

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

SUSAN EKIMOTO JAWOROWSKI
Researcher

Report No. 4, 1995

Legislative Reference Bureau
State Capitol
Honolulu, 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.

The Bureau wishes to extend its appreciation to all those who assisted in the study, including the respondents from other access organizations across the United States and in Canada. The Bureau extends special thanks to Sue Buske, Kathleen Schuler, Sanford Inouye, Ras Skelton, Darla Palmer, Richard Turner, Juergen Denecke, Brian Lee, Wendy Arbeit, Bruce Fisher, Prema Qadir, Carol Bain, Ed Coll, Andy Park, and Robbie Alm for their cooperation and assistance.

Wendell K. Kimura
Acting Director

November 1995

TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	ii
1. INTRODUCTION	1
Nature of the Study	1
Objective of the Study	1
Organization of the Study	1
2. BACKGROUND	2
The Players	
The Federal Government	2
The State	2
The Cable Companies	3
The Access Organizations	3
Interconnections between the State, the Cable Companies, and the Access Organizations	
Other Issues	6
Endnotes	6
3. 'OLELO: THE CORPORATION FOR COMMUNITY TELEVISION	9
Background	9
Training	9
Equipment and Facility Availability	12
Cablecast Access	15
Editorial Guidelines	16
Promotion	17
Viewership	17
Budget	18
Board Membership	18
What the State Can Do to Help Meet PEG Access Goals	18
Public Comments on 'Olelo	19
Endnotes	20
4. HO'IKE: KAUA'I COMMUNITY TELEVISION	22
Background	22
Training	23
Equipment Availability	24
Cablecast Access	24
Editorial Guidelines	25

	<u>Page</u>
Promotion	26
Viewership	26
Budget	26
Board Membership	27
What State Could Do to Assist Public Access	27
Guidelines to Restrict Potential Abuse of G Channel	27
Public Comments	28
Endnotes	29
5. AKAKU: MAUI COMMUNITY TELEVISION	30
Background	30
Training	31
Equipment Availability	31
Cablecast Access	32
Editorial Guidelines	33
Promotion	33
Viewership	33
Cablecast Scheduling	33
Budget	34
Board Membership	35
Community Access to Channels	36
Endnotes	36
6. NA LEO 'O HAWAI'I, INC.	37
Background	37
Training	37
Equipment Availability	37
Broadcast Access	38
Editorial Guidelines	38
Promotion	38
Viewership	39
E & G Programming	39
Budget	39
Proposed Insurance Deposit and Fees	39
Board Membership	39
What Could the State Do to Try to Help Na Leo Meet PEG Goals	40
What the State Can Do to Help Na Leo Promote the G Function	40
Public Comments	41
Endnotes	41
7. WHAT TYPE OF ACCESS SHOULD BE PROVIDED?	42
1. Speakers' Access to Technology	43
2. Access to the Medium	45
3. The Community's Access	46
Endnotes	46

	<u>Page</u>
8. BOARD SELECTION	48
Proponents of Board Selection	50
Criticism of Current Selection Process.....	51
1. No Subscriber Representation	51
2. No Producer Representation.....	52
3. No Election of Board Members	52
4. Removal from Local Community	53
5. State Appointments.....	53
6. Cable Company Appointments.....	54
Other Models	54
Analysis.....	58
Summary	58
Endnotes	61
9. FINDINGS AND RECOMMENDATIONS	64
General Findings.....	64
Findings Concerning the Access Organizations.....	66
Conclusions of Relevance to the State	68
Conclusions Concerning the Access Organizations	70

APPENDICES

A. Senate Resolution No. 65, The Senate, Eighteenth Legislature, 1995 Regular Session, State of Hawaii	72
B. Letter from Sanford T. Inouye, Cable Television Division, Department of Commerce and Consumer Affairs	75
C. Letter from Richard D. Turner, Executive Director, 'Olelo.....	78
D. Letter from Dr. Keola G.A. Downing, President, Na Maka 'O Hilo	85

Chapter 1

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." A copy of the Resolution is contained in Appendix A.

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.

Organization of the Study

This study is organized into nine chapters. Chapter two delineates the entities involved in public access television and their interrelationships. Chapter three describes 'Olelo, the access organization for the city and county of Honolulu; chapter four discusses Ho'ike, the access organization for the county of Kaua'i; chapter five looks at Akakū, the access organization for the county of Maui; and chapter six covers Na Leo 'O Hawai'i, the access organization for the county of Hawaii. Chapter seven examines the legislative history of the public access television laws and discusses its three components. Chapter eight sets out and discusses the issue of board selection. Chapter nine contains the Bureau's findings and recommendations.

Chapter 2

BACKGROUND

In Senate Resolution No. 65, S.D. 1, the Legislature sought answers to five specific questions. In researching the issues, it became apparent that the answers would not illuminate the picture without adequate background. A significant part of this study will be a description of the issues and the structure and operations of the access organizations. This chapter describes the interrelationship between the federal and state cable television access laws and between the three major entities involved: the State, through the Department of Commerce and Consumer Affairs (DCCA), the cable companies, and the access organizations. The issue of what type of access is intended by the law will be reviewed. Chapters 3 through 6 will review the structure and functions of each of the four access organizations.

It should be stressed that this study is intended to address policy issues, and is not an audit of the public access organizations. Some people who contacted the Bureau in connection with the study reported issues relating to alleged problems such as purchase of the wrong equipment, improper use of facilities, and improper installation of equipment. These are not the issues relevant to the resolution. 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.

The Cable Companies

The cable companies are the private entities that provide cable television service to their subscribers. At the time this study was prepared, those providers were: on O'ahu, Oceanic Cablevision¹ and Chronicle Cablevision of Hawaii; on the Big Island, Jones Spacelink of Hawaii, Inc., Sun Cablevision of Hawaii and Kamehameha Cablevision Cable Systems,² and Chronicle; on Maui, Chronicle and Hawaiian Cablevision Company;³ and on Kaua'i, Garden Isle Cablevision and Kauai Cablevision. As discussed in detail below, the cable companies each pay a small portion of their annual gross revenue to fund the cable access organizations.

The Access Organizations

The access organizations are known by several descriptions: "PEG access organizations", "nonprofit cable access organizations", and "access centers". This study will refer to them as the "access organizations". This term refers to the private, nonprofit companies set up solely to handle the PEG obligations of the cable companies. These access organizations are intended to be independent; they are not intended to be state agencies and they are not affiliated with the cable companies. On O'ahu, the access organization is 'Olelo: The Corporation for Community Television; on Maui, Akaka: Maui County Community Television, Inc.; on Kaua'i, Ho'ike: Kauai Community Television; and on the Big Island, Na Leo 'O Hawai'i.

Each of these organizations has a written or oral contract with the State by which they agree to provide PEG services (or in the case of Maui, P services only).

The federal act is silent on the role of access organizations, as Congress did not anticipate their existence.⁴ The Act does provide that cable companies may be required, in each twelve-month period, to pay the franchising authority a franchise fee of not more than five percent of gross revenues.⁵ However, the legislation does not provide instruction on the use of the fee. The federal legislation also indicates that the cable companies can be required to make capital contributions to the access organizations, which are not included in the five percent franchise fee limit.

Neither the state statutes nor state rules directly mention this franchise fee, although the statute refers to conditions that the Director of Commerce and Consumer Affairs may place on franchisees, and also specifies that each cable operator shall pay an annual fee, to be determined by the Director, to offset the costs of administering the state law.⁶

The franchise fees are mentioned explicitly in the Decisions and Orders that constitute the contract between the State and the cable operators. At the time this study was requested, 'Olelo was receiving three percent of the gross revenues and, for the most part, the neighbor island access organizations were receiving only two percent.⁷ The situation has changed since that time, as documented in a letter from the Cable Television Division of the DCCA, included as Appendix B. Most of the neighbor island access organization now have access to three percent. Ho'ike's agreement will change as of 1996 but it will not receive payment at the three percent rate until the end of 1996. See Appendix B. This change is appropriate; the neighbor island access organizations have been operating on a comparative shoestring due to their much smaller subscriber bases. While they cannot expect the kind of revenues and facilities that 'Olelo has, the disparity in resources is marked. While 'Olelo has sufficient resources with which to purchase its own building, two of the neighbor island organizations cannot even afford to rent enough space for a small studio. As they lack the

economies of scale that a large organization such as 'Olelo enjoys, equity would seem to demand that they receive at least the same percentage as 'Olelo.

In addition to the two to three percent paid to the access organizations, the cable companies are required to pay to the DCCA one percent of their gross revenues for its operating expenses. Another one percent of gross revenues has been designated in some franchise areas for the Hawaii Public Broadcasting Authority (HPBA). This means that Oceanic, for example, is at its maximum 5 percent franchise fee capacity: 3 percent to PEG access, 1 percent to DCCA, and 1 percent to HPBA.

While the federal act is silent as to the uses of the franchise fee, paying a portion to HPBA is problematic. HPBA's mission is to establish and operate public broadcasting facilities, to produce or obtain programs intended to enlighten the people of the State, and to air these programs.⁸ HPBA, which is also within the DCCA, is intended to be funded by a revolving fund, the sources of which include funding from the state Legislature. HPBA has had additional funding needs for a number of years, and, according to Robbie Alm, the then-director of the DCCA, in 1991, half a percent of the franchise fee was diverted to HPBA in a one-year only agreement to provide for community programming.⁹ Alm saw HPBA as complementary to public access, with HPBA providing "broadcast" programs drawing a wide audience and capable of competing with commercial television, and PEG access providing "narrowcasting," programming for more discrete audiences, such as ethnic, social, religious, and political groups. The funding lapsed until January 1993, when the DCCA required 1% of Oceanic's gross cable revenues (as part of its franchise fee) to go to HPBA. The rationale for such a decision was (1) that HPBA was a major resource to the State and that without equipment resources it would not be able to continue broadcasting; and (2) HPBA managed the Hawaii Interactive Television System (HITS), which is an integral part of the state-wide cable communications network. HITS is a closed circuit microwave television facility with two-way video and audio that can be picked up by all cable companies. HITS is the source for TEC (The Education Channel) programming in Honolulu, and is also one of the sources for educational programming in the other counties. The HITS microwave distribution system allows programming to be delivered to cable subscribers statewide, including emergency broadcasting information.

The DCCA approved three franchise transfers in 1995. Sun Cablevision, Kamehameha Cablevision Cable Systems, and Hawaiian Cablevision, were transferred to Time Warner, despite, in Hawaiian's case, opposition by Akaka. These transfers included provisions that the franchise fee also include a one percent transfer to the HPBA.¹⁰

However, as of January 1995, HPBA no longer administers HITS, which has been transferred to the University of Hawai'i.¹¹ Thus the propriety of continuing to fund HPBA should again be examined by the DCCA, as the funding acts as a barrier to increased funding for public access. This is an issue of great importance to the access organizations, as it appears that the maximum operational funding that can be required from the cable companies is five percent of gross revenues. With three percent (in most areas) of revenues already going to access, one percent going to the DCCA, and another one percent going to HPBA, there is no room for growth in the allocations for the access organizations. This may be less of a problem in Honolulu, as the subscriber base is very large, so that three percent constitutes a seven-figure sum. However, one of the neighbor island access organizations noted that they have a far smaller subscriber base, and hence a much smaller budget. This organization fears that the diversion of funds will prevent it from meeting the demand for public access services in its county.

BACKGROUND

If the State finds that HPBA still needs the funds and that another source is available, the State may choose to continue to dedicate these funds to HPBA. However, the State should weigh this concern against the potential deprivation to the access organizations. The State has warned the access organizations that "funding for PEG access via cable companies' contributions should not be viewed as permanent" and encourages access organizations to seek other funding strategies.¹² However, the feasibility of the access organizations to raise significant sums has not been determined.

Interconnections between the State, the Cable Companies, and the Access Organizations

The connection between the State and the cable companies is statutory and contractual: chapter 440G, *Hawaii Revised Statutes*, requires the cable companies to provide PEG access, and the franchise agreements between the State and the companies provide that, in exchange for the grant of the franchise, the cable companies will provide a minimum of three access channels and pay the franchise fee and make capital contributions for the access programming.

The connection between the State and the access organizations is contractual. After each access organization was created, it entered into a contract with the State to:

- (1) Manage the PEG channels;
- (2) Provide facilities and equipment for the production of PEG programming;
- (3) Train governmental, educational, and community organizations and the general public to use the facilities and equipment;
- (4) Market and promote the organization and the channels; and
- (5) Provide support services to the users of the channel¹³ in exchange for the access fees and equipment and facilities funds paid by the cable companies in the respective counties (the "access fees" are apparently the access organizations' share of the franchise fees).

The State's part of the connection is its ability to appoint a majority of all board members by the Director of DCCA.

The relationship between the cable companies and the access organizations is less formal. The only reason for the access organizations to exist is to fulfill the cable companies' PEG requirements, yet the access organizations do not, with one important exception, have a direct interconnection with the cable companies. The moneys collected by the cable companies are transmitted to 'Olelo, which, upon approval by the DCCA of the access organization's budget, disburses a certain percentage of those funds to the access organization. The only direct contact the entities have is the ability of almost all the cable companies¹⁴ to appoint a specified number of members, depending on the organization, to the access organization's board:

Ho'ike: out of 11 members, 2 are appointed by Garden Isle Cable and 2 appointed by Kaua'i CableVision.¹⁵

'Olelo: out of 9 members, 3 are appointed by Oceanic.¹⁶

Akakō: out of 11 directors, 2 appointed by Chronicle Cablevision and 1 by Hawaiian Cablevision, Inc.¹⁷

Na Leo: out of 11, 2 appointed by Jones Spacelink and 2 appointed by Sun Cablevision.¹⁸

The propriety of having cable companies appoint board members of the access organizations will be discussed in detail in chapter 8.

