoke at the meetings. The public comment meetings were videotaped, and the meetings in Kahului and Honolulu were broadcast live over PEG access channels. Public comments are available for review at DCCA's offices. Additionally, the written comments are posted on our website (www.hawaii.gov/dcca/catv).

The public testimony and comments show that PEG access is fulfilling its mission of providing a forum for free expression for the people of Hawaii. Across the State, citizens repeatedly told the DCCA about the opportunities that PEG access had given them to reach their fellow citizens.

At the same time, the public comment process identified many challenges and areas for improvement. These included: (1) the fact that conditions in each county are different, and an approach to PEG access that works in one county may be unsuccessful in another, (2) the fact that there are areas throughout the State, including both Oahu and the neighbor islands, that are underserved by the current PEG access system, (3) a need for a more participatory governance system for PEGs, both in the process of selecting board members and in the rules governing how the PEGs conduct business, (4) a need for DCCA to receive ongoing input from the community on issues relating to PEG access, and (5) a need for periodic, independent review of PEG operations.

On November 26, 2003, DCCA issued a Draft of the Plan, and gave the public the opportunity to provide written comments. The DCCA received approximately 20 comments regarding the Draft Plan by the requested due date of 12-10-03. These

Administration believed that the CAC had been established to provide guidance during the formative years of cable regulation, and that it had outlived that role.

Under current law, the committee is comprised of five (5) members who are appointed by the Governor and serve without pay but are entitled to reimbursement of necessary expenses. The committee last met before 1990, and the last member's term expired in 1996. No replacement members have been named since then.

There is a need for DCCA to receive ongoing input from the community on cable matters generally, and specifically on issues relating to PEG access. Accordingly, the DCCA will recommend to the Governor that she appoint new members to the committee. Current law does not specify residency or other requirements for membership. However, the DCCA will recommend to the Governor that representatives from each of the four Counties be appointed, along with an at-large appointment. The DCCA will further recommend that the Governor seek input from the mayor of each County regarding possible appointees from that County.

ISSUE #4: Funding - Financial Resources

Franchise fee assessments are consistent statewide, except for an agreed upon limitation that is in place for 'Olelo on Oahu. 'Olelo is subject to a $3.7M cap that may increase annually based on the Consumer Price Index ("CPI"). This calculated cap amount is compared against the actual 3% calculation, and the lower amount is remitted to 'Olelo.

As stated previously, the distribution of franchise fees collected are as follows:

1) 3% of gross revenues to the PEG access organization for the specific County where fees are collected;

2) 1% of gross revenues to the Hawaii Public Television Foundation (Public Television – PBS); and

3) 1% of standard service revenues to the DCCA
Note: This is equal to approximately 0.64% of gross revenues

See law

Due to the differences in population as well as differences in cable services purchased by subscribers, franchise fees vary widely among the four Counties. Under current DCCA policy, the fees collected in each County remain in that County. The fees collected for each PEG access organization in 2002 were:

Hawaii	$547,243.00
Kauai	$270,569.00
Maui	$608,510.00
Oahu	$3,387,288.00

Franchise fees for PEG access collected in a particular County currently remain there for the benefit of its residents. There has been much debate regarding the issue of redistribution of franchise fees regardless of their source. Many members of the public support the current system, under which fees remain in the County in which they are collected. Others suggest that there should be some mechanism to redistribute franchise fees so that neighbor islands receive a larger percentage of the statewide total. They suggest that absent such redistribution, some areas of the neighbor islands are not able to receive even a minimal "baseline" of PEG access services.

In any event, it is clear that there are a number of areas which are underserved by the current system. These include islands such as Molokai and Lanai, rural areas on the neighbor islands such as Hana, and portions of Oahu such as the windward side. It is also clear that some of the recent successes in PEG access have occurred when PEG access services are brought into communities where there is a strong need and support for them, such as Waianae and Palolo on Oahu. $

In order to support additional funding for these services without increasing the amounts assessed to cable subscribers, DCCA will reallocate funds that are currently being collected to support its administration of cable regulation in Hawaii. In the past, up to $500,000/yr. of those funds have been appropriated to support the INET. Since the INET is largely deployed, expenditures at that level are unlikely to be needed in the future. Accordingly, DCCA will seek to reallocate a portion of the amount currently collected to support cable administration, and make these additional funds available for PEG purposes as described in the process below. The result will be an increase in funds available for PEG purposes, without an increase in cable subscribers' overall bills. 500,000

DCCA's Funding Plan: Additional funding to support cable access in underserved areas

DCCA will implement a three (3) year pilot program that will provide additional funding to meet the cable access needs of currently underserved areas. Such funding could be used to support additional access centers or for other programs which will enhance services in those areas.

Criteria for the program will be developed by DCCA in consultation with the cable advisory committee. It is anticipated that the cable advisory committee will also assist in reviewing applications and making funding recommendations to the Director of DCCA. Additional funding will be available to only the four (4) PEG access organizations.

ISSUE #6: Sustainability

The issue of sustainability can be summarized by this question: "What would happen to each PEG organization if funding from franchise fees suddenly decreased significantly or disappeared completely?"

The question was first posed by the DCCA a few years ago as a discussion mechanism. The major item that prompted DCCA's request for plans of self sufficiency was the evolution of technologies that compete with cable tv. At first, wireless cable companies were the primary competition but lacked the market share to significantly impact the cable operators. Currently, there is a technology that may present true competition to cable tv, without cable's regulatory requirements: DBS. The DBS industry is currently represented by two major vendors, DirecTV and Echostar (Dish Network). If these service providers continue to gain market share, at the expense of cable tv companies, revenues to all beneficiaries of franchise fees will decrease. In addition to competitive technologies, there is also the potential of an evolving cable tv industry. If cable tv companies provided their services through the use of new or innovative technologies, such as Wireless Fidelity ("WI-FI"), would they still be held to requirements such as franchise fees? The development of new delivery systems and technologies will be a significant consideration in future regulatory policy.

The second item that affects sustainability relates to regulatory issues facing telecommunications / entertainment companies and the services they provide. For example, the FCC has recently determined that cable modem service (e.g. Oceanic's Roadrunner) is an information service, not a cable service. Many jurisdictions, including the State, have questioned this opinion, which currently is being reviewed by the FCC and also being litigated in federal court. The cable modem issue illustrates the uncertainty in this area, i.e., that services currently assessed with franchise fees may not be assessed in the future. This uncertainty relating to designation of type of service and the applicability of franchise fees also holds true for services being developed and not yet deployed. There is no certainty in how the FCC will identify a new service, whether as an information service or a cable service.

Again, the DCCA initially posed this question to the PEGs as a discussion mechanism on the effects that evolving technologies and regulatory issues may have on their revenues. Although the DCCA has not required any specific actions on the part of the PEGs regarding this matter, a plan was requested from each PEG that included actions that would be initiated in case revenues from cable operators were severely restricted. DCCA encourages the PEGs to identify and pursue additional funding from other sources, such as through grants that are consistent with the overall PEG mission.