Other Issues

One issue that reached national prominence as this report was finalized was a First Amendment challenge to the federal law that encourages access organizations (and other cable operators) to restrict indecent programming.¹⁹ To date, indecent programming does not appear to be an issue in Hawaii.

Endnotes

1. The Oceanic Cablevision franchise has been transferred to Time Warner Entertainment Company, L.P. DCCA Decision and Order No. 153, September 25, 1995.
2. Both the Sun and the Kamehameha franchises have been transferred to Time Warner. DCCA Decision and Order No. 173, June 30, 1995.
3. The Hawaiian Cablevision franchise was transferred to Time Warner on October 2, 1995. See DCCA Decision and Order No. 174, October 2, 1995.
4. David T. Styles, Kathleen T. Schuler, and Evelyn Pine, Community Channels, Free Speech, and the Law: A Layman's Guide to Access Programming on Cable Television (The Foundation for Community Service Cable Television: San Francisco 1988) at 36.
5. Cable Communications Policy Act of 1984, sec. 622; codified at 47 U.S.C. sec. 542.
6. Sections 440G-8(d) and 440G-15, Hawaii Revised Statutes.
7. Oceanic paid three percent of its annual gross revenue to 'Olelo, and can be assessed up to four and a half percent upon determination by the Director. DCCA Decision and Order No. 135, secs. 5.1, 5.11; DCCA Decision and Order No. 154, secs. 5.1, 5.11. Oceanic is also scheduled to pay a total of \$9,286,498 in years one through fifteen of its franchise agreement for capital funds for facilities and equipment. *Id.* at 5.4; c.f. DCCA Decision and Order No. 154, sec. 5.4.

Chronicle is on a schedule under which it pays the greater of either 3% for its franchises in Hawaii Kai and Maui and 2% for its franchises in Moloka'i, Lana'i, and Ka'u, or a flat fee ranging from \$273,000 due on December 31, 1991 to \$361,000 for the year ending December 31, 1995. For subsequent years, the access fee shall be a flat 3%. DCCA Decision and Order No. 148, sec. 7.2. The director may adjust the fee based on Chronicle's financial condition, community needs, and other factors. The capital contribution for the years ending December 31, 1991 through December 31, 2000 is a total of \$490,000.

Hawaiian, in its 1990 franchise agreement, was to pay the greater of two percent of its gross revenues or a fixed amount ranging from \$78,000 to \$111,000 per year for operating expenses between December 31, 1991 and December 31, 1995, and three percent thereafter. The schedule of facilities and equipment was erratic,

BACKGROUND

ranging from zero to \$124,000 over the same five year period. DCCA Decision and Order No.142 dated November 23, 1990.

Kauai CableVision is slated to pay the greater of 2% for all of Kauai except Princeville, and 1/2% for Princeville (the rate for Princeville is to rise to 2% when services to that area are offered that are identical to the services offered to the rest of Kaua'i) or a flat fee ranging from \$74,000 due on December 31, 1991 to \$116,000 due on December 31, 1995. After that date, the rate shall be 3% of gross revenues, but the Director may reconsider the rates for unspecified reasons. DCCA Decision and Order No. 152, section 6.1. The annual capital fund requirements ranges from \$8223 as of December 31, 1991, to \$14,807 as of December 31, 2000.

Garden Isle Cablevision pays a rate of two percent of its gross revenues and one lump sum of \$128,000 for capital costs for the period of its franchise through December 31, 1995 at a minimum, and, if Garden Isle meets some franchise obligations, this sum will constitute fulfillment of its obligation through December 31, 2000. DCCA Decision and Order No. 143 and 145, December 19, 1990.

For the years 1992 and 1993, Jones Spacelink is to pay the greater of 1% of gross revenues or \$48,000 for the fiscal year ending May 31, 1992 and \$53,000 for the fiscal year ending May 31, 1993; and the greater of 2% of gross revenues or a range of between \$112,000 and \$131,000 for the ensuing three years, and a flat percentage of 3% of gross revenues for the remainder of the franchise term. Capital funds range from zero dollars per year to \$188,370, for a total of \$458,393 for the life of the franchise. DCCA Decision and Order No. 155, secs. 7.2, 7.3.

Sun Cablevision pays up to 3% of its gross revenues to the DCCA, and \$200,000 for PEG facilities and equipment for the period between July 1, 1995 and December 31, 1995, and an amount to be designated by the director of the DCCA after that date. DCCA decision and Order No. 159 (July 6, 1994).

8. Section 314-1, Hawaii Revised Statutes.
9. Interview with Robbie Alm, former director, DCCA, on October 13, 1995; see Act 87, Regular Session of 1991.
10. See DCCA Decisions and Orders No. 173 and 174.
11. The transfer was authorized by Act 272, Regular Session of 1994, sec. 31.
12. DCCA Decision and Order No. 174, October 2, 1995, at 10.
13. Agreement between the Department of Commerce and Consumer Affairs and 'Olelo: The Corporation For Community Television, signed January 19, 1990, section 4; Agreement between the Department of Commerce and Consumer Affairs and Hō'ike - Kaua'i Community Television, Inc., commencing October 13, 1993. The Hō'ike and 'Olelo agreements also require them to maintain appropriate levels of insurance. At the time this study was prepared, the contracts with Akakū and Na Leo were not available, but the researcher was informed that these provisions will be the same.
14. The exception in Chronicle's Honolulu operation, which does not appoint a member to 'Olelo, the Honolulu access organization. Instead, Oceanic, the other cable company on Honolulu, appoints three members.
15. Bylaws of Hō'ike: Kauai Community Television, as amended 12/7/93, at sec. 7.2.
16. Bylaws of 'Olelo: The Corporation for Community Television, adopted February 28, 1990.
17. Bylaws of Maui County Community Television, Inc. at sec. 7.2.

18. Bylaws of Na Leo 'O Hawai'i at sec. 7.2.
19. See, e.g., "Justices to Consider Cable-TV Sex Curbs," Wall Street Journal, Tuesday, November 14, 1995, at B14-15.

Chapter 3

'OLELO: THE CORPORATION FOR COMMUNITY TELEVISION

Background

'Olelo, the access organization for the City and County of Honolulu, is by far the largest access organization in the State, and one of the largest in the country.¹ 'Olelo was budgeted to received over \$2.6 million for operating expenses alone in 1995.² 'Olelo provides PEG programming on four channels to most of Honolulu through the Oceanic Cable franchise, except for the Hawaii Kai area, which receives three channels through the Chronicle cable franchise.³

'Olelo's four channels are:

- ATTN (Access to the Network). ATTN is the primary site for public access.
- ATTN2 had just been inaugurated at the time this report was prepared, and was offering a mixture of educational and public access programming.
- TEC (The Education Channel), the primary site for educational access provided by the DOE, UH, and others.
- VIEWS, the public affairs and issue-oriented programming channel.

'Olelo owns a 38,101 square foot facility in Mapunapuna which it purchased in May 1994.⁴ It uses 13,735 sq. feet of the building and plans to rent the rest. It is the only access organization in the State that provides community production grants to assist in putting programming on the air.

Training

The resolution asked whether the demand for training and personnel is adequately being met through current training requirements. The Bureau looked at several issues in this area: how the training is publicized; how often it is publicized; the number of individuals and/or organizations trained each year; the nature of the training program; the cost of the training program; the evaluations received from the people who have gone through the program; and the number of shows actually produced by the people trained. A copy of the survey sent to 'Olelo and the other access organizations is attached as Appendix B.

'Olelo publicizes its training program through its video bulletin board, Island Info, as well as through promotional videos. Staff members make appearances at a variety of community events, such as Family Day at Bishop Museum, and set up exhibits including information on training. 'Olelo has made limited use of radio, broadcast television, and newspaper. In addition, existing users are a source of publicity as they spread the word in an attempt to obtain more crew members. The training publicity is continuous, but increases when the wait list for training decreases.

The training process is an arduous one. For persons with prior experience, the option of taking equivalency exams is available. For those without prior experience, complete training can run up to six months. The introductory class for the technical certification course

runs for thirteen weeks, covering the operation of cameras and edit systems, although the separate field and studio portions could conceivably be taken and passed in five weeks each. The introductory producer class covers the process of story development from conceptualization, and runs concurrently for thirteen weeks, with some joint and some separate meetings with the technician course. According to executive director Richard Turner, a person interested in becoming certified in both areas could conceivably take the technical course and qualify through examination, and then attempt to pass the producer's section on an equivalency basis. If the person is not that ambitious, or is unsuccessful, the person must take the other course to obtain the other certification, thus undergoing a six month process to obtain both producer and technician certification. The introductory classes are offered approximately six times per year.⁵

The length of time this training procedure takes is daunting to potential producers. 'Olelo's procedures required a certified producer to file the initial request for production, but required a technician to check out the equipment. A producer would either need to be a certified technician to check out the equipment, or be working in close conjunction with one.

Evaluation forms are given after the first, fifth, and final sessions of the introductory field classes, and at the end of the studio, multi-camera van, and refresher courses.

Since 'Olelo's inception in 1990, 1061 individuals have been certified to use 'Olelo's facilities.⁶ Of this number, 398 have been certified in technical areas only, and the other 663 have been certified as producers, although over half of the producers also hold certificates in one or more technical areas. As of July 31, 1995, the following statistics apply:

Total Certifications to Date	Total
Producer Field	636
Technical Field	643
Technical Edit	462
Producer Studio	189
Director Studio	134
Technical Studio	177
Technical Control Room	154
Traveling Video Producer	72
Traveling Video Director	37
Traveling Video Floor Technician	102
Traveling Video Control Room Technician	55
Traveling video CG Technician	36

Total Certifications	2,697
Total Certified Individuals	1,023

While these figures add up to 1061, they do not show the full picture; the number of total certificates awarded by 'Olelo as of the end of the second quarter of 1995 is 2697, as many individuals hold certificates in more than one area. Of the total 663 certified producers, 318, almost half, received their certification as a result of waiver through an equivalency test process.

Even these numbers do not tell the whole story, however. 'Olelo has had a high attrition rate, with a comparatively small number of people who start the courses actually going on to produce public access shows. 'Olelo's Training Assessment Interim Report showed that 35 percent of the trainees did not achieve certification, and another 42 percent graduated but did not work in productions. Twenty-three percent, or less than a quarter, went on to create programming.

The reasons participants cited for not continuing to create programming were:

70%	Lack of time for producing
14%	Personal reasons
10%	No transportation
8%	Not prepared to produce
7%	Not interested in production

Lack of time may be related to the comparative sophistication of 'Olelo equipment and facilities; however, it is also strongly tied to the underlying motivations of those who take the training. According to one 'Olelo survey, the primary motivation for 51 percent of the trainees is gaining practical career skills, not to produce public access videos per se. To the extent that trainees come in with motives other than the production of public access, 'Olelo's job is much tougher, as it must inculcate not only the basic skills but the desire to serve the community through the provision of public access services.

For those trainees who do desire to produce public access shows, the primary barrier is the difficulty of the 'Olelo curriculum. Some trainees felt intimidated by 'Olelo's advanced equipment and the complexity of video work. The feedback reveals that the training attempts to convey too much information in too short a time span, although, it should be noted, that at thirteen weeks, 'Olelo's training is far longer than that of the other access organizations. Not quite half felt the program length was just right, while just over a quarter thought that it was too long.

The solution to the difficulty of training is thus probably not to increase its length. One suggested solution is to break the certification up into shorter, more manageable courses that enable producers to start up sooner and with fewer basic skills that can be added to as the producer's interest grows.

Other reported training issues were a lack of consistency in teaching methods by the various instructors, text materials that were not "reader-friendly" or not accurate, and insufficient opportunities for hands-on practice. The recommendations/implementations plan suggested (1) offering instructional take-home videos to enable students to review the in-class

instruction; (2) simplify and clarify the textbook explanations; (3) facilitate quality hands-on training by communicating the availability of equipment and facilities for practice purposes, making the edit facility more available to trainees, and providing more one-on-one assistance to students in the practice sessions; communicate more thoroughly with trainees; (4) restructure the curriculum, including breaking up the technician workshop into shorter courses on individual topics; integrate technical training into the producer/director curriculum; create a transitional mechanism to enable graduates to gain experience immediately after certification; (5) be more active in the post-certification phase by starting a mentoring program, requiring trainees to volunteer for existing productions, create studio or field training labs, and develop an "Open Mike" format that requires minimal production skills.

The length of the wait list and the training, plus the concerns of the public, convinced 'Olelo to revise its training procedures. This new program⁷ was being implemented as this report was being prepared, so this report is unable to comment on its actual implementation. However, it is a positive sign that 'Olelo realizes that its current program is flawed and is searching for a better alternative.

As stated above, one problem in retaining producers had been the fact that for just over half, the primary goal was gaining practical career skills, not producing public access shows. 'Olelo is attempting to address the motivation issue by requiring an individual to participate in a review in which the potential trainee's motivation is assessed and alternatives are suggested for those whose goals are not the production of public access programs. 'Olelo considered and rejected a scheme in which all certified producers would be required to make, and all technicians to work on, at least one show within a six month period, or refund to 'Olelo the actual cost of the training program. Apparently one of the 'Olelo options, however, will be to train an individual whose goal is only to gain practical skills, but charge him or her for the full cost of the program.