If a County takes over responsibility for PEG access, then it will be up to the County to determine its policy on this issue.

Consultant Reports

— filed under: SpotlightCATV

Franchise Fee Review of Oceanic Time Warner Cable of Oahu May 13 2009
Franchise Fee Review of Oceanic Time Warner Cable of Hilo May 13 2009
Franchise Fee Review of Oceanic Time Warner Cable of Kona May 13 2009
Franchise Fee Review of Oceanic Time Warner Cable of Kahului May 13 2009
Franchise Fee Review of Oceanic Time Warner Cable of Lahaina May 13 2009
Franchise Fee Review of Oceanic Time Warner Cable of Kauai May 13 2009

Franchise Fee Review of Oceanic Time Warner Cable of Oahu 12/12/07

Franchise Fee Review of Oceanic Time Warner Cable of Hilo 12/12/07

Franchise Fee Review of Oceanic Time Warner Cable of Kahului 12/12/07

Franchise Fee Review of Oceanic Time Warner Cable of Kona 12/12/07

Franchise Fee Review of Oceanic Time Warner Cable of Lahaina 12/12/07

Franchise Fee Review of Oceanic Time Warner Cable of Kauai 12/12/07

2005 Independent Third Party Review - Management Letter 04/15/05

2005 Independent Third Party Review - Akaku 02/25/05

2005 Independent Third Party Review - Ho'ike 02/25/05

2005 Independent Third Party Review - Na Leo 'O Hawaii 02/25/05

2005 Independent Third Party Review - 'Olelo Part 1- 02/25/05

2005 Independent Third Party Review - 'Olelo Part 2- 02/25/05

Franchise Fee Review of Oceanic Time Warner Cable of Oahu 12/19/03

Franchise Fee Review of Oceanic Time Warner Cable of Hilo 10/29/04

Franchise Fee Review of Oceanic Time Warner Cable of Kahului 10/29/04

Franchise Fee Review of Oceanic Time Warner Cable of Kona 10/29/04

Franchise Fee Review of Oceanic Time Warner Cable of Kauai 10/29/04

Franchise Fee Review of Oceanic Time Warner Cable of Lahaina 10/29/04

<u>H.C.R. 358 Task Force</u>
<u>Report to the 25th Legislature</u>

Submitted to: Representative Calvin K. Y. Say, Speaker of the House
Senator Colleen Hanabusa, President of the Senate

December 16, 2008

Introduction

A Task Force pursuant to H.C.R. 358, 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. Furthermore, the Task Force was to examine the selection process for PEG advisory board members, and in so doing, take into account the first amendment rights of PEG. H.C.R. 358, 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 (See Attachment "A").

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 Eric Knutzen of the County of Kaua'i was nominated and selected by Task Force members to lead the Task Force. 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, substantive Task Force group emails and all written input received from the public as supporting documentation to this report (See Attachment "B").

Task Force 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 designation of PEG Access organizations in a manner that is similar to the process used by the DCCA for 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 on each island within the local franchise area and allow for interested parties to intervene. A sample set of draft rules is set

forth for consideration as Attachment "C".

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 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 people of the local communities they serve. This will be made available for public comment and reviewed as part of the renewal process.

H.C.R. 358 Task Force Members

Mr. Eric Knutzen, HCR 358 Task Force Chair, County of Kaua'i

Mr. Roy K. Amemiya, Jr., Central Pacific Bank, 'Olelo

Mr. Jay April, President and CEO, Akaku – Maui Community Television

Mr. Gilbert Benevides, County of Hawaii

Ms. MaBel Fujiuchi, Ho'ike

Mr. Gregg Hirata, Office of the Mayor, City and County of Honolulu

Ms. Geri Ann Hong, State Department of Education

Mr. David Lassner, University of Hawaii

Ms. Shelley Pellegrino, Office of the Mayor, County of Maui

Mr. Keith Rollman, CAC Representative

Mr. Clyde S. Sonobe, Cable Television Division, DCCA

Mr. Gerald Takase, Na Leo'o Hawai'i

Presentation of Report to Legislature

The Task Force through its Chair, Eric Knutzen, will seek to present supporting testimony at the Legislature as early in the next Legislative session as possible.

Attachments

Attachment "A" – H.C.R. 358 HD1 House Concurrent Resolution
Attachment "B" – Agendas, Minutes, Working Papers, Bylaws, Substantive Task Force Group Email, Written Testimony
Attachment "C" - Draft Rules

Contact

Mr. Eric Knutzen, Task Force Chair
County of Kauai
4444 Rice Street, Suite 427
Lihue, HI 96766
(808) 241-4406

Cc: Mr. Lawrence Reifurth, Director, Department of Commerce and Consumer Affairs

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER _____

SUBCHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 2

PROCEDURES FOR NEW AND TRANSFER APPLICATIONS

Hawaii State Legislature
Bill Status

HCR358 HD1

All versions of this measure
Committee Reports
All Testimony

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Measure Title: REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO ESTABLISH A TASK FORCE TO SOLICIT PUBLIC INPUT AND EXAMINE METHODS OTHER THAN THE PUBLIC PROCUREMENT CODE PROCESS TO OVERSEE PUBLIC, EDUCATION, AND GOVERNMENT ACCESS ORGANIZATIONS' EXPENDITURES AND ENSURE PROPER CHECKS AND BALANCES.

Report Title: Public, Education, and Government Access Organizations; State Procurement Code

Description:

Package: None

Companion:

Introducer(s): YAMASHITA

Current Referral: TSG

DATE		STATUS TEXT
3/12/2008	H	Offered
3/14/2008	H	Referred to EDB, FIN, referral sheet 48
3/20/2008	H	Resolution scheduled to be heard by EDB on Tuesday, 03-25-08 at 9:00 am in conference room 325.
3/25/2008	H	The committees on EDB recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 10 Ayes: Representative(s) Yamashita, Wakai, Berg, Brower, Chang, Hanohano, Herkes, Tsuji, Yamane, Marumoto; Ayes with reservations: none; 0 Noes: none; and 2 Excused: Representative(s) Manahan, Ching.
3/31/2008	H	Reported from EDB (Stand. Com. Rep. No. 1531-08) as amended in HD 1, recommending referral to FIN.
4/1/2008	H	Report adopted. referred to the committee(s) on FIN as amended in HD 1 with none voting no and Nakasone, Sonson, Takai excused.
4/7/2008	H	Scheduled for decision making on Wednesday, 04-09-08 at 1:15 pm in conference room 308.
4/9/2008	H	The committee on FIN recommends that the measure be PASSED, UNAMENDED. The votes were as follows: 15 Ayes: M. Oshiro, Lee, Awana, Belatti, Brower, Hanohano, Har, Magaoay, Manahan, Mizuno, Rhoads, Sagum, Tokioka, Meyer, Ward; Ayes with reservations: none; 0 Noes: none; and 4 Excused: Carroll, Karamatsu, Nakasone, Pine.