The Bureau asked for a compilation or transmittal of the course evaluations, and statistics on number of shows each producer makes on a yearly basis, and received a copy of the independent study of training workshops cited above in lieu of information from the over-2000 individual evaluation forms.

Equipment and Facility Availability

Equipment availability is limited to residents, organizations, institutions, and businesses that reside or conduct business within the franchise area. Individuals residing on military installations, such as Hickam Air Force Base, that do not contribute to the fees that are passed on to 'Olelo, are excluded. Residents must be adults, or minors under the supervision of a responsible adult. Reservations are made a maximum of three months in advance, and the amount of equipment loaned will be determined by the 'Olelo staff, based on the total number of producers divided by the total amount of equipment. Five days before the day of the reservation, the equipment list can be expanded if there is any unreserved equipment. Forty-eight hours before the day of reservation, any unreserved field or editing equipment is made available on a first-come, first-served basis. If the requests exceed the equipment available, reservations are granted according to the following priorities:

- Organizations that have received a Model or Community Productions grant from 'Olelo;

'OLELO: THE CORPORATION FOR COMMUNITY TELEVISION

- Individuals or organizations with programs that both (1) serve the needs established in a community needs assessment, and (2) are tied to a specific event or activity that cannot be reproduced or recreated;
- Individuals or organizations with productions tied to a specific event or activity that cannot be reproduced or recreated;
- Individuals or organizations with programs that serve the needs established in a community needs assessment, and are not tied to a specific event or activity; and
- Any other programming tied to an event that can be recreated.

'Olelo has allocated production equipment to the City and County of Honolulu and the City administration, and allocates equipment periodically to the state Legislature. In particular, two robotic units are loaned to the Legislature, until its plan to obtain its own equipment is approved. When the Legislature is not in session, the robotics are made available to other groups if they meet certain criteria.⁸

On occasion, these governmental entities require additional equipment, which 'Olelo will grant them according to these criteria:

- There is no significant impact on the use of the equipment by others;
- The requestor has used the designated equipment to its maximum potential, and/or additional equipment is necessary to accomplish the production;
- The request is minimal and limited in time; and
- The equipment is scheduled on a first-come, first-served basis.

'Olelo's central Mapunapuna facility is available for PEG use, but as a practical matter, the vast majority of the facility and equipment usage is made by public access users only. In the second quarter of 1995 the largest user group for each of the facilities and equipment was the public (the following figures do not add up to 100 percent as they do not include that time that the facility was not in use).⁹

Editing:

Public:	72.4%
Training	15.5%
Gov't	0.2%
'Olelo	0.2%
Education	0

Studio:

Public	29.1%
Public - EFP	8.5%
Training	3.8%
Gov't - EFP	2.6%

PEG ACCESS

Education	0
-----------	---

Remote portable cameras

Public:	37.7%
Training:	4.1%
Gov't	2.3%
Education	0

Consumer portable camera

Public:	25.1%
Training:	1.0%
Gov't	0
Education	0

In 1994, the public used the 'Olelo facilities 88 percent of the time, government 5 percent, and education, not at all (Department of Education (DOE) and the University of Hawaii (UH) use their institutional production equipment). Leeward Community College (LCC) contracts with 'Olelo to allow use of LCC's excess capacity for public access clients. On occasion, 'Olelo itself will facilitate a production using their central facilities.

'Olelo restricts facility use on a monthly basis, according to whether the production is a studio, remote, or mixed location production. According to executive director Richard Turner, these time restrictions permit an experienced producer to prepare two new shows per month, but may not provide the same opportunity to a new producer who is still getting used to the equipment and thus working at a slower pace.

'Olelo gives priority for use of equipment assigned to the City and County of Honolulu, DOE, UH, and the Legislature. If that equipment is underutilized, or 'Olelo has a temporary need that will not adversely affect these agencies, 'Olelo will reassign the equipment. 'Olelo's central facility does not grant priority to one category of users (P, E, or G) over another.

Removal of defective and obsolete equipment was an issue to some producers. 'Olelo states that it maintains a capital asset equipment inventory database that projects a useful life for each piece of equipment and schedules a projected replacement. If a piece of equipment needs replacement earlier, it is taken out of the inventory and either used for parts or is supposed to be disposed of in the following order of priority:

- (1) Auctioned for the highest price;
- (2) Offered to grants recipients (such as UH and DOE) to offset grant amounts; and
- (3) Disposed of by the executive director in any method that best serves the organization.

As a practical matter, according to Turner, the equipment is either cannibalized to provide parts for other equipment or given to DOE and UH as an equipment grant. It should, however, be noted that equipment disposal is a matter of considerable controversy by some independent producers, who claim that equipment disappears from use without explanation.

Cablecast Access

'Olelo divides up its weekly programming schedule into blocks dedicated to sixteen types of programming: Arts and Performance, City government issues, community information and services, cultural/ethnic issues, economic issues, educational/instructional, education issues, environmental/health issues, inspiration, national/international issues, native Hawai'i, native Hawai'i issues, personal growth, social/political issues, sports, and state government issues. Each show is scheduled a minimum of four times. Block programming is intended to help build an audience for a channel. Within the blocks, programs are scheduled according to the following criteria:

Program category, as selected by the producer

Target audience

Priority level

Appropriate placement within the time block

Whether the program contains adult material (typically scheduled after 10 p.m.)

Producers may indicate a date and time of choice, which is taken into consideration, given the constraints of block programming and the scheduling priorities.

The scheduling priorities are:

- (1) First consideration:
 - (a) Programs created within Honolulu;
 - (b) Programs created within the State; and
 - (c) Programs created elsewhere.
- (2) Second consideration:
 - (a) Time-sensitive programming (as opposed to "evergreen" programs that are not time-sensitive);
 - (b) Programs that cover events that cannot be recreated;
 - (c) Requests involving original premiere programming.
- (3) Third consideration:
 - (a) Programs representing multiple speakers (as opposed to single speakers)
 - (b) Shorter programs have precedence over longer programs;

- (c) Programs over which 'Olelo exercises editorial control and/or creates have a lower priority than programs created by others;
- (d) Programs that have been cablecast the longest will be first to be preempted, and live broadcasts will be considered independently. Premieres or previously preempted programs will have a higher priority.
- (e) All other factors being equal, if one producer's work has already been bumped by another, the first producer's work will have a higher priority than the other.

'Olelo also has criteria for scheduling programs on The Education Channel, ranging from programming produced by an accredited educational institution that is offered for academic credit, to programming produced by an individual or agency independent of an accredited educational institution and that does not deal with a vocational and/or employment subject.

To enable producers to have sufficient time to promote their programs, 'Olelo establishes, for each channel, a scheduling window that guarantees the time and date of the show. The scheduling window for ATTN and ATTN2 is six weeks; a show may be preempted at any point up to six weeks from the date of its premiere, but once the six week point is reached, the show is guaranteed its placement. The scheduling window for TEC is one year, to allow adequate time for instructional courses to lock in a class schedule for an entire school year. The VIEWS scheduling window is forty-eight hours to allow issue-oriented, time-sensitive materials to be cablecast in a timely manner.

A live show scheduled outside the scheduling window (*i.e.*, before the start of the minimum window period) will be carried in its entirety even if it runs over, with original programs to follow immediately and with the preemption of repeat shows. A live show scheduled within the scheduling window (once the window has started) will run until its conflict with a premiere program, at which point it will be discontinued. The presenter of the live program may choose to return to the live event in progress after the premiere programming is concluded, or cablecasting the remainder on a tape-delayed basis.

Editorial Guidelines

'Olelo exercises no editorial control over programs pursuant to Department of Commerce and Consumer Affairs (DCCA) Decision and Order No. 154, which provides that "a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity" authorized by the federal law.¹⁰ No program is turned away on the basis of length or content *per se*; the only criteria for rejection are:

- (1) Inability to meet the requirements for technical compatibility;¹¹
- (2) Programming inconsistent with PEG purposes, such as:
 - (a) Defamatory matters;
 - (b) Matters that invade the privacy of a private citizen;
 - (c) Matters intended to defraud the viewer or obtain money by false or fraudulent means;

- (d) Obscene matters; and
 - (e) Matters concerning a lottery or similar enterprise; or
- (3) If the content is commercial.

Commercial content is forbidden by the DCCA rules as well as the Decision and Order. Specifically forbidden are:

- Materials designed or intended to promote the sale of commercial products, trade, or services;
- Materials containing any direct appeal for contribution of funds, support, or other property of value;
- Audio or visual reference to any business, service, or product from which economic consideration was received in exchange for the reference, except for limited references to a sponsor;
- The listing of a contact phone or number for anyone other than the program producer or presenter.

As 'Olelo does not prescreen its programs, a violation would only be discovered after the program had aired. If a program is found to have commercial content, the producer/presenter is given the option of removing that portion, or having the entire program withdrawn from the access channel. Repeated violators risk the loss of PEG access privileges.

Promotion

Program listings are submitted regularly to the Honolulu Advertiser, the Honolulu Star-Bulletin, and Mid-Week Magazine. Advance notice is given on the cable system's Preview Network and Pro-Guide. More immediate notice is given on the access channels themselves on their Coming-Up Next and Coming-Up Later services. Listings contain the title, but not the content, of the show. Program producers and presenters are encouraged to promote their own programs, with the help of free workshops by 'Olelo as well as a video tape available for in-home viewing.

Viewership

'Olelo arranged for a viewership survey in December 1993, covering only ATTN (which at that time covered both P and G access) and TEC (E access), which revealed that 81 percent of cable subscribers support cable access as very (32 percent) or somewhat (49 percent) valuable. Four in ten viewers reported watching ATTN, and about three in ten reported watching TEC, for a total of over half who watched either channel. Forty-seven percent watched neither channel. An additional viewership study was prepared in the summer of 1995, which showed that half of O'ahu cable viewers reported tuning in to one or more 'Olelo channels in July 1995. Over eight in ten viewers surveyed viewed access programming as valuable to the community.¹²

Budget

'Olelo allocates funds between the PEG sectors based on priorities established by the Board in the strategic planning process. The budget is reviewed annually along with requests for funding from each of the three areas. The current priorities are, first, public access, second, education, and third, government. Within each of these sectors, moneys are allocated between the areas of production, overhead, administrative staff, and the other areas through the operating budget, which is developed by creating a business plan with public, community policy advisory committee, and staff input and feedback. The budget is then presented to the program, development, and then finance committees of the board prior to full presentation at a board meeting.

One of the complaints lodged against 'Olelo is that it spends more money and resources on E and G, and less on P. That is not the case. 'Olelo spends over half its resources to support P programming, about 30 percent to educational institutions, and about 13 percent for state and local government. 'Olelo provides more resources for P as it sees its educational and governmental partners as more able to bring in their own resources.¹³

Board Membership

On the issue of whether the method of selecting its board of directors should be changed to include the votes of cable subscribers, 'Olelo replied that:

As a general matter, however, we are not in favor of any proposal which would have certain sets [seats] reserved for or selected by certain groups. Special interest may always come before the board, or lobby the board; the board itself should operate in the general community interest.

This is not entirely responsive; the question was whether the subscriber votes should be included, not whether they (or any other group) should have a dedicated seat on the board.

'Olelo does seek public input through its various advisory mechanisms. It continuously solicits feedback from all users by evaluation, suggestion box, quarterly open forum, evaluation committees formed for particular projects, and both a community policy advisory committee (CPAC) and educational advisory committee. The members are selected by staff. The CPAC meet on a regular basis to review reports, recommendations on new services, and changes to policy, and to hear specific complaints.

What the State Can Do to Help Meet PEG Access Goals

The Bureau asked for additional input from 'Olelo as to what the State could do to help 'Olelo meet the PEG goals. 'Olelo listed three ideas:

- (1) The State could help by ensuring that undue political influence and special interests do not interfere with the creation and implementation of PEG access public policy;

- (2) Ensure that the current funding mechanism that ties cable franchise fees to cable related purposes remains status quo; and
- (3) Ensure that future state and federal regulatory developments in the telecommunications industry will perpetuate these public benefits to all those who provide video services by wire (*i.e.*, video dial tone (VDT)) technologies and providers.

When asked what the State could do to help fulfill the promise of the G access channel, 'Olelo's only suggestion was that the State make the allocation of PEG channels consistent for all cable operators at the rate of ten percent of capacity.

Public Comments on 'Olelo

The Bureau received a significant amount of comments from the public on 'Olelo. Proponents found the training to be very helpful and adequate, the service exemplary, and the staff cheerful and helpful. They spoke of encouragement, of a vast improvement since the days when Oceanic handled public access, and of the extraordinarily good job that 'Olelo's management is doing. One teacher wrote describing the award-winning programs her school has been able to produce, thanks to 'Olelo's training and grants.

On the other hand, the Bureau also received complaints from independent producers that center around the lack of responsiveness of 'Olelo management to their needs. This is not a new complaint; 'Olelo's 1993 Draft Five Year Plan states that

. . . [i]nterviews and meetings with producers surfaced significant criticism of the organization. This is not unusual, for many access center find themselves at odds with the very producers who should advocates of the organization. Producers are usually most concerned with the creative process of making television and frequently have little patience with the organizational and policy issues surrounding access. However, they are the clients ... 'Olelo needs to find creative ways of addressing the perceptions and issues raised by these constituencies.¹⁴

The report points out seven primary differences in perception between 'Olelo and its producers: first, there are dramatic differences between the perception of 'Olelo's mission: most producers define public access in terms of individuals' access to equipment and saw other programs as competing with that access. Second, producers feel that they are not valued by the organization and are shut out of the decision-making and information loop. They seem unaware of 'Olelo's mission and basic policies. Third, the producers have the perception (echoed in comments made to the researcher) that more funds are devoted to the E and G functions. In fact, this is incorrect; as shown above, the P element is the most highly funded and P users get more facility and equipment time than do E or G. Fourth, a small but vocal number of producers are quite critical of 'Olelo's policy of prohibiting producers from engaging in commercial productions or in being compensated for those production. Fifth, producers want more training and more assistance during productions. Sixth, there are some expectations that 'Olelo should be providing professional-level training and technical equipment to support those aspiring to become professionals. Seventh, an active core of

producers do not support activities that increase the load on PEG equipment and oppose any 'Olelo program that appears to take resources away from public access.

Some of these points appear to be the self-centered complaints of those who seek to make money from public access television. One producer on O'ahu relayed his complaints about other producers who try to earn a living by selling their services to organizations that want to make public access programs. A balanced view seems to be the best approach. As the goal of public access is to allow for a diversity of viewpoints, the complexity of the equipment should be kept to a bare minimum to allow new users to learn quickly and gain confidence. Complexity should be avoided. On the other hand, not everyone can make the three to six month commitment for training. Those who want to be able to transmit their message should be able to make arrangements with those who have training to have their message aired, within certain limits; hired producers cannot be allowed to elbow out users who speak for themselves, lest access be limited to those who can pay for it.

Other points that have more validity revolve around the misconception of 'Olelo's mission and allocation of resources. There is a small, vocal, concerned group of users who feel, rightly or wrongly, that 'Olelo is deliberately ignoring their concerns. 'Olelo needs to take active steps to familiarize all of its users with its full mission and to be responsive to user inquiries, even if 'Olelo does not ultimately agree with or act on them. 'Olelo seems to be trying to respond to these complaints through instituting its new training program, the details of which were not available at the time this report was prepared.

Endnotes

1. According to Executive Director Richard Turner, while a precise ranking of public access organizations does not exist, given the size of its budget, 'Olelo is probably among the top five public access organizations in the nation.
2. 'Olelo also receives varying amounts during the fifteen year life of its franchise agreement for restricted equipment and facilities expenses. The amounts range from \$50,000 to \$1,941,088 per year, for a total of \$9,286,498 in 1988 dollars.
3. Hawaii Kai receives a compendium of the four channels available on Oceanic via time-sharing.
4. 'Olelo purchased the building to help ensure long term financial stability. As the purchase price offset by lease revenues will result in a lower net cost to 'Olelo than if 'Olelo had continued to rent. Memorandum from Mickey Wittig-Harby to researcher, October 18, 1995.
5. In addition, for interested users, four sessions of studio classes follow these field classes, covering the operation of control room and studio equipment and the skills of producing and directing. A single-session multi-camera van is also available to those who are certified in studio production, and various advanced classes are offered as demand and time permit. Short refresher classes are offered also. The introductory and studio classes were \$25 and will rise to \$30 each this year, and the multi-camera van and refresher courses are free. Studio classes are offered quarterly, and the multi-camera van session is offered bi-monthly.
6. Of the general trainee pool, half were Caucasian, a larger number than their proportion in the general population, and Japanese, Hawaiian, and Filipinos were underrepresented in the trainee pool, at 11%, 10%, and 3%, respectively. 'Olelo realizes the imbalance and stated that it will attempt to address it by initiating aggressive, targeted outreach activities, including special events, collaborative projects, and media and public relations.

'OLELO: THE CORPORATION FOR COMMUNITY TELEVISION

7. The new system is supposed to support four basic types of users: (1) independent, trained producers who want to work by themselves; (2) producers who lack confidence and/or training and who want to work with 'Olelo's assistance; (3) people who have a personal message to communicate and have no real desire to learn the technical end; and (4) those who just have a factual notice that they want passed on to the community. A memorandum outlining the basic plan is attached as Appendix C.
8. Such as a requestor who is a representative of a government entity or who is working collaboratively with 'Olelo, and who is able to provide \$200,000 in liability insurance for the equipment.
9. All figures are taken from 'Olelo's 1995 Second Quarter Report: April 1 - June 30.
10. 47 U.S.C. sec. 531 (e).
11. In brief, the program must be on either 3/4" U-matic, 3/4" SP, or Hi8 videotape format; it must have a stable and continuous control track; there must be no tape damage; audio must be on channel 2 only; there must be level and consistent audio throughout; and program length must not run more than 5 seconds beyond its scheduled time slot, or risk not being cablecast if it effects other programming.
12. Ward Research, "A Study of Viewership of and Interest in Local Cable Access Channels," (Summer 1995) at 3, 5.
13. Memorandum from Mickey Wittig-Harby, Community Relations Director, 'Olelo, to Pono Chong, Budget Analyst, Senate Ways and Means Committee, dated March 23, 1995.
14. 'Olelo: Five Year Plan -- Draft #3 at 71 (March 3, 1993).

Chapter 4

HO'IKE: KAUA'I COMMUNITY TELEVISION

Background

Ho'ike is the smallest of the public access centers, serving approximately 20,000 cable television subscribers. Despite its size, and relative youth, having gone on the air in the fall of 1993, Ho'ike has been a dynamic organization. Whereas 'Olelo has a yearly budget of approximately \$2.6 million, Ho'ike works with a figure one sixteenth the size, approximately \$150,000, for P, E, and G access.¹ At the time this report was prepared, Ho'ike received only two percent out of a possible maximum five percent of gross cable revenues from the Kaua'i cable companies.² Ho'ike has requested receipt of three percent in the past and has been rejected by the Department of Commerce and Consumer Affairs (DCCA). The DCCA has since reconsidered and indicated to the researcher that Ho'ike will be receiving three percent for 1996. However, those moneys will not be received until December 31, 1996.

Ho'ike rents a nine hundred square foot building in Koloa, Kauai, which holds room for three staff members, cameras and other equipment, and four editing bays marked off by half-height partitions. Ho'ike has no studio, as it is unable to afford either the space rental or the cost of the studio equipment.

With such a limited budget, Ho'ike has had to be creative. For example, since it cannot afford a studio, it trains all of its producers in field techniques. Rather than have a two-phase training as 'Olelo does, with separate producer and technical tracks, Ho'ike offers one five-week combined course that covers operation of the camera, tripod, and audio kit in the field; operation of the VCRs, editing system, and titlemaker; planning a script and storyboard; and proper preparation of videotapes for cablecast and distribution.

Ho'ike was one of the first public access organizations in the nation to implement an interactive video bulletin board (IVBB) system (Akaka on Maui and Na Leo on the Big Island have also adopted an IVBB). In this system, the television screen scrolls through a list of numbered topics. Any television viewer with a touch-tone phone can call in and enter the number, and on the TV screen will appear the full text of that topic. In addition to topics of general concern, such as information of the Kaua'i Humane Society, tuberculosis testing, and recycling, Ho'ike has worked with the Ask-2000 program to list their topics and information, including child protective services, the WIC program, Al-Anon, and the Legal Aid Society. Ho'ike made another innovative coup by adding job vacancy notices to the IVBB, which are the most requested topics on the IVBB.

Ho'ike has also sought to attract teens to its program by obtaining a grant for equipment for them and instituting a Teen TV program. Ho'ike is also presently exploring the option of coordinating the purchase of hardware and software for producers to use, if they choose, to open caption their programs.

With its limited funds, Ho'ike has sought other funding sources. Ho'ike has also just become an Aloha United Way of Kaua'i agency, eligible for those funds, and will be a recipient of the combined federal campaign fund. At the time this report was prepared, these programs were just getting underway and no revenues had yet been generated for Ho'ike.

Training

Ho'ike's training is available to anyone living within the franchise area. Ho'ike publicizes its basic field producer training through its monthly newsletter, which goes out to two hundred people; extra copies of the newsletters are available at the Barking Sands Pacific Missile Range Facility, and the county and state buildings in Lihue; newspaper articles, which come out about every six weeks; public meetings; public outreach to business and social gatherings; words of mouth from existing producers; watching Ho'ike producers in the field, and via the IVBB.

Since Ho'ike's inception, utilizing a staff of only three full-time employees, Ho'ike has trained one hundred eighty-five people. An additional three people have passed using an equivalency exam process.

Ho'ike offers its training course every month, except December. The course trains twelve people each session and runs for five consecutive Saturdays, from 8:30 to 5:00; differently-abled persons have specialized instruction on Tuesdays and Thursdays. The waiting list for individuals is between three and five months; the wait is shorter for nonprofit agencies. The cost for the basic field production course is \$35. The advanced sound and weather resistant camera seminars are \$5 to \$10 per person.

Ho'ike submitted copies of eighty evaluation forms it received. Of those, approximately fifty-three were positive, twenty-one were basically positive with a few suggested changes, and only three had significant criticism, generally based on the need for more time. One instructor, who no longer teaches at Ho'ike, got mixed to negative ratings, but the other instructors were very enthusiastically received. Sample comments from the forms are:

"I appreciate the staff's willingness to be of assistance - they were knowledgeable and patient and good-natured."

"[The course could last for a few months] making each producer a bit more qualified instead of rushing many through quickly."

"Course was outstanding and instructors superb."

"Ho'ike could use a bigger place."

"The course is excellent and packed full of valuable information."

"Too little time for everything[.]"

"[Course pace] too slow."

"Great course!!! Fun and inspirational."

"This was an incredible opportunity and one I hope many take advantage of."

Of the people trained, forty-seven individuals and eight groups have gone on to produce programs for Ho'ike. Ten have produced only one, but several have been quite prolific, producing as many as fifty-five shows.

Statistics for shows produced by certified producers:

One show:	10
2-9:	31
10-19:	8
20-29:	1
30-39:	2
40-49:	2
50-59:	1

Equipment Availability

A certified producer needs to propose a production plan to the staff in order to obtain the necessary equipment. The staff will work with the producer to discuss the resources needed and to reserve the necessary equipment no more than three months in advance. To ensure equitable access, a maximum number of requests per producer is established, which fluctuates based on total current requests. The equipment is available on a first-come, first served basis, unless there is a conflict, in which case the following priorities apply:

- (1) Individuals and organizations that have proposed programs that will serve needs established in community needs assessment that are tied to a specific event or activity that cannot be reproduced or recreated;
- (2) Individuals or organizations that have proposed programs and productions that are tied to a specific event that cannot be reproduce or recreated;
- (3) Individuals or organizations that have proposed programs and productions that will serve needs established in an annual community needs assessment, and are not tied to a specific event or activity; and
- (4) Any other individual or organization's proposals, which are scheduled on a first-come, first-served basis.

Additional training is needed to utilize the water-resistant camera housings, waterproof underwater camera, and "live switching" multi-camera projects require additional training and certification. The equipment is restricted only due to training and safety concerns.

When a piece of equipment becomes defective, obsolete, or otherwise unusable, it is sent to Sony in Honolulu for repair if it is deemed reparable. If it is not, it is sold or discarded.

Cablecast Access

Ho'ike uses block programming to schedule its programs, in the following categories: arts and entertainment, community service/information, education/instruction (for credit); issue-oriented; religious/spiritual; sports; and well-being. Presenters and producers may indicate first through fourth choices of date and time for play, and Ho'ike will take these requests into consideration, but the block programming and its scheduling priorities will prevail.

First consideration:

- (a) Programs created with Ho'ike facilities;
- (b) Programs created within the franchise area;
- (c) Programs created on Kaua'i;
- (d) Programs created in the State of Hawai'i; and
- (e) Programs created elsewhere.

Second consideration:

Timeliness: time-sensitive programs have priority over those that are not.

Third consideration:

- (a) Series programs have priority over non-series;
- (b) Programs scheduled by presenters making an initial request have priority over programs scheduled by presenters whose programs have already been cablecast;
- (c) Premiere programs have priority over repeat programs.

Programming is changed three times a week, on Mondays, Wednesdays, and Fridays.

Editorial Guidelines

Ho'ike does not censor or edit public access programs submitted to it. It does preview each tape to ensure that it meets the technical requirements, but does not reject a tape on grounds of content unless:

- The program is of a commercial nature;
- The program contains a solicitation of funds or other property of value;
- The program contains obscene or defamatory material;
- The program concerns a lottery, gift enterprise, or similar scheme;
- The program contains matter intended to defraud the viewer or obtain money by false or fraudulent pretenses; or
- The program invades the privacy of a private citizen.

Promotion

Ho'ike promotes its shows through the IVBB; promotion of a show through other methods, such as TV Guide and newspapers, is left up to the individual. Programming is finalized each week and delivered by the prior Thursday, but any presenter or promoter who wants advance time for the purposes of publicizing the show will be given as much time as they require.

Ho'ike submitted its monthly programming schedules for May 1995, which appeared to indicate a diverse range of public access programming, including programs on Hawaiian music, astrology, religion, martial arts, United States Representative Patsy Mink, the Humane Society, surfing, volcanology, sustainable development, heart disease, drug awareness, a forum with State Representative Cynthia Thielen, the budget, a charity golf tournament, a scholarship pageant, hula, juvenile justice reform, shows for children, and dog care.