4/9/2008	H	Reported from FIN (Stand. Com. Rep. No. 1855-08), recommending adoption.
4/10/2008	H	Adopted with none voting no and Nakasone excused.
4/10/2008	H	Transmitted to Senate.
4/11/2008	S	Received from House (Hse. Com. No. 697).
4/14/2008	S	Referred to CPH/TSG.
4/22/2008	S	Re-Referred to TSG.
4/29/2008	S	Waived referral to TSG.
4/29/2008	S	One Day Notice 05-01-08.
5/1/2008	S	Resolution Adopted.
5/1/2008	S	Transmitted to House.
5/1/2008	H	Returned from Senate (Sen. Com. No. 736).
5/1/2008	H	Resolution adopted in final form.

S = Senate
H = House
D = Data Systems
$ = Appropriation measure
ConAm = Constitutional Amendment
Please read our Disclaimer Statement.
Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO ESTABLISH A TASK FORCE TO SOLICIT PUBLIC INPUT AND EXAMINE METHODS OTHER THAN THE PUBLIC PROCUREMENT CODE PROCESS TO OVERSEE PUBLIC, EDUCATION, AND GOVERNMENT ACCESS ORGANIZATIONS' EXPENDITURES AND ENSURE PROPER CHECKS AND BALANCES.

WHEREAS, the Department of Commerce and Consumer Affairs (DCCA) entered into and renegotiated contracts between 1990 and 1999 with the following four public, education, and government (PEG) access organizations: Olelo Community Television; Akaku: Maui Community Television; Hoike: Kauai Community Television; and Na Leo O Hawaii; and

WHEREAS, two of these PEG contracts were initially entered into prior to the effective date of Chapter 103D, Hawaii Revised Statutes, the Hawaii Public Procurement Code (state procurement code); and

WHEREAS, DCCA was not aware that these PEG contracts were subject to the state procurement code at the time the two contracts were renegotiated, and two new contracts were entered into by DCCA; and

WHEREAS, the Department of the Attorney General informed DCCA some time after December 2003 that contracts with PEG access organizations must comply with the state procurement code; and

WHEREAS, to provide continuous, high-quality PEG services to the public, DCCA needs to rely on consistent providers; and

WHEREAS, with the application of the state procurement code, problems with purchases of equipment and long-term maintenance of the equipment by current PEG access organizations may arise for the DCCA and current PEG access organizations; and

WHEREAS, the application of the state procurement code to the contract process between the DCCA and current PEG access organizations may disrupt the consistent provision of service and long-term maintenance of equipment; and

WHEREAS, current PEG access organizations are funded primarily through annual PEG access fees that the local cable operator is required to pay pursuant to DCCA franchise orders; and

WHEREAS, current PEG access organizations do not receive any governmental moneys from the state general fund or the DCCA Compliance Resolution Fund; and

WHEREAS, an alternative method needs to be found that allows PEGs to continue providing their valuable services to the state while ensuring proper expenditure of public funds; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-fourth Legislature of the State of Hawaii, Regular Session of 2008, the Senate concurring, that DCCA is requested to establish a task force to solicit public input and examine methods other than the Public Procurement Code process to oversee PEG expenditures and ensure proper checks and balances; and

BE IT FURTHER RESOLVED that the task force should also examine the selection process for PEG advisory board members; and

BE IT FURTHER RESOLVED that the task force should be comprised of 12 members, including:

(1) One representative each from the boards of Olelo Community Television; Akaku: Maui Community Television; Hoike: Kauai Community Television; and Na Leo O Hawaii;

(2) One representative from each county, appointed by the respective county's Mayor;

(3) The Director of Commerce and Consumer Affairs or the Director's designee;

(4) The Superintendent of Education or the Superintendent's designee;

(5) The President of the University of Hawaii or the President's designee; and

(6) The Chairperson of the Cable Access Committee or the Chairperson's designee;

and

BE IT FURTHER RESOLVED that recommendations made by the task force should take into account the first amendment rights of PEG; and

BE IT FURTHER RESOLVED that the task force is requested 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; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of Commerce and Consumer Affairs, Administrator of the State Procurement Office, President of the University of Hawaii, Superintendent of Education, the Mayors of each county, the Administrator of the Cable Television Division of the Department of Commerce and Consumer Affairs, the Attorney General, and the executive directors and chairpersons of the boards of Olelo Community Television; Akaku: Maui Community Television; Hoike: Kauai Community Television; and Na Leo O Hawaii.

Hawaii State Legislature
Bill Status

SB1789 SD2

All versions of this measure
Committee Reports
All Testimony

Generated on 2/24/2010 11:02:12 AM

Measure Title: RELATING TO CABLE TELEVISION SYSTEMS.

Report Title: Cable Television Systems; Access Organizations; Cable Advisory Committee

Description: Authorizes the director of commerce and consumer affairs to designate an access organization to oversee the development, operation, supervision, management, production, or broadcasting of programs for cable television channels; requires the director to also establish requirements for the designation of access organizations; and requires the cable advisory committee to advise access organizations on matters under chapter 440G, Hawaii Revised Statutes. Eff. 7/1/2050. (SD2)

Package: None

Companion:

Introducer(s): TSUTSUI, ENGLISH, BAKER

Current Referral: FIN

DATE		STATUS TEXT
1/24/2007	S	Introduced.
1/26/2007	S	Passed First Reading.
1/30/2007	S	Referred to CPH.
2/2/2007	S	Re-Referred to CPH, WAM.
8/27/2007 3:04:29 PM	D	Carried over to 2008 Regular Session.
2/4/2008	S	The committee(s) on CPH has scheduled a public hearing on 02-08-08 at 9:00 am in conference room 229.
2/6/2008	S	Re-Referred to TSG, CPH.
2/7/2008	S	The committee(s) on TSG has scheduled a public hearing on 02-12-08 at 1:15 pm in conference room 229.
2/7/2008	S	The committee(s) on CPH deleted the measure from the public hearing scheduled on 02-08-08 at 9:00 am in conference room 229.
2/12/2008	S	The committee on TSG deferred the measure until 02-12-08 at 4:00 pm in conference room 229.
		The committee(s) on TSG recommend(s) that the measure be PASSED, WITH