The government access channel programming for May 1995 featured county council meetings, budget review hearing, Navy and Marine news, two shows from the Kaua'i Police Department on bicycle safety and the F.B.I., a press conference with Mayor Kusaka, and a planning commission meeting.

The education access channel for the period May 15, 1995 through June 24, 1995 included course series such as advanced placement calculus, geology, history, anthropology, and Kulaiwi (Hawaiian language), as well as non-series classes in the areas of KidScience, public safety, local herbs and tropical fruits, and environmental resources for the classroom, as well as a Board of Education meeting. This channel has a full schedule of programming from DOE's Distance Learning Technology center, UH-Manoa, UH-Hilo, Kapiolani Community College, and Maui Community College. Ho'ike also solicits educational programming from the Kaua'i Community School for Adults.

Viewership

Ho'ike has no hard data for the viewership of its channels. However, it does have statistics on usage of the IVBB. For the month of July 1995 alone, the IVBB received 2111 calls. As of its inception through August 1, 1995, a fifteen month period, the IVBB has received a total of 33,585 completed requests.

Budget

Ho'ike received approximately \$150,000 per year in franchise fees for operating expenses (approximately six percent of the amount received by 'Olelo). This figure is based on receipt of only 2 percent of the gross revenues from the cable companies, not 3 percent, as is the case in Honolulu. The allocations between the P, E, and G components are made by the Board, based on recommendations from the finance committee.

Ho'ike transmitted information on its allocation between the P, E, and G components. It states that the document is confidential, so information will not be reproduced in full here. In broad terms, the document shows that, except for two interns, all employees put at least as much time into P as they do into the E and G components, and three put in more time into P access than into E or G.

Board Membership

The Ho'ike board as a whole took the position that it is not in favor of a board selected through the votes of cable subscribers due to low response of cable subscribers, because it is not reflective of the population polled, and because it is not cost effective.³

Stan Yates, president of the Ho'ike board, speaking as an individual, made the point that at present, the nominating committee selects potential members based on an individual's demonstrated interest in cable television and potential contributions, not just because they have a group affiliation in general. He says that trying to base a board on differing affiliations cannot be successful unless one is "working with a relatively rigid definition of 'representative,' and one had *a lot* of Director slots available." For instance, if one slot is for subscribers, should another slot be designated for non-subscribers to even things out? If one slot is for urban representatives, one would need to set up a slot for a rural representative. Mr. Yates stated that the Ho'ike board is representative, featuring members from four ethnic backgrounds and a variety of business and government backgrounds. The primary criterion for their selection is not the group that they represent, but their individuality.

Ho'ike has three standing committees: Development, Finance, and Program. The bylaws state that any citizen may request to be placed on a committee as a voting member, and that during his tenure on the board, no one who has so requested has been denied membership on the committee. According to Yates: "No Ho'ike committee members are selected, encouraged, or appointed according to any grouping or group affinity. That would appear to me to be grossly undemocratic and exclusionary." It should also be noted that the Ho'ike bylaws require that a majority of directors be cable subscribers.

What State Could Do to Assist Public Access

When asked what the State could do to help Ho'ike meet the PEG access goals, Ho'ike had three responses. First, it requested that more of the franchise fees be directed to the neighbor island public access organizations in general, and Ho'ike in particular, since it is at only 2 percent out of the possible 5 percent franchise fee level. While Kaua'i has a much smaller population than Honolulu, it has certain fixed costs that cannot be reduced. The subscription base for Kaua'i is so small that Ho'ike cannot afford to have its own studio (in contrast, 'Olelo not only has its own studio, it has recently purchased its own building).

Second, Ho'ike asks that the Legislature help the public access centers form a strong state-wide organization. Third, Ho'ike asks that the Legislature develop a clear policy that does not allow government to influence independent public access centers. According to Ho'ike, government does not have a clear stake in access management.

Guidelines to Restrict Potential Abuse of G Channel

During the last political season the executive director sent letters to government officials reminding them that the channel is for government business only, and not to be used for re-election purposes. Ho'ike warned them that violations will be reported to the state Ethics Commission. No problems were noted.

Public Comments

The Bureau was contacted by three independent producers on Kaua'i who had several complaints and comments to make on Ho'ike's functions in general, its board of directors, and its general manager. Their major points fall into two categories; one set is directed toward the general set-up of the public access organizations in general:

- The boards of all the public access corporations are authoritarian, hierarchical, and illegitimate as they were not democratically elected;
- The responsibilities of the board should be to facilitate viewers into becoming producers;
- The board members appointed by the cable companies have a conflict of interest, as the interests of cable companies can be contrary to that of PEG access; and
- The purpose of the 1984 Cable Act is to provide electronic free speech, and not to turn out television producers.

They also have specific objections to the way in which Ho'ike is being operated, such as:

- Ho'ike is running a "chop-shop," competing with independent producers like themselves by contracting and working with nonprofit organizations such as Kaua'i Police Department to produce their shows;
- The general manager has at times violated some of Ho'ike's procedures; and
- The board members are not experienced in television production, are not community free-speech activists, have at times not followed their own procedures, and have a "gate-keeper" mentality.

The recommendation was that the board be democratically elected from the subscribers.

Ho'ike's response is that the board's duty is to the community as a whole, not to the independent producers who are seeking to make a living by producing public access programs. The board president has not noted any conflict of interest on the part of the board members appointed by the cable companies. On the allegations that Ho'ike is acting as a so-called "chop shop," Ho'ike stated that when the organization first opened, it did provide production services to groups such as the Kaua'i Police Department and the County Council. Upon receipt of the so-called "chop-shop" complaints, the board took the position that it would not compete with independent producers, and now envisions Ho'ike as the last resort for these governmental and non-profit groups, allowing the independent producers the first opportunity to compete for these jobs. One producer informed the Bureau that the board apparently changed its position in its November 1995 board meeting, and intends to bid on producing programming for the Kaua'i county council.⁴

The polarity between these three producers and the Ho'ike management and board seems to be intractable. This does not mean that public access is not working on Kaua'i. The IVBB statistics show that a significant portion of the viewing public is watching Ho'ike, and the variety of shows is also evidence that a diversity of views is being shown. The

training comments are quite positive and there seems to be an active group of producers. The only element missing from what seems to be a well-rounded program is an "Open Mike" type of show. The criticism voiced above that Ho'ike should not be in the business of making television producers but should just provide access appears too limited; the versatility and power of the medium are so much greater than a fifteen minute "talking head" program. Those who want to produce should be encouraged to do so, but the Open Mike option should, if at all possible, be available for those who just want to be heard. However, the reality of Ho'ike's tight budget precludes this at this time.

Endnotes

1. Ho'ike: Kaua'i Community Television, Inc. Financial Statements for the Year Ended June 30, 1994.
2. The fee paid by the cable companies is scheduled to go up to 3 percent in the next year, unless reconsidered by the Director of the Commerce and Consumer Affairs. See DCCA Decision and Order No. 152, section 6.1 (b), (c), and (e).
3. Minutes of the Ho'ike: Kaua'i Community Television Board of Directors meeting, November 7, 1995.
4. Telephone call from Ed Coll to researcher, November 17, 1995.

Chapter 5

AKAKU: MAUI COMMUNITY TELEVISION

Background

Akaku: Maui Community Television, is unique in Hawai'i in that, while it serves as the "clearinghouse" and transmission site for P, E, and G access in Maui county, it was incorporated as a public access (only) corporation. Akaku produces G programming through its contract with the county of Maui. The E element is handled by Maui Community College (MCC) and the DOE. This tripartite arrangement arose as MCC had been producing and airing its own educational programs for eight years before Akaku was formed, and had a strong interest in continuing in a leadership position with educational access. MCC also wanted to handle public access on Moloka'i and Lana'i, as it has educational centers on those islands. Akaku is responsible only for assisting in the creation of P and G programming, but its facilities are used for playback of all three PEG segments on a single PEG channel.

PEG access is thus split between these and is coordinated through a consortium composed of representatives of these organizations. The role of the consortium is discussed in more detail in the budget section.

Akaku is located in Kahului in a 1,345 square foot office. The office space includes a small (304 square foot) studio and two edit bays, separated by half-height partitions. Akaku has been operating the PEG channel on since October 1993. It has four full-time and two part-time employees and an annual operating budget of \$204,787, airing programs for a subscriber population of approximately 40,000 on the islands of Maui, Moloka'i, and Lana'i, which comprise Maui county. Akaku's funding is based on receiving between two and three percent of the gross revenue from the cable companies in its area.¹

One of the primary components of its service is an interactive bulletin board that appears on PEG access channel between programs. The bulletin board features titles of various nonprofit, education, and government topics ranging from announcements of fundraising events to health information. Viewers see a directory of title with a number by each title, and by calling the phone number on the screen and typing in the number with any touch-tone phone, an expanded description of the event or topic appears on the television. The service is primarily for nonprofit agencies and educational and governmental notices. Akaku program schedules and information about individual shows are also listed.

Akaku also features an "open mike" type of show, "Speak out Saturday," in which Akaku provides a single camera, studio, and staff to start and stop the recording. Individuals or organizations in the community can use the studio for a half hour to make a presentation of up to five minutes on any topic of interest to them, as long as they comply with the Akaku limitations on commercial programs, obscenity, promoting gambling, and illegal and defamatory programs or other content restricted by law. These brief commentaries can be made without the need for production training and certification.

Akaku surveyed nonprofit agencies to determine type and level of access services desired. Akaku provides two bi-monthly studio programs for nonprofit agencies to discuss services, events or interview guests. Akaku production class is provided as crew.

Another feature of Akakū is its Senior Issues program, an all-volunteer senior citizen television talk show on issues of interest to Maui senior citizens. No prior production experience is necessary.

Akakū reviews and facilitates "special project" requests that can be accommodated within budget. Special projects have included multicamera political forums and sponsorships of large nonprofit events such as "First Night Maui". Akakū has over 150 individual access producers, and over 200 nonprofit, government, and educational groups that have used Akakū's services in the past 19 months. Groups tend to be more organized and repeat users, while individuals represent 30 or so "regular, weekly" users.

Training

Akakū started training in February 1994 and as of the end of July 1995 had certified 132 people in its Access Basics class. An additional 17 people have been waived in by meeting other standards. The Access Basics class is a five week course, meeting three hours per week, that covers the basics of how to produce an access show, how to use the access center, multicamera studio and control operation, graphics, directing, copyright issues, program promotion, and how to submit a program to be cablecast. Two classes are run concurrently each month, for a total of twenty-four people trained each session. Akakū also offers additional courses in field production, editing, and advanced editing. The cost of each course is \$20. Members of the class evaluate the training after every session provided. The Bureau asked for a compilation or transmittal of the course evaluations. Neither was provided Akakū stated that although evaluations are reviewed and used to improve the training program, the information has not yet been statistically compiled.

Training at Akakū is very popular; when its doors opened in October 1993, there were over 300 people on the waiting list; there were 254 as of February 1995; and 194 as of September 1995.

Akakū publicizes its services and training opportunities in free public orientation meetings held every other month. Akakū also posts messages on its video bulletin board, airs promotional announcements, and has its staff and board members speak to individuals and community groups about access opportunities.

The Bureau asked for statistics on how many certified users produce shows that are broadcast and the number of shows each individual produces, but Akakū stated that these statistics have not been compiled. Akakū does track and report to the DCCA information such as total number of Public, Education, and Government programs produced and aired, and total number of people certified in production classes.

Equipment Availability

At present, equipment is made available on a first-come, first-served basis to any certified access user, once the user's program proposal has been approved by the staff. Akakū is considering allocating a certain amount of resource hours per month per user to allow more equitable distribution of resources and enable new users to gain access to equipment.

The only equipment that is restricted is the multicamera studio equipment when it is used outside the studio setting. In that event, it is sent out in the Akakū van with an Akakū

staff member, due to insurance requirements. Akaka does not promote this type of usage as it places extra wear and tear on the equipment. Akaka cannot afford an engineer or maintenance person on staff, so remote use, with its attendant risks, is not promoted.

No organization has priority over another for public access equipment usage. MCC has been given funds for facility and equipment, and Maui High School also been given funds for a television studio for Department of Education (DOE) use. Akaka has received PEG funds to purchase equipment on behalf of the county for G use. That equipment has been made available for public access use when not in use by the county.

Defective or obsolete pieces of equipment are removed from service and repaired. Akaka's budget is limited and inadequate equipment may not be replaced, depending on the cost. Major repairs are handled by an authorized service representative. Lesser repairs are handled by an engineer who comes in once a month on a voluntary basis, or sometimes the chief engineer at 'Olelo is able to come over and assist. Maintenance, repair, and replacement of equipment are of increasing concern to Akaka as its equipment ages. Akaka realizes that it is unrealistic to continue to rely on the kindness and unpredictable schedules of engineering volunteers, and is seeking a source of revenue for this area.

Cablecast Access

Akaka divides its cablecast time into program categories, such as community service, issues, spiritual, arts and entertainment, government access, recreation, nonprofit, and various educational categories. Producers can designate the category in which their program falls, and can request a preferred cablecast time. A new program is generally scheduled to air two to four times during its premiere week, except for series, and is generally kept in Akaka's program library for up to three years for future cablecast.

Akaka submitted its programming list for the period of June 1 through July 1, 1995. While public access shows predominated during this period, governmental programming was aired every day, and educational programs aired every day except for five -- one Friday and all four Sundays. Public access shows were on various topics, such as religion, sports, politics, entertainment, cooking, astrology, comedy, health, Hawaiian issues, and the Speak Out Saturday program. The educational programming was taken from the HITS system and included courses on calculus, analytical geometry, Hawaiian language, public safety, and environmental resources for classes, and a Board of Education meeting. G programming basically consisted of a senior issues program County "What's Happening" and County Council and planning commission meetings. Akaka also submitted statistics for a more representative month, which showed more educational programming:

PROGRAMMING STATISTICS FOR OCTOBER 1995

HITS (DOE and UH Educational)	43%
County of Maui (Gov't Access)	9%
Arts and Entertainment	15%
Spiritual	8%
Issues	7%
Community Service (nonprofit)	7%
Sports/Recreation	7%
Bulletin Board	4%

As public access is still relatively new in Maui, no limitations had been placed on access to ensure the widest possible usage. As of July 1995, however, Akaka has sent a letter to its series producers that the number and length of series would be limited, and will also create some limitations for producers of individual shows to enable more shows to be aired.

Akaka has experienced no significant problems to date with persons who seek to use government access for political purposes. The government access program centers around specific production projects that are agreed upon on a yearly basis. According to Akaka, this "generally prevents our County Administration and County Council from using government access production for self-serving purposes, such as political campaigning." While overt campaigning is not allowed, the free exchange of ideas and positions in political debate is acceptable. During the last election season, Akaka aired several candidate forums and helped facilitate candidate forums for a local community association and for the Office of Hawaiian Affairs, by paying for the camera crew and technicians who crewed the events.

Editorial Guidelines

Akaka does not pre-screen any program for content. Each producer must sign a cablecast agreement stating that the producer is aware of Akaka's policies and has abided by them. Each program is checked to ascertain whether it meets minimal technical standards. No program is rejected based on length, but Akaka does request that it be consulted in advance if the program is over two hours in length, due to the difficulty of scheduling longer programs. Akaka also asks producers for assistance in scheduling sensitive subject matter or content designed for adults only.

Promotion

Programs are promoted by both Akaka and the individual producer. Promoters are taught how to draft a press release and how to distribute programs to the other access centers. Akaka will schedule the program on its on-air bulletin board and in the TV Guide pull-out section of the Maui News. If the completed program is received by Akaka at least two weeks before air-time, the show will be listed by name in the newspaper.²

Viewership

Akaka does not have information on viewer statistics; however, it does receive up to 2,500 phone calls per month to its on-air bulletin board. The general manager reports that she often fields comments and requests for information about access programming, and that "there is a strong indication that community television is a popular and watched resource in the community."

Cablecast Scheduling

Akaka works with representatives from UH and DOE well in advance of each semester to establish an equitable distribution of channel time. Akaka has worked with the DOE on production equipment purchases so that the resources would be similar and could be loaned in the event of an equipment emergency. Akaka is also developing a cooperative training

program with DOE for students and for staff so that they can use their own production resources and the DOE studio to create programming.

Akakū updates program scheduling format on a quarterly basis. Educational programs are scheduled first since many are credit courses for the schools. Government programs are then scheduled because Akakū knows well in advance what G programs will be produced according to the G agreement. Public series programs are also scheduled in advance, and Akakū leaves "open blocks" for individual public programs produced throughout the quarter.

Budget

Unlike the other public access organizations in Hawai'i, the P, E, and G access functions on Maui are handled by different entities, so the budget process is quite different. Akakū, MCC, DOE, and the county administration have formed a consortium, an unofficial advisory group, to handle issues relating to PEG access, including budget.³ In the past, consortium members had jointly discussed a mutual budget. But due to conflicts of interest, for fiscal year 1995-1996, Akakū prepared the public access budget and helped to facilitate the government budget, while MCC and DOE prepared their individual educational access budgets.

Unfortunately, this method of organization has its drawbacks. Due to conflicts between the four main entities' priorities, a unified budget was not presented to the Department of Commerce and Consumer Affairs (DCCA); rather, each organization submitted its own. The total of the budgets far exceeded the moneys available, thus placing the DCCA in the awkward position of having to create the budget for Maui county PEG access. Given the State's attempts to distance itself from PEG access provision, as discussed in chapter 8, the DCCA's involvement with establishing a PEG budget is understandable but inappropriate.

The consortium's quasi-official status is another drawback to this arrangement. Consortium meetings are confidential and closed to the public. The consortium discusses and attempts to make decisions that will have a significant impact on the way that PEG access is handled. Yet there is only one board member from Akakū in the consortium, who is not authorized to speak for the whole board unless board processes, such as public notice and open hearing, are complied with. Similarly, the Maui county representatives have expressed their concern that their participation does not comply with state open meeting ("Sunshine") law requirements. The consortium does not seem to be the best method of handling these issues.

The fact that PEG access is fractured between different entities has also resulted in duplication of facilities. For example, MCC, DOE, and Akakū all have studio facilities. Given the comparatively low number of programs generated through the Maui DOE, a more cost-effective use of funds might have been to build a larger joint studio with Akakū.

Another issue that has arisen is that lack of public access on the islands of Moloka'i and Lana'i. MCC proposed to provide public access on these islands as it has learning centers already established there and has been receiving funding to do so since 1993. In September 1995, an outreach coordinator was hired by MCC for public access provision on Lana'i and Moloka'i, but no equipment or training has been provided.

The Legislature asked how moneys are allocated between the areas of production, overhead, and administrative staff. A copy of the 1995-1996 PEG access budget was not available at the time this report was prepared.

One suggestion that has been made to strengthen PEG access on Maui is for the State to complete its work in setting up the PEG arrangement by finalizing the Maui plan and setting goals and deadlines. A clear articulation of responsibilities between the P, E, and G providers plus a time frame for them to carry out their responsibilities will enable all participants to fulfill their obligations in a timely manner.

It may also be timely for the State to consider requiring a central responsible entity. The consortium is unwieldy and has no separate legal standing. Its failure to come up with a combined budget has placed the DCCA in the untenable situation of having to devise Maui county's PEG budget for them, a situation which should not be allowed to continue. Akaka seems the most logical entity to be primarily responsible for PEG access, as access is the basic reason for its existence and as it programs P, E, and G on the existing channel. Akaka seems the most involved in all PEG aspects.

Board Membership

When asked whether the method of selecting the board should be changed to include the votes of users, subscribers, or both, in the area, Akaka replied in the negative. It was concerned that a membership-driven PEG access board would risk acquiring self-serving board members who may not necessarily act in the best interests of the organization or the public.

Akaka points out that it has ample opportunity for public input and participation. Its meetings are publicized and open to the public. Akaka has a policy of informing the public how they can participate in board meetings and the decision-making process. Akaka solicits county-wide input through publications, on-air promotions, outreach, and public meetings. Akaka has also held meetings in West Maui and on Moloka'i. Akaka has a number of advisory boards, standing committees, with members appointed by the board president, and other committees created by the board itself. Akaka is the only public access organization whose users did not contact the Bureau with complaints, perhaps due to its open access.

Akaka's nominating committee seeks board members who support the general goal of community access. Akaka tries to obtain individuals with varied backgrounds, including those with legal, financial, and nonprofit backgrounds. Current board members "represent the interests of seniors, education, government, media, nonprofit groups, arts and culture," Hawaiians, and others. The nominating committee looks for complementary board members based on expertise and capacity for input, and passes on a slate to the board of directors for their review and approval. The names are then passed on to the DCCA (the cable companies appoint their own directors). The nominations submitted are advisory only; the DCCA is free to place its own choices on the board, and in fact, the DCCA has exercised that right.

Akaka notes that several Akaka board members have been access users prior to becoming a board member, and that the majority of the board members end up being access users in some capacity while on the board. Akaka takes the position that member-driven boards (where members are elected rather than selected) have had very poor results; the primary reason being attempts by elected members to sway the board for self-serving purposes, rather than considering the interests of the entire community.

Community Access to Channels

Cable subscribers on Maui have experienced some difficulty in receiving the PEG access to which they are entitled, due to poor signal quality and the fact that the public access channel in West Maui is on channel 50, a channel well beyond other basic service channels on the dial and not available on many older television sets. The Bureau understands that these issues were being negotiated during the fall of 1995. The public's right to hear the diversity of viewpoints is concomitant with the individual's right to be heard. The cable company's duties do not stop at the mere provision of "a" channel; the channel must be findable and useable. Each cable company should promptly meet the spirit of its obligations under its franchise agreement.

Endnotes

1. DCCA Decision and Order No. 148, concerning Chronicle Cablevision, currently requires Chronicle to pay either the fixed rate in the franchise agreement or three percent of its gross revenues on the island of Maui, and two percent for the islands of Moloka'i and Lana'i.
2. Akakū needs the two week lead time to send its program roster to the TV data service, which is located in New York.
3. The consortium consists of one representative each from the DOE, MCC, Maui county administration, Maui County Council, a member of the Akakū board, the general manager of Akakū, and each of the cable companies serving Maui county.

Chapter 6

NA LEO 'O HAWAII, INC.

Background

Na Leo, established in 1993, was the last of the access organizations to commence operations. It covers the Big Island, with offices in Hilo and Kailua-Kona. Na Leo has an annual budget of approximately \$350,000 spread between the two sites.

The Kona office receives three percent of the gross revenues from the cable companies in its area; Hilo received two percent, until May 31, 1995, and now receives three percent.¹ At present the sites are run on separate budgets. The Hilo office is 800 square feet, and the Kona office is 960 square feet. Both offices provide training, equipment, and edit bays; neither has a studio. Na Leo has no money for grants to users. The size of the Big Island has precluded services from reaching the entire island; the districts of Ka'u and Honoka'a currently do not receive cable services.

Training

Training for the Hilo office started in April 1995. Training for the Kona office had not been established as of July 1995, as the Kona office was opened on July 1, 1995, and the equipment had not yet been assembled. At the time this report was prepared, the Hilo office had trained thirty individuals. Training was not advertised or publicized at this time because of the backlog on the Hilo waiting list, which contains approximately 130 people. Na Leo is only able to train eight people per month, with a backlog (at this rate) of sixteen months. The Kona wait list is between 50 and 60 people.

Training is offered monthly and consists of sixteen hours covering camera operation, audio, lighting for television, taping in the field, editing, and finalizing the show. As a part of the certification process, each person must produce two public service announcements within eight weeks, or the person will have to repeat the training course to be certified. The cost of training is \$25. Certification in one Na Leo site entitles the user to services at both sites.

An evaluation form has not been established yet. No statistics are available as of the time this report was prepared.

Equipment Availability

Equipment is made available to all certified users on a first-come, first-served basis. There are no equipment restrictions. Priority of use is made in the following order:

Residents of Hawai'i county

Staff and volunteers of community service organizations

Representatives from governmental and educational institutions located on the Big Island

Students of any educational institution located within the county

Non-locally produced tapes cablecast over the community channel must be sponsored by a local resident or organization.

The Operations Coordinator checks out each piece of equipment for defects before it is loaned out, and the equipment is inspected for defects upon return. If a piece of equipment is found to be defective upon return, it is immediately withdrawn from service.

Broadcast Access

Na Leo schedules its programming on a first-come, first-served basis. It is still so new that it has not experienced the necessity of limiting the number of programs being aired. It does have guidelines in place for that situation, with priority being given to locally produced programming, programs not previously aired, and programs produced by new users.

Editorial Guidelines

Na Leo does not preview the tapes it cablecasts. It makes its restrictions known and requires presenters and promoters to sign a statement of compliance. Na Leo's program content policy is to prohibit:

- (1) Obscene or indecent matter as defined in the 1992 FCC guidelines;
- (2) Materials containing speech not protected by the United States Constitution;
- (3) The direct or indirect presentation of lottery information;
- (4) Materials designed to promote the sale of commercial products or services;
- (5) Advertising, publicity, or promotion of a candidate for political office, excluding group-sponsored political debate; and
- (6) Material which might violate any state, federal, or local law, including the laws on defamation, unfair competition, and violation of trademark or copyright.

Promotion

Na Leo will list a program in its televised program schedule for that day if the program is submitted four weeks prior to "the deadline." While its Handbook states that programs submitted four weeks in advance "may" be listed in the program guides with Jones and Sun, the general manager responded that "since the program channel guide for Jones is produced in Honolulu, for both the cable channel and newspaper ads, the cable access channel is only listed generically." The general manager indicated that this failure to list the channels is a fiscal issue of the part of Jones Spacelink, its cable provider.

The survey indicates that Na Leo lists the programs on their respective days, and will run promotional spots for producers if the producers made them, on a "run of schedule basis."

Viewership

Na Leo does not have any viewership statistics. However, it has logged 20,000 calls to its IVBB since it started broadcasting in October 1994.

E & G Programming

Na Leo itself does not produce programming. Due to staff limitations, Na Leo has not actively pursued program production by educational or governmental institutions. Na Leo has contacted a number of educational and governmental institutions, and to date response has been minimal. UH-Hilo cablecasts an agricultural course and a Hawaiian language course, and UH-Hilo Athletic Department and UH-Hilo College of Continuing Education and Community Services use the IVBB. Na Leo also receives educational course programs from DOE and County Council meeting programs.