2/12/2008	S	AMENDMENTS. The votes in TSG were as follows: 3 Aye(s): Senator(s) Nishihara, Tsutsui, Trimble; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Kim.
2/15/2008	S	Reported from TSG (Stand. Com. Rep. No. 2382) with recommendation of passage on Second Reading, as amended (SD 1) and referral to CPH.
2/15/2008	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to CPH.
2/21/2008	S	The committee(s) on CPH will hold a public decision making on 02-26-08 at 9:00 am in conference room 229.
2/26/2008	S	The committee(s) on CPH recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in CPH were as follows: 6 Aye(s): Senator(s) Kokubun, Espero, Sakamoto, Trimble; Aye(s) with reservations: Senator(s) Ige, Ihara ; 0 No(es): none; and 1 Excused: Senator(s) Taniguchi.
2/29/2008	S	Reported from CPH (Stand. Com. Rep. No. 2728) with recommendation of passage on Third Reading, as amended (SD 2).
2/29/2008	S	48 Hrs. Notice 03-04-08.
3/4/2008	S	Report adopted; Passed Third Reading, as amended (SD 2). Ayes, 24; Aye(s) with reservations: Senator(s) Ige, Ihara, Slom . Noes, 0 (none). Excused, 1 (Senator(s) Bunda). Transmitted to House.
3/4/2008	H	Received from Senate (Sen. Com. No. 62).
3/6/2008	H	Pass First Reading
3/6/2008	H	Referred to CPC, EDB, FIN, referral sheet 33
3/13/2008	H	Re-referred to FIN, referral sheet 47
3/24/2008	H	Bill scheduled to be heard by FIN on Wednesday, 03-26-08 at 12:30 pm in House conference room 308.
3/26/2008	H	The committee(s) recommends that the measure be deferred until 03-28-08.
3/27/2008	H	Bill scheduled for decision making on Friday, 03-28-08 at 4:40 pm in conference room 308.
3/28/2008	H	The committees on FIN recommend that the measure be PASSED, UNAMENDED. The votes were as follows: 15 Ayes: Representative(s) M. Oshiro, Lee, Awana, Belatti, Brower, Hanohano, Har, Karamatsu, Magaoay, Manahan, Mizuno, Rhoads, Tokioka, Ward; Ayes with reservations: Representative(s) Meyer; 0 Noes: none; and 4 Excused: Representative(s) Carroll, Nakasone, Sagum, Pine.

S = Senate
H = House
D = Data Systems
$ = Appropriation measure
ConAm = Constitutional Amendment
Please read our Disclaimer Statement.
Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

A BILL FOR AN ACT

RELATING TO CABLE TELEVISION SYSTEMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§440G- Designation of access organizations for PEG access channels.** (a) The director may designate an access organization to oversee the development, operation, supervision, management, production, and broadcasting of programs on public education and government (PEG) channels obtained under section 440G-8; provided that the designation shall be exempt from chapter 103D; and provided further that the director shall establish the requirements for the designation of an access organization pursuant to rules adopted under chapter 91.

(b) The director shall ensure that the terms and conditions required of the operation of an access organization designated under subsection (a) are fair to the public, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable access in the service area.

(c) Any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefor shall first be submitted to the cable advisory committee for advice under section 440G-13; provided that any comments of the committee shall be incorporated into the final order of the director."

SECTION 2. Section 440G-13, Hawaii Revised Statutes, is amended to read as follows:

"**§440G-13 Cable advisory committee.** (a) There is established the cable advisory committee. The committee shall consist of five members appointed by the governor as provided in section 26-34.

The committee shall advise [~~the~~]:

(1) The director [~~and~~], cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director [~~or~~], any cable operator[~~.~~], or any access organization; and

(2) The director on any decision designating, modifying, or rescinding a designation of an access organization

or the requirements therefor, as provided in section 440G- .

(b) The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2050.

LINDA LINGLE
GOVERNOR

LATE

RUSS K. SAITO
Comptroller

SANDRA YAHIRO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
RUSS K. SAITO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES
ON
COMMERCE AND CONSUMER PROTECTION
AND
JUDICIARY AND GOVERNMENT OPERATIONS
ON
February 18, 2010

S.B. 707

RELATING TO CABLE TELEVISION SYSTEMS

Chair Baker, Chair Taniguchi, and Committee members, thank you for the opportunity to testify on S.B. 707.

The Department of Accounting and General Services (DAGS) defers to and supports the position of the Department of Commerce and Consumer Affairs (DCCA) on S.B. 707 as they have the responsibility for contracting with the access organizations for PEG access channels.

In supporting the DCCA position on this bill, DAGS understands that DCCA has determined that procurement of the contracts with the access organizations for PEG access channels subject to the source selection methods in §103D, HRS is not practicable or advantageous to the State.

DAGS notes that this position is consistent with §103D-102(a)of the Hawai‘i procurement code, which states that “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.”

The code recognizes that there are exceptions, stating in §103D-102(b) that “Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:” and proceeds to list contracts that are exempt. A contract “for goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State” is described in §103D-102(b) (4) (F):

§103D-102(b) (4) (F) Utility services whose rates or prices are fixed by regulatory processes or agencies; A public utility is defined in §269-1, HRS:

“Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use, for the transportation of passengers or freight, or the conveyance or transmission of telecommunications messages, or the furnishing of facilities for the transmission of intelligence by electricity by land or water or air within the State, or between points within the State, or for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil, or for the storage or warehousing of goods, or the disposal of sewage…”

The designation and oversight by the DCCA of the access organizations for PEG access channels that this bill proposes would seem to qualify the contracts that the DCCA would execute with the access organizations for PEG access channels for this exemption under §103D-102(b) (4) (F).

DAGS notes that this bill, if enacted into law, will require that the DCCA execute contracts with an access organization for PEG access channels for each of the franchise areas. No organization is automatically designated. The DCCA is also required to ensure that the terms and conditions of the contract, including fairness to the public, are met by each contracted access organization for PEG access channels.

Thank you for the opportunity to testify on this matter.

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.B. NO. 707

JAN 23 2009

A BILL FOR AN ACT

RELATING TO CABLE TELEVISION SYSTEMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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(b) The director shall ensure that the terms and conditions required of the operation of an access organization designated under subsection (a) are fair to the public, taking into account the geographic, topographic, and economic characteristics of the service area and the economics of providing cable access in the service area.

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The committee shall advise [~~the~~]:

(1) The director [~~and~~], cable operators, and access organizations on matters within the jurisdiction of this chapter at the request of the director [~~or~~], any cable operator[~~.~~], or any access organization; and

(2) The director on any decision designating, modifying, or rescinding a designation of an access organization or the requirements therefor, as provided in section 440G- .

<u>(b)</u> The members of the committee shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2009.

INTRODUCED BY: J. Kalani English

Rosalyn H. Baker

[illegible]

Norman Sakamoto

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Davig Ige, Vice Chair

COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
Senator Brian T. Tanaguchi, Chair
Senator Dwight Y. Takamine, Vice Chair

Thursday, February 18, 2010, 9:30 a.m.