Budget

Na Leo's budget is approximately \$350,000 in franchise fees from Jones Spacelink, Sun Cablevision, and Chronicle Cablevision. Na Leo does not specifically allocate funds for each of the PEG components. Most of the funds are expended to cover the costs of staff, but as some of the positions are not being filled, there will be a savings of approximately \$50,000..

Proposed Insurance Deposit and Fees

In the spring of 1995, Na Leo proposed that each access user be charged a \$5 user insurance fee and make a refundable \$100 deposit for using Na Leo's equipment, despite language in the policy and procedures manual stating that the only cost involved is the cost of the training workshop. The purpose of the fee is to provide a self-insurance pool in the event a piece of equipment is damaged, lost, or stolen, and the user is unable to pay for the repair or replacement cost of the equipment.

This proposed policy raised an immediate outcry among users and potential users. None of the other public access organizations in Hawai'i have such a requirement. It was alleged that the threshold requirement of \$100, even if refundable, was simply too costly for many local residents. The board, according to general manager Juergen Denecke, has dropped consideration of the \$100 charge but the size of any other fees that might be imposed instead is still to be determined.

Board Membership

Na Leo objects to the elected board format for several reasons. One is cost; Na Leo estimated that the cost of mailing two first-class envelopes (ballot plus return envelope) to each of the 35,000 subscribers would be \$22,400, or over 6 percent of the Na Leo budget, not including printing costs.² However, costs could be reduced to less than a quarter of that if a bulk mailing was made, without postage on the return envelope, or reduced to zero if the ballot was placed in the cable subscribers' monthly bill (assuming the affected cable companies are willing to cooperate).

Na Leo's second comment was that it would be "very probable" that the balloting process would discourage community members from considering the possibility of becoming a director.

Third, Na Leo wrote that it is "VERY probable" (emphasis in original) that an elected board would be divided into special interest groups, which could lead to "stalemates and chaos for budgets, policy decisions, etc."

Fourth, "it is not a given" that either cable subscribers or access users are more qualified than anyone else to perform the oversight functions of a director, and in fact, more micro-management might occur as a result. At present, the bylaws require that the board "be generally reflective of the ethnic, geographical, and cultural diversity of the County and the public, educational, and government groups."³ Additional criteria are expertise and the willingness to commit time and to contribute to the board. Na Leo adds that in the relatively small Big Island community, it is still possible to make personal assessments of these qualities. At present, the board consists of individuals of diverse ethnic heritage, from different part of the island, and there are 5 members from the public, 5 from the educational, and 3 from the governmental sector, plus 2 cable company representatives.

Na Leo does not have any advisory committees. As discussed below, the opportunity for public input into its discussion and decision-making process is minimal.

What Could the State Do to Try to Help Na Leo Meet PEG Goals

Na Leo states that the National Association of Regulatory and Utility Commissions recommended that franchising authorities contract with non-profits to manage access, which would help distance the government from First Amendment and possible conflicts. Na Leo then adds that "[f]or the State now to single out PEG corporations with specific Board of Directors requirements, which do not universally apply to all other Boards of Directors, is a risky strategy which can be interpreted as undue government control and thus challenges the core of the First Amendment." (In reality, however, it would appear that the State is at present in much more of a controlling position by having free rein to appoint a majority of the board members than it would by establishing requirements that the board or voters would have to fulfill.)

What the State Can Do to Help Na Leo Promote the G Function

Na Leo says that the Legislature took a step in the right direction by funding S.B. No. 1939, C.D. 1 (1995),⁴ which provided funds that would allow the neighbor island access centers to tape legislative proceedings and show them during prime time so that a large audience could view them. The general manager states that "I would urge the State to expand on these efforts and provide funding for the necessary infrastructure."

Na Leo notes further that there is "no comparison between the facilities, resources, and employees between O'ahu and the neighbor islands, yet the neighbor islands are expected to produce the same services with a vastly smaller financial basis."

Public Comments

The Bureau was contacted by independent producers from the Big Island with complaints and comments about Na Leo's procedures. A copy of a letter from Na Maka 'O Hilo is included as Appendix D. The most serious complaints revolve around the issues of the \$5 equipment use fees and the \$100 deposit, as discussed above, and the lack of public information about the board's processes and public input into the decision-making process. Na Leo is the only public access organization in Hawaii that does not have any advisory boards. The access producers group Na Maka 'O Hilo reported to the Bureau that they had experienced difficulty in receiving copies of the agendas and board minutes on a timely basis,⁵ and were limited at board meetings to speaking for three minutes at the beginning of the meeting. Members of the public are also allowed to speak for three minutes on action items only, but not on other items such as discussions of policy. Given the fact that Na Leo has no advisory boards and no other form of public input, these rules seem unduly restrictive.

Na Maka 'O Hilo takes the position that a cable access membership should be formed, with the board elected by the members. While Na Maka did not specify who the membership should consist of, in most places, members are either the producers or other who have demonstrated an interest in the access organization, often by paying dues. Na Maka's concerns appear to be that, at the time this study was researched, no one on the board has personal insight into how a public access program is made, and that some decisions are being made in a factual vacuum. The Bureau was informed in mid-November 1995 that a Na Maka member was appointed to the Na Leo board.

Na Maka criticizes the current training program as inadequate and does not impart essential video production skills. Na Leo states that due to heavy demand for training and limited equipment that it was not possible to provide a comprehensive video training course. Na Leo will also provide consultation on an individual basis, and states that trainees who have used the consulting process have had no particular difficulties in preparing public service announcements. The Bureau does not have the expertise to determine the appropriateness of the training process, as it is technical in nature. Na Maka 'O Hilo also suggests, as training is limited, that Na Leo institute an Open Mike type of program in which people with a non-commercial message can get air time without training or certification.

Endnotes

1. At the time this report was prepared, Jones Spacelink paid Na Leo in the amount of the greater of two percent of gross revenues or a fixed amount established in the franchise agreement (\$119,000 for the fiscal year ending May 31, 1995). Chronicle Cablevision paid two percent for the region of Ka'u. Time Warner paid between 2.4 percent and 3 percent. See Appendix B for the current franchise fee distributions.
2. Letter from Juergen Denecke, General Manager, Na Leo 'O Hawaii, Inc., to researcher, August 4, 1995.
3. Na Leo Bylaws, section 7.5.
4. Actually, S.B. No. 1939, C.D. 1, was vetoed by the governor but the substance of the bill was enacted during the 1995 special session as Act 5.
5. The general manager disputes this point, but one of the Na Leo board members supported Na Maka's allegations on this point.

Chapter 7

WHAT TYPE OF ACCESS SHOULD BE PROVIDED?

Most jurisdictions delegate the management of public access to a third party, usually a nonprofit access center, a cable operator, or local school, to avoid First Amendment problems.¹ In Hawaii, the State has delegated management to the nonprofit access organizations. Senate Resolution No. 65, S.D. 1, asked the Bureau to ascertain whether these local access organizations "provide that type of access and programming intended by federal and state law." Unfortunately, the law does not explicitly state what type of access and programming is intended. One expert in the field has said that, outside of a general agreement that there should be adequate channel capacity, technical ability to air the programs, and equipment and facilities to support use, that there are no guidelines in terms of content or otherwise.² A review of the history of the federal law will provide some background and context for this statement and will provide a framework for the issue.

The Federal Communications Commission (FCC) was created by the Communications Act of 1934. This Act was intended to regulate "commerce in communication by wire and radio"; at that point in time, the cable television industry did not exist.³ As the cable television industry developed, Congress added it to the FCC's responsibilities. From 1972 until 1979, the Act mandated the larger cable companies to provide PEG access. Oceanic Television in Honolulu was one of the companies obligated to provide PEG access. However, in 1979, the United States Supreme Court struck down a number of provisions of the Act, including mandatory PEG access.⁴ The Court based its ruling on PEG access on the ground that this requirement treated cable companies as though they were common carriers, which the Act explicitly states that they are not.

Thus franchisees with franchise agreements specifying PEG access were not affected, while franchisees with agreements that merely required compliance with FCC regulations were relieved from the duty of providing PEG access.⁵ In 1984, Congress passed the Cable Communications Policy Act of 1984, making PEG access officially optional:

A franchising authority ... may require ... that channel capacity be designated for public, educational, or governmental use [.]

The importance of PEG access is referred to in the legislative history,⁶ which states that:

A requirement of reasonable third-party access to cable systems will mean a wide diversity of information sources for the public -- the fundamental goal of the First Amendment -- without the need to regulate the content of programming provided over cable....

Public access channels are often the video equivalent of the speaker's soap box or the electronic parallel to the printed leaflet. They provide groups and individuals who generally have not had access to electronic media with the opportunity to become sources of information in the electronic marketplace of ideas. PEG channels also contribute to an informed citizenry by bringing

WHAT TYPE OF ACCESS SHOULD BE PROVIDED?

local schools into the home, and by showing the public local government at work.⁷

The Cable Television Consumer Protection and Competition Act of 1992 further explained the rationale:

Leased access and public access programming uniquely allow individuals and groups to communicate their messages to the general public. Educational access allows local schools to supplement classroom learning and to reach out to teach those who are beyond school age or unable to attend classes. The government channel allows for a local "mini-C-SPAN," thus contributing to an informed electorate, essential to the proper functioning of government.⁸

This language indicates that there are two beneficiaries of PEG access: the individual speaker, who has a forum for the speaker's ideas, and the community, which will receive access to a diversity of viewpoints. Both sides of this equation are important; without the speakers, no viewpoint is available, and without the potential for the community to listen, the expression of the viewpoint is fruitless. Some have expressed the opinion that only the speakers' rights are important, but this lacks logic, for if the community is not on the receiving end of the speakers' communications, the speakers might just as well declaim their views in the privacy of their own living rooms. The speakers' rights may receive more support in that the speakers have a more dynamic role; they must actively participate in making their voices heard, where the community is passive, letting the speakers into its homes.

Hawai'i chose to make PEG access mandatory, but did not state a reason in the implementing legislation.

Access can have three components: (1) the speaker's access to technology; (2) the speaker's access to the medium; and (3) the community's access to the diversity of views. Each of these elements will be discussed below.

1. *Speakers' Access to Technology*

This element involves the training and certification, and access to equipment at the public access centers. As discussed in more detail in the individual access organizations' chapters, training varies widely among the centers. In the past, 'Olelo had the longest training schedule, with a thirteen week technicians course and another thirteen week production course before one can produce a video (although some individuals can try to study on their own and pass the latter at the same time as the former). The programs at the other access centers were much shorter -- five weeks before certification and ability to use the equipment.

Part of the reason for the brevity of these other courses is that (1) Ho'ike and Na Leo do not have studios, so that segment of training is not necessary, and Akaku has a much smaller and more modest studio, with simpler equipment than 'Olelo, (2) the equipment in these three neighbor island centers is simpler and easier to learn, and (3) the production aspect at the neighbor island centers is minimized.

While the more detailed training available at 'Olelo may be helpful in producing a fine quality product, there is a significant imbalance in the certification requirements that could and probably does pose a significant stumbling block to those who want to speak. There are approximately 300 people on 'Olelo's waiting list, and 194, almost two-thirds that many, on Akakō's list, even though Maui's population is only about thirteen percent of O'ahu's.⁹ While the opportunity to produce a fine quality program may be gratifying to videophiles, as stated in 'Olelo's own draft Five Year Strategic Plan:¹⁰ "Quality programming is an underlying goal of the corporation and its producers, but it is not a primary mission. *Concerns about quality should not override its goals for access and diversity.*" (emphasis added)

'Olelo seems to have realized that their training program as it was proved to be a stumbling block to wider participation, and has moved to rectify this through a major revamp of its training program. The new program is intended to assure that the technology is made more available to O'ahu residents. As this program was just being initiated at the time this report was finalized, it remains to be seen how effective it will be.

A complaint was also received concerning training at Na Leo; specifically, that some of the training did not comport with the testing. Na Leo is in the process of compiling a training evaluation system. Attention to the comments received should assist Na Leo in clearing up these types of complaints.

Access to equipment is another facet of this element. In general, each of the access organizations uses a first-come, first-served basis for equipment reservation. Certain very expensive equipment, such as 'Olelo's robotic unit, is available only to those who can provide proof of insurance; given the robotic equipment's estimated value, this requirement does not seem excessive, given the other means available of making videos with 'Olelo's equipment.

Some independent producers on O'ahu do have questions for 'Olelo about the disposition of missing 'Olelo equipment. When asked about this, executive director Richard Turner stated that all equipment that was taken out of service was either cannibalized for parts or given to one of 'Olelo's E or G partners. While this may indeed be the case, a failure on 'Olelo's part to explain clearly where and when a piece of equipment is taken out of service feeds into the perception of certain members of the Community Television Producers Association that 'Olelo is not being forthcoming.

There is a certain tension between the access organizations and the producers about type of equipment. On one hand, producers on the Big Island claim that the Na Leo technology is not up to date; on Kaua'i Ho'ike is criticized for putting money into equipment instead of providing access (such as in an Open Mike-type of show); and 'Olelo is open to criticism that its sophisticated technology overwhelms users who would be perfectly happy to be able to use a simple Super8 camcorder. Some of the access organizations respond to producer complaints with the observation that public access equipment is not meant or intended to provide professional-quality service, and that some of these producers are trying to make a living by using the public access equipment to shoot projects for which they receive compensation.