Testimony **IN SUPPORT** of SB707 – Relating to Cable Television

Aloha Chair Baker, Chair Taniguchi and members.

My name is DeGray Vanderbilt. I am a 30-year resident of Molokai and recently stepped down as Chairman of the Molokai Planning Commission. I have served, and continue to serve, on several county and state commissions, which deal with rural planning and water issues. On January 15 of this year, I was elected to the Akaku Community TV Board of Directors for a second time, this time as the Government's designated representative. I was nominated for the Board position by Danny Mateo, Chair of the Molokai Planning Commission.

I was recently asked by a fellow Akaku Board member, why I would want to be on the Akaku Board for a second term. I said my years on Molokai had a lot to do with it. I have seen how rural people tend to share, help each other out in tough times and are reluctant to compromise their community and lifestyle values for short-term gain.

During this time, I have seen what an invaluable, trusted community asset Akaku's Molokai Media Center has become for our small, rural island community........just as the Olelo Community Television's seven community media centers on Oahu have become treasured assets for the many, many residents living in the areas of Kahuku/Northshore, Mapunapuna, Pololo/Kamuki, Wahiwa, Waianae, Waipahu and Oahu's Windward area where the community media center operates out of King Intermediate School.

Akaku Molokai and the other community media centers throughout the state did not evolve like into valued community assets overnight. Each of these dedicated non-profit community-based operations has earned a special place in the hearts of their respective communities through genuine and open involvement with residents over a 20-year period.

Two years ago, Sharlette L. K. Poe Jr., a native Hawaiian and resident of Waianae, put this into perspective through testimony she presented before Senator Kokubun's Committee on Commerce and Consumer Affairs and Affordable Housing Committee during the 2008 legislative session.

She was referencing Olelo and the importance of Olelo's Waianae Community Media Center. She spoke about how Olelo's dedicated community-building efforts over the years has brought about changes and a sense of hope to kupuna, families and especially the youth who realize they have options and have come to see ***"how their voices make a difference especially when called out in harmony with others around them"***

Sharlette went on to say that these changes in attitude *"do not come about because an organization or individual was mandated or ordered to do it"* as through a competitive bid process.... ***"changes like these,"* she said, *"come about because people see the need and are moved by love and compassion to make a difference in the lives of those around them."***

"This cannot be written into any RFP, or put out for bid...who can guarantee that the successes that the best bid would be the best for the people, who a PEG access provider is supposed to serve."

Sharlette's point of view mirrors a viewpoint expressed by former DCCA Director Mark Recktenwald in an application he filed with the State Procurement Office in 2006 requesting an exemption for the community access stations statewide from the RFP or competitive bidding process. The application can be found on the DCCA website.

Director Rechtenwald wrote, ***"Over time, each PEG access facility has developed its own set of procedures policies and practices. They have done so in light of unique circumstances that exist in each of the counties and communities within those counties. The procurement process is intended to ensure government neutrality, but leaves open the possibility that successful bidders may themselves have bias".***

Simply put," Director Rechtenwald said, ***"there is a distinct possibility that a winning bidder would not be as neutral as the existing public access providers. For example, it could have a particular ideological point of view, or have institutional priorities that cause it to tilt in favor of certain types of speech."***

For that reason, among others, Director Recktenwald advised the State Procurement Office that his department, and I quote from DCCA's application, ***"has concluded that the costs and risks of issuing an RFP would be neither practicable nor advantageous to the state, and we respectfully request an exemption from the procurement code."***

Under the law (HRS Chapter 103D) exemptions from the procurement code for services, such as those the public access organizations provide communities statewide, maybe granted if, ***"procurement by competitive means is either not practicable or not advantageous to the state."***

So in essence, Director Recktenwald came to the same conclusion that Waianae's Sharlette Poe did, that under the law an exemption from the procurement code is very much warranted.

And former DCCA Director Recktenwald you would assume has a reasonably good grasp of what is intended under the law and how to apply the law fairly. He is now a judge on the Hawaii Supreme Court.

Judge Recktenwald's petition for an exemption in 2006 came directly on the heals of a massive statewide campaign sponsored by DCCA, in which public hearings were held on Oahu, Hawaii, Kauai, Maui and Molokai.

The purpose of these hearing was two-fold. One to determine how communities perceived the services they were receiving from their public access providers (Na Leo on the Big island, Hoike on Kauai, Olelo on Oahu and Akaku on Maui and Molokai).

Secondly, DCCA was seeking input on the possibility of using the competitive bid process under the state procurement code as a means of determining who would provide future access services to various communities statewide

Hundreds of people attended those public hearings and provided both oral and written testimonies. The testimonies were passionate and emotional. There were over 1,200 pages of written testimony, and well over 100 oral testimonies provided. The written testimonies are currently on the DCCA website and DCCA has DVD's of all the meetings, which can be made available upon request.

The bottom line is that over 90% of the testimonies were a) strongly supportive of the access services being provided by Na Leo, Hoike, Olelo and Akaku, and b) strongly opposed to subjecting the access service contracts to competitive bidding under the procurement code.

In 2008, many of you Senators heard testimonies concerning SB 1789. That bill contained the exact same wording as SB 707, which is before you today. Senate Bill 1789 almost passed in the 2008 legislative session. For whatever reason, it was held up from a final floor vote near the end of the session despite being unanimously being approved by the two Senate Committees and one House Committee that heard the bill.

In his Committee report on Senate Bill 1789, Senator Kokubun wrote:

"Your Committee finds that while an open bid process promotes the public interest generally, in this instance of selecting a PEG organization, open competition would be detrimental to the public. Much of the quality of the PEG depends upon the perception and sensitivity of the provider to the needs and wants of the community. The unqualified intangibles of social impact would be negated in an open competition bid, resulting in rural districts being adversely affected."

During that same 2008 same session, House Concurrent Resolution 358 passed. The intent of the resolution was to have DCCA establish a Task Force to solicit public input and examine methods other than the state procurement code to oversee the community-based public access stations (PEGs) statewide.

The Task Force put in a lot of effort statewide during 2008, and just prior to the 2009 legislative session sent a final Task Force Report to Senate President Hanabusa and House Speaker Say.

In their report, the Task Force members, which included representatives from education, the public, the four county governments, as well as, the PEGs, not only recommended that procurement is not appropriate for regulating PEG services, but also, came up with a set of rules for DCCA to adopt for the purposes of overseeing the PEG operations and holding the PEGs accountable to performance standards.

So why are we here today seeking an exemption from the procurement code through legislation? One reason is because the legislature has the authority to legislate such an exemption. A second reason is that the state procurement board was unable to get enough votes together to even made a declaratory ruling on whether or not to grant such an exemption.

A few weeks ago on January 21, the State Procurement Policy Board met for to address a petition filed by Olelo. The petition asked the Board to make a declaratory ruling on exempting Olelo public service contracts from the procurement code.

After a three hour hearing, the Board could not muster the necessary four (4) votes needed to even agree to issue a formal declaratory ruling. Two members were against granting an exemption, two members supported an exemption being granted and one member abstained. The two members opposed to an exemption presented what appeared to weak arguments in support of their positions.

The two members in favor of the exemptions were Russ Saito, Comptroller for the State of Hawaii and Darrly Bardusch, an attorney with 20 years experience in providing legal guidance to contracting officers purchasing supplies and service for the Army here in Hawaii. The arguments they presented in support of their positions, were more expansive and focused on the evidence presented at the hearing.

The State Procurement Board hearing was transcribed by a court reporter who said the transcript would be available during the first week of February. It has not been completed to date. Olelo did make a DVD of the meeting, which I reviewed that DVD.

The following are some the many comments Russ Saito and Darrly Bardusch made at the January 21 procurement board hearing in support of granting the petition"

DARRYL BARDUSCH ON PREVIOUS EXEMPTIONS APPROVED: ***"People have come in and put forth really flimsy excuses that convince the procurement board to issue exemptions saying that it was impracticable to compete dog food through the procurement process, that it was impracticable to compete the purchase of fresh meat and it was not practicable or advantageous to the state to compete the purchase of library books and we bought into those arguments and granted exemptions.***

So I would argue that if the procurement board was willing to give exemptions for those rather unsupported arguments, and now we have Olelo coming through and presenting argument after argument as to why an exemption is warranted, I just don't think its right for us not to grant Olelo the exemption."

RUSS SAITO'S CONCLUSIONS AFTER REVIEWING THE OLELO PETITION:
"I have read the Olelo petition which described all those things that in their minds made the procurement process impracticable and not advantageous to the state, and having read it through I am convinced that it is not practicable and not advantageous to the state to apply the procurement process to PEG services. There is not a single item that leads me to that conclusion, it's the total of all the arguments presented in the petition."

Just former DCCA Director Judge Recktenwald had the legal background and credentials to determine if an exemption was warranted under the law, both Darrly Bardusch and Russ Saito have equally impressive credentials and experience to be in positions to fairly determine whether an exemption from the procurement process is warranted or not.

Russ Saito is comptroller of our state. He serves as the Director of the state's Department of Accounting and General Services, which is the umbrella organization overseeing the State Procurement Office.

Last legislative session, there was a broadband bill being heard by the Senate, which included some language about the public access organizations. In his support testimony for the broadband bill before, what I believe was this committee, DCCA's current Director Larry Reifurth put forth the following reference about the PEG access organizations:

"Although DCCA recognizes the importance of public access television, respects the role that the

incumbent PEG entities have played in developing PEG programming and services, and has fostered an environment whereby Hawaii's PEGs in many respects have become the standard to which other PEG's aspire, we respectfully suggest that this broadband bill in not the vehicle by which to resolve the exemption issues pertaining to the PEG's. DCCA has supported and continues to support exemption the PEG contracts from Chapter 103D procurement requirements; nonetheless, we believe that, <u>if possible</u>, this issue should betaken up by the Legislature separately."

Well now the possibility of specific legislation addressing the exemption issue, which Director Reifurth referenced, is a reality in the form of Senate Bill 707 that is before you today for consideration.

Please listen to the people, listen to the experts and listen to your hearts.

Please....approve SB 707. Thank you

Respectfully submitted

DeGray Vanderbilt
Box 1348
Kaunakakai, Molokai, Hawaii 96748
(808) 283-8171
Email: pauhanamolokai@yahoo.com

Grant Thornton

APPROVED

Financial Statements and Report of Independent Certified Public Accountants

‘Olelo Community Television

December 31, 2008 and 2007

LATE TESTIMONY

Contents

Grant Thornton

Report of Independent Certified Public Accountants

Audit • Tax • Advisory
Grant Thornton LLP
1132 Bishop Street, Suite 2500
Honolulu, HI 96813-2864
T 808.536.0066
F 808.523.8590
www.GrantThornton.com

Board of Directors
'Olelo Community Television

We have audited the accompanying statements of financial position of 'Olelo Community Television (a Hawaii nonprofit corporation) as of December 31, 2008 and 2007 and the related statements of activities, and cash flows for the years then ended. These financial statements are the responsibility of the organization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America as established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of 'Olelo Community Television, as of December 31, 2008 and 2007, and its activities and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Grant Thornton LLP

Honolulu, Hawaii
May 13, 2009

'Olelo Community Television

STATEMENTS OF FINANCIAL POSITION

December 31,

	2008			2007		
ASSETS	Unrestricted	Temporarily Restricted	Total	Unrestricted	Temporarily Restricted	Total
Cash and cash equivalents (notes A6 and F)	$ (144,834)	$ 462,049	$ 317,215	$ (128,363)	$ 462,226	$ 333,863
Investments (notes A4, F and H)	3,743,128	1,051,593	4,794,721	4,213,649	1,162,857	5,376,506
Rental receivables and other	50,844	-	50,844	63,576	-	63,576
Inventory (note A3)	19,149	-	19,149	18,749	-	18,749
Prepaid expenses and deposits	84,916	-	84,916	89,640	-	89,640
Property and equipment – at cost						
Leasehold improvements	6,877,896	-	6,877,896	6,661,193	-	6,661,193
Production equipment	8,138,705	-	8,138,705	7,518,278	-	7,518,278
Furniture and office equipment	1,112,398	-	1,112,398	996,581	-	996,581
Vehicles	253,080	-	253,080	246,661	-	246,661
	16,382,079	-	16,382,079	15,422,713	-	15,422,713
Less accumulated depreciation and amortization (note A2)	9,191,443	-	9,191,443	8,198,959	-	8,198,959
	7,190,636	-	7,190,636	7,223,754	-	7,223,754
TOTAL ASSETS	$ 10,943,839	$ 1,513,642	$ 12,457,481	$ 11,481,005	$ 1,625,083	$ 13,106,088
LIABILITIES AND NET ASSETS						
Accounts payable and accrued expenses	$ 398,298	$ -	398,298	$ 313,735	$ -	$ 313,735
Contracts and grants payable	35,410	-	35,410	45,365	-	45,365
Total liabilities	433,708	-	433,708	359,100	-	359,100
Commitments (note C)	-	-	-	-	-	-
Net assets						
Unrestricted	10,510,131	-	10,510,131	11,121,905	-	11,121,905
Temporarily restricted	-	1,513,642	1,513,642	-	1,625,083	1,625,083
TOTAL NET ASSETS	10,510,131	1,513,642	12,023,773	11,121,905	1,625,083	12,746,988
TOTAL LIABILITIES AND NET ASSETS	$ 10,943,839	$ 1,513,642	$ 12,457,481	$ 11,481,005	$ 1,625,083	$ 13,106,088

The accompanying notes are an integral part of these statements.