Obviously there is a range of possibilities, and equally obviously, there are always those who will not be satisfied with arrangements that they find less than optimum. However, it is not clear that the choices being implemented by the various access organizations are obviously wrong, either. What does seem clear is that producers feel that some of the access organizations are not taking their needs into consideration. On the Big Island, for example, representatives of Na Maka 'O Hilo complain that the edit equipment there has no time codes, without which precise editing cannot be done. Na Maka also notes that there are no Na Leo

board members who have production experience. Na Leo has the least opportunity for public input of any of the access organizations. It would not be unreasonable for Na Leo to allow Na Maka or any other interested producers to present to the board technical information on their equipment needs, since they have expertise that the board lacks. At present, the producers are limited to three minutes of speech on action items only, and have trouble even receiving copies of the minutes and notices of board meetings. There is no need for the exacerbation of an already tense relationship by the withholding of information, when a more fruitful relationship can be developed by the sharing of views backed by experience. If the board chooses not to follow the producers' suggestions, at least it will have done so in an informed manner. It is to be hoped that the addition of a Na Maka member in November 1995 will resolve these problems.

Na Leo has proposed an arrangement that would seriously hamper access of its producers to equipment. In 1995, the board discussed the option of charging a \$5 user equipment fee for each piece of equipment that it used, along with a refundable \$100 equipment deposit. The purpose of the fees is to provide a self-insurance pool in the event that a piece of equipment is damaged, stolen, or lost, and the producer is unable to pay for the repair or replacement. This proposal created a storm of controversy among the producers on the Big Island, who pointed out that (1) the policy and procedures manual promised that no such fees would be assessed; (2) the \$100 would only cover four percent of the cost of the camera, a far cry from the full amount needed, (3) the Big Island community in general is economically depressed and a \$100 fee, even if refunded, and \$5 fee for every piece of equipment to be used each time, is not affordable for many. None of the other access organizations in Hawaii charges any kind of fee or deposit for equipment, and neither do the access organizations that this researcher contacted in the course of researching this study.

The Na Leo board eventually tabled the motion. The concept of some type of charge, however, is apparently still being considered. It would be hoped that the board would avoid an alternative that would provide a barrier to public access.

2. *Access to the Medium*

Access to the medium permits someone with no training to have his or her views aired. The classic example of this is the so-called "Open Mike" show, in which a simple studio set-up is provided and a person can go in, start the camera, present his or her viewpoint, and stop the camera. The presentation is then broadcast by the station.

Akakū has had such a program, called Speak out Saturday, since February 1995. 'Olelo started its program, called O'ahu Speaks, in August 1995. Neither Ho'ike nor Na Leo have such a program, but Ho'ike has only three staff members and Na Leo has only two at each site plus the general manager. While this type of program does involve some staff time, which is in limited supply, perhaps some kind of arrangement can be made with volunteer producers to help the access organizations provide this type of forum. It might assist the access organizations by shortening the wait list with the removal of people who just want an opportunity to be heard, but do not really want to be in the position of producing videos.

Some independent producers argued that the access organizations should not be "in the business of creating video producers," but should merely provide this type of access only. This proposal is too extreme. The ability of video to capture concepts visually is a powerful tool; the persuasive power of a "talking head" presenting a brief statement does not compare. For people who want to communicate their ideas visually, video production should be an option. For those who want the medium without the tedium, the instant gratification of an

"Open Mike" production should also be available, within the constraints of the access organizations' budgets.

3. *The Community's Access*

Two separate issues have arisen under this heading. The first is the most literal -- the community's ability to actually see what is being shown. Problems have arisen in several of the counties. On Maui, the signal quality in the West Maui area has been "poor to unviewable" for a year, and in West Maui the public access channel is channel number 50, which many older television sets do not have. These issues were under discussion in the fall of 1995; it is unfortunate that their resolution was not cleared up on a timely basis.

The Big Island is scheduled to provide an additional PEG channel in Hilo, but due to planned upgrades at Jones Spacelink, Na Leo's general manager reported that the cable company would request a delay in providing this number of channels. In mid-November 1995, the Bureau was informed that Jones will "relinquish" another channel to Na Leo on January 15, 1996. While a certain amount of leeway may be necessary, the State should hold a firm line on long-term efforts of cable companies to decrease their PEG commitment, especially in counties where the public access organizations have a proven track record.

While the details of these problems are worked on, the State can assist the community by making clear to the cable companies that PEG access is a serious issue to the State, and that poor signal quality, inability to access a PEG channel, and other related issues will not be tolerated.

Another issue related to this topic is whether the access organizations should actively help foster a diversity of viewpoints. Some access organizations are more active, either by serving the under-served by actively recruiting their participation, while others sponsor programs, such as political debates, to assist in presenting a wide range of views. This has been described as the "access center as facilitator" versus "access center as production" unit debate.¹¹ In the facilitator model, also known as the pure public access model, the independent producers do all the work and produce the programs themselves. Program quality can be a problem. In the production unit model, the access organization becomes actively involved by providing the production crew while the user group provides the content. This is more costly and limits the amount of programming that can be produced with the available staff.

In Hawai'i, 'Olelo has tried to target under-served groups, and 'Olelo and Akaka have helped to sponsor programs such as political debates in the past. Producers here have complained about access organizations' more active efforts, but it is not clear, based on these accepted models, that these efforts are improper. It has been alleged that the true motive for these producer complaints is that fact that some producers try to make a living from producing the same type of shows, and feel that these activities by the access organizations deprive them of the opportunity to produce these shows themselves. Yet the desire of independent producers to make money from public access equipment and facilities should not preclude access organizations from assisting projects that benefit the public. Quite the contrary; in these instances, the right of the community to receive a diversity of viewpoints should not be bounded by the desires of producers to be paid for using a public resource.

Endnotes

1. Kathleen T. Schuler, "Overview of PEG Access," document prepared for the City of Cerritos, at 11 (undated). Ms. Schuler has been the State of Hawai'i's consultant in designing the public access organizations.

WHAT TYPE OF ACCESS SHOULD BE PROVIDED?

2. Telephone interview with Sue Buske, The Buske Group, June 9, 1995.
3. See 47 U.S.C.A. 151 et seq.
4. F.C.C. V. Midwest Video Corporation, 440 U.S. 689, 700-01 (1979).
5. Daniel L. Brenner and Monroe E. Price, Cable Television and Other Nonbroadcast Video (Clark Boardman, New York, NY) 1988 revision at 6-29.
6. House Report No. 98-934, 5 U.S. Cong. and Administrative News Vol. 6 (1984) at 4655. House Report No. 98-934 actually applied to the companion house bill, but the report states that the "Senate bill was passed in lieu of the House bill after amending its language to contain much of the text of the House bill." Id.
7. Id. at 4667.
8. Legislative History of the Cable Television Consumer Act of 1992, P.L. 102-385, 1992 USCCAN, Vol. 4, at 1185-86 (1992).
9. Comparisons are made to population totals, and not subscriber totals, since access is based on a person's status as a resident, and not whether he or she subscribes to cable television. There are approximately 180 on the Na Leo waiting lists, more than half the number on 'Olelo's, even though the Big Island's population is only about fifteen percent of O'ahu's. Kaua'i has a wait list of approximately 30, 10 percent of 'Olelo's and a population approximately six percent of O'ahu's.
10. 'Olelo, "Five Year Strategic Plan," draft #4 at 3 (May 1995).
11. This discussion is taken from materials prepared by Kathleen Schuler of Schuler & Associates for the City of Berkeley, California on PEG Access Management Models.

Chapter 8

BOARD SELECTION

The topic that drew the most debate was the issue of board selection. Senate Resolution No. 65, S.D. 1, asked whether the method of selecting the boards of the public access organizations should be changed to include "the votes of cable subscribers living in the cable service franchise area in which the non-profit access corporation operates." At present, each access corporation has a nominating committee that prepares a suggested slate of members for the majority of director slots. This slate is advisory only. This list is transmitted to the DCCA, which has independent control on whom to appoint. The DCCA need not use the access organization's list, and in fact has at times exercised its ability to appoint board members not on the list.

In addition to the majority of board members appointed by the DCCA, each cable company (except Chronicle on O'ahu) has the ability to place one, two, or three members each on the board, depending on the cable franchise agreement.

Considerable controversy exists on this method, especially with the level of state involvement with the board appointment process. One primary reason access organizations have burgeoned is that they provide a buffer against the government's liability for programming and for First Amendment violations.¹ In the event of a lawsuit, the deep pockets of the State are sheltered behind the relatively shallow pockets of the access organization. Government and cable representation on the board is usually an issue.² The buffer aspect of an access organization is diluted when the government becomes involved. As one article states, "A [government] representative serving on a Board which directly or indirectly sets programming poses First Amendment questions. The more [government] seats, the greater the question becomes. There is also the potential for conflicts of interest when voting on issues that impact the city or cable system."³ Those access organizations which want to avert these problems yet maintain communication have either placed the government and cable companies into advisory positions, or made them non-voting, ex-officio members of the board.⁴ The State commissioned a study on cable communications access by Jean Rice, a nationally-known consultant.⁵ In discussing a possible format for an access organization, the study suggested a format with four members appointed by the governor; three members representing the community producers initially appointed by the Community Television Producers Association (CTPA) and thereafter to be elected by the membership of the corporation; two institutional representatives to be appointed by the board or the governor, and to reappointed by the institutional task force, if one is developed; two members to be appointed by the board to ensure broad representation and special expertise; and ex-officio members to include representatives from governmental and educational access management, the DCCA's cable television division, and the cable company.⁶ The Rice report noted that "the level of volunteer participation in access has been so significant over the years that any structure that does not allow full representation by community [producers] and other community representatives should not be an option considered by the State."⁷

The State chose a different model for its access organizations, one involving appointments by government and cable companies, with no specific representation for the independent producers.

As the State was instrumental in forming the access corporations, appoints a majority of all the board members, and has oversight responsibilities for the access organizations, some producers have taken the position that the access organizations are actually state

BOARD SELECTION

entities and as such should be subject to the state sunshine laws and the information practices act.⁸

The office of information practices (OIP) has taken the position that the access organizations are not state entities and that therefore the information practices act does not apply, although its opinions have been based on a less than full understanding of the facts. In its first opinion,⁹ OIP erroneously stated that the extent of state involvement in appointing board members was the appointment of the initial board only. This is incorrect; the DCCA has ongoing board appointment responsibilities. In a subsequent letter the OIP stated that the state does have ongoing appointment responsibilities, but that it has no discretionary abilities as it is required merely to appoint whomever the board submits. This also is incorrect; the DCCA has the ability to reject board-selected nominees and appoint its own choices and has in fact done so. In its most recent letter,¹⁰ the OIP again takes the same position, based in part on the ground that providing community broadcasting is not a required function of any government agency. Yet the Hawaii Public broadcasting Authority is required by statute to produce and broadcast programs intended to enlighten the people of the State.¹¹ Whether the OIP considered this or not and whether it would affect its opinion is unknown.¹²

Aside from appointing a majority of all board members, the State is tied to the access organizations in other ways. As set forth in chapter 5, on Maui PEG access is split between Akaka, MCC, the DOE, and the county administration. As these entities could not decide on a joint budget, three separate budgets were submitted to the DCCA, by Akaka for P, MCC for E, and the county for G. These budgets totalled more than the available moneys. To be able to approve distribution of the cable company moneys, the DCCA was placed, albeit reluctantly, in the position of having to devise the PEG budget. The State is therefore deciding where the PEG moneys for Maui county should go, and setting PEG priorities for the county. This is not unusual for the State to do in a purchase of services contract, perhaps -- but public access is ostensibly not a state function.

Additionally, the two existing contracts¹³ between the State and the access organizations provide an unusual degree of state involvement. The Ho'ike contract permits the State to terminate PEG funding if Ho'ike breaches its obligations under the contract, and provides that upon contract termination Ho'ike will transfer to the DCCA or its designee the balance of its fees and funds and the PEG access facilities and equipment. This language is significant as, technically speaking, the State has no interest in PEG funds, as they are provided by private entities, the cable companies. The intent of this language may be that the DCCA hold the money and equipment in trust until a successor organization is established, but while such an intent may be implied, it is not stated. This wording is another element giving credence to the allegation that access organizations are creatures of the State.

'Olelo's contract, on the other hand, contains no language allowing the DCCA to terminate the contract, and contains no reference whatsoever to the disposal of money and equipment upon termination of the contract. This is ironic, given the fact that 'Olelo receives so much more money than Ho'ike does. 'Olelo's bylaws provide that upon dissolution, properties and assets shall be disposed of as provided in the DCCA agreement, which language is meaningless as the agreement contains no such disposition. (The bylaws do provide that the assets will not go to benefit any private individual and that any assets and properties remaining after they are distributed pursuant to the DCCA agreement shall be paid over to a 501(c)(3) nonprofit corporation dedicated to cultural, charitable, and educational purposes.)

The DCCA has recognized the oversight in the 'Olelo contract and, at the time this report was prepared, was drafting a new agreement for 'Olelo. However, the original

agreement provided that it may be revised only by written consent of both the majority of the Board of Directors and the Director of DCCA, and it is unknown whether the board will agree to the amended contract.

The fact that, at least in Ho'ike's case, the assets and funds are to go to DCCA only highlights the contention that the access organizations are creatures of the State. While there may be an argument that the State intends to hold this money in trust for a successor access organization, given the fact that the federal act is silent on the use of this money, and thus no legal obligation prevents the State from keeping it for itself, the lack of specific trust language is interesting