'Olelo Community Television

STATEMENTS OF ACTIVITIES

Year ended December 31,

	2008 Unrestricted	2008 Temporarily Restricted	2008 Total	2007 Unrestricted	2007 Temporarily Restricted	2007 Total
Revenues and other support						
Franchise fees (note B)	$ 4,503,406	$ 823,000	$ 5,326,406	$ 4,323,105	$ 823,000	$ 5,146,105
Rental revenue	628,541	-	628,541	606,917	-	606,917
Interest income (note H)	271,264	-	271,264	352,353	-	352,353
Net realized/unrealized gain on investments (notes A4 and H)	124,926	24,925	149,851	114,706	29,769	144,475
Other	92,500	-	92,500	59,538	-	59,538
Net assets released from restrictions	959,366	(959,366)	-	1,056,975	(1,056,975)	-
Total revenues and other support	6,580,003	(111,441)	6,468,562	6,513,594	(204,206)	6,309,388
Expenses (note D)						
Program services						
Client services and support	2,772,091	-	2,772,091	1,911,262	-	1,911,262
Contracts (note C)	49,424	-	49,424	47,869	-	47,869
Grants (note C)	1,125,847	-	1,125,847	1,127,555	-	1,127,555
Depreciation and amortization	879,431	-	879,431	798,718	-	798,718
Other	17,063	-	17,063	17,907	-	17,907
Management and general						
General and administrative	2,234,868	-	2,234,868	2,566,846	-	2,566,846
Depreciation and amortization	113,053	-	113,053	103,143	-	103,143
Total expenses	7,191,777	-	7,191,777	6,573,300	-	6,573,300
CHANGE IN NET ASSETS	(611,774)	(111,441)	(723,215)	(59,706)	(204,206)	(263,912)
Net assets at beginning of year	11,121,905	1,625,083	12,746,988	11,181,611	1,829,289	13,010,900
Net assets at end of year	$ 10,510,131	$ 1,513,642	$ 12,023,773	$ 11,121,905	$ 1,625,083	$ 12,746,988

The accompanying notes are an integral part of these statements.

'Olelo Community Television

STATEMENTS OF CASH FLOWS

Year ended December 31,

	2008	2007
Cash flows from operating activities:		
Change in net assets	$ (723,215)	$ (263,912)
Adjustments to reconcile change in net assets to net cash used in operating activities:		
Depreciation and amortization	992,484	901,861
Loss on disposal of fixed assets		-
Net unrealized gain on investments	(149,851)	(144,475)
Decrease in accounts receivable	12,732	70,470
Increase in inventory	(400)	154
Decrease in prepaid and other expenses	4,724	(15,237)
Increase in accounts payable and accrued expenses	84,563	530
Decrease in contracts payable	(9,955)	(17,285)
Revenues restricted for property and equipment	(823,000)	(823,000)
Net cash used in operating activities	(611,918)	(290,894)
Cash flows from investing activities:		
Purchase of equipment and leasehold improvements	(959,366)	(1,056,975)
Purchase of investments	(2,184,523)	(3,249,036)
Proceeds from sales of investments	2,916,159	3,284,404
Net cash used in investing activities	(227,730)	(1,021,607)
Cash flows from financing activities:		
Revenues restricted for property and equipment	823,000	823,000
Net cash provided by financing activities	823,000	823,000
NET DECREASE IN CASH AND CASH EQUIVALENTS	(16,648)	(489,501)
Cash and cash equivalents at beginning of year	333,863	823,364
Cash and cash equivalents at end of year	$ 317,215	$ 333,863

The accompanying notes are an integral part of these statements.

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of 'Olelo Community Television ('Olelo) have been prepared on the accrual basis of accounting. A summary of the significant accounting policies consistently applied in the preparation of the accompanying financial statements follows.

1. Financial Statements

To ensure observance of limitations and restrictions placed on the use of resources available to 'Olelo, the financial statements of the corporation are prepared in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and reporting purposes into classifications established according to their nature and purposes.

The assets, liabilities and net assets of 'Olelo are reported by the following classifications:

Unrestricted

Unrestricted net assets consist of all resources of the corporation which have not been specifically restricted by an external party.

Temporarily Restricted

Temporarily restricted net assets consist of cash and other assets received with stipulations that limit the use of such assets. When a restriction expires, that is when a stipulated purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. Temporarily restricted net assets are restricted for acquisition of property and equipment.

2. Depreciation and Amortization

Property and equipment with lives in excess of one year and cost of more than $500 are capitalized and stated at cost.

Depreciation of equipment is provided over the estimated useful lives of the respective assets on a straight-line basis. Leasehold improvements are amortized over the life of the lease or service life of the improvements, whichever is shorter, on a straight-line basis.

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

2. Depreciation and Amortization (continued)

Depreciation and amortization expense is summarized as follows at December 31:

	2008	2007
Leasehold improvements	$166,255	$151,680
Production equipment	628,662	578,389
Furniture and office equipment	172,533	142,870
Vehicles	25,034	28,922
	$992,484	$901,861

3. Inventory

Inventory consists primarily of blank video tapes and is stated at the lower of cost or market, determined by the first-in, first-out method.

4. Investments

In September 2006, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 157, *Fair Value Measurement*. SFAS No. 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS No. 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value and, therefore, does not expand the use of fair value in any new circumstances. SFAS No. 157 clarifies that fair value should be based on the assumptions market participants would use when pricing an asset or liability and establishes a fair value hierarchy that prioritizes the information used to develop those assumptions. The fair value hierarchy gives the highest priority to quoted prices in active markets and lowest priority to unobservable data. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007. 'Olelo Community Television adopted SFAS No. 157 as of January 1, 2008 and the adoption did not have a material impact on the financial statements of 'Olelo.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities, including an amendment of FASB Statement No. 115*. SFAS No. 159 provides an alternative measurement treatment for certain financial assets and financial liabilities, under an instrument-by-instrument election, that permits fair value to be used for both initial and subsequent measurement, with changes in fair value recognized in earnings. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. 'Olelo adopted SFAS No. 159 as of January 1, 2008 and the adoption did not have a material impact on the financial statements of 'Olelo.

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

4. Investments (continued)

In October, 2008, the FASB issued FASB Staff Position ("FSP") No. 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset is not Active.* FSP No. 157-3 clarifies the application of SFAS 157, *Fair Value Measurements*, in a market that is not active. FSP No. 157-3 is effective upon issuance, including prior periods for which financial statements have not been issued. 'Olelo does not expect the adoption of this statement to have a material effect on their financial statements.

Investments are classified as available-for-sale and are presented in the financial statements in the aggregate at fair value. Fair values are based on quoted market prices in active markets (Level 1 input). Investment income is reported as an increase in unrestricted and temporarily restricted net assets.

5. Use of Estimates

In preparing 'Olelo's financial statements, management is required to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

6. Cash and Cash Equivalents

For purposes of the statement of cash flows, 'Olelo considers commercial paper and corporate bonds purchased with an original maturity of three months or less to be cash and cash equivalents.

7. Accounts Receivable

The majority of 'Olelo's receivables are made up of rent receivable from tenants and other trade receivables. Accounts receivable are due within 30 days and are stated as amounts due from tenants or others. There was no bad debt expense for the fiscal years ended December 31, 2008 and 2007.

8. Advertising Expenses

Advertising costs are charged to expense when incurred. Advertising expense amounted to $300,594 and $47,019 for 2008 and 2007, respectively.

9. Accounting for Uncertainty in Income Taxes

In December 2008, the Financial Accounting Standards Board issued FASB Staff Position (FSP) FIN 48 3, "Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises." FSP FIN 48-3 permits an entity within its scope to defer the effective date of FASB Interpretation 48 (Interpretation 48), *Accounting for Uncertainty in Income Taxes*, to its annual financial statements for fiscal years beginning after December 5, 2008. 'Olelo has elected to defer the application of Interpretation 48

NOTE A – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

9. Accounting for Uncertainty in Income Taxes (continued)

for the year ended December 31, 2008. 'Olelo evaluates its uncertain tax positions using the provisions of FASB Statement 5, *Accounting for Contingencies*. Accordingly, a loss contingency is recognized when it is probable that a liability has been incurred as of the date of the financial statements and the amount of the loss can be reasonably estimated. The amount recognized is subject to estimate and management judgment with respect to the likely outcome of each uncertain tax position. The amount that is ultimately sustained for an individual uncertain tax position or for all uncertain tax positions in the aggregate could differ from the amount recognized.

10. Reclassification

Certain accounts have been reclassified in 2007 to conform to the 2008 presentation.

NOTE B – NATURE OF OPERATIONS AND FUNDING

'Olelo is a nonprofit organization formed to manage the public, educational, and governmental access channels on Oahu provided by cable television operators. It has been designated as the recipient of certain cable access operating fees and facilities and equipment funding by the State of Hawaii as part of the State's franchise agreement with a cable television operator. The capital funding is $823,000 annually from January 2004 through January 2009. The access fee is the amount paid in the prior year adjusted for the change in the consumer price index or an amount equal to 3% of certain of the cable operator's revenues, whichever is less.

'Olelo's agreement with the State has been extended numerous times and is presently extended to June 30, 2009. 'Olelo believes that its agreement with the State will continue to be extended until such time as the State decides on the procurement method for the services 'Olelo presently provides.

In connection with the State's efforts to solicit competitive proposals for the PEG access services presently provided by 'Olelo, as referred to in the preceding paragraph, the State has informed 'Olelo that all real and personal property currently owned by 'Olelo which were purchased with PEG funds must be relinquished to the State upon termination of the current agreement between 'Olelo and the State. 'Olelo has advised the State that it disagrees with the State's position and will vigorously defend its property rights.

NOTE C – COMMITMENTS AND CONTINGENCIES

1. In December 1998, 'Olelo entered into an agreement with the Hawaii Educational Networking Consortium (HENC) to manage various educational grants. The term of the agreement is January 1999 through December 2002, subject to annual review by 'Olelo. Payments will be made as directed by HENC. In 2000, the requirement to continue funding HENC was incorporated in the State's franchise agreement with the cable television operator at an amount equal to 25% of the access fees received. The 2009 commitment for these grants amount to approximately $568,712 based on 50% of the 2009 access operating fees which were received as of January 27, 2009.

NOTE C – COMMITMENTS AND CONTINGENCIES (continued)

2. 'Olelo conducts its operations primarily from a building located on leased land under a noncancelable operating lease, which terminates in October 2044. The lease provides for payment of specified annual rent up to September 30, 2008. The rent for the remaining term of the lease shall be determined by mutual agreement. Total rent expense amounted to $512,311 and $491,957 for 2008 and 2007, respectively.

   'Olelo has also entered into several agreements to sublease portions of its property. These agreements terminate at November 2009, July 2011, and June 2016, respectively. Amounts related to these subleases are recorded in the statement of activities as rental revenue.

   As of April 16, 2009, 'Olelo has not entered into a final agreement relating to its operating lease.

3. A former employee has filed a charge against 'Olelo for discrimination and retaliation with the Equal Employee Opportunity Commission (EEOC). 'Olelo has responded denying all allegations. The matter is pending before the EEOC.

NOTE D – FUNCTIONAL ALLOCATION OF EXPENSES

The costs of providing various programs and other activities have been summarized on a functional basis in the statement of activities.

NOTE E – INCOME TAXES

'Olelo is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and, therefore, the financial statements do not reflect any provision for federal income taxes.

NOTE F – BUSINESS AND CREDIT CONCENTRATIONS

Financial instruments which potentially subject 'Olelo to concentrations of credit risk consist principally of cash, investments, and accounts receivable.

'Olelo maintains cash balances at a financial institution located in Honolulu, Hawaii. Accounts are insured by the Federal Deposit Insurance Corporation up to $250,000. At December 31, 2008, uninsured amounts held at this institution total $117,200, of which $117,200 is held by a financial services company. 'Olelo has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash and cash equivalents.

Most of 'Olelo's revenues are from access fees from a cable television franchisee on the Island of Oahu, Hawaii. 'Olelo also receives capital support from the franchisee for equipment and property.

NOTE G – PENSION PLAN

'Olelo sponsors a defined contribution pension plan that provides pension benefits to all full-time and certain part-time employees after one year and 1,000 hours of service. The company contributes 4% of the participant's compensation.

Defined contribution pension expense for 2008 and 2007 was $72,636 and $67,519, respectively.

NOTE H – INVESTMENTS

Investments are presented in the financial statements at the current market value and are summarized as follows as of December 31,:

	2008		2007	
	Cost	Fair value	Cost	Fair value
Unrestricted	$3,608,846	$3,743,128	$4,167,910	$4,213,648
Temporarily restricted	1,013,868	1,051,593	1,150,234	1,162,857
	$4,622,714	$4,794,721	$5,318,144	$5,376,505

	2008		2007	
	Cost	Fair value	Cost	Fair value
U.S. Government agencies	$1,786,207	$1,910,172	$1,887,683	$1,926,900
Corporate and foreign bonds	1,457,862	1,421,707	1,313,805	1,291,895
U.S. Treasury obligations	1,378,645	1,462,842	2,116,656	2,157,710
	$4,622,714	$4,794,721	$5,318,144	$5,376,505

The following summarizes the investment return and classification in the statement of activities for the year ended December 31,:

	2008	2007
Interest income	$271,264	$352,353
Net unrealized gain	149,851	144,475
	$421,115	$496,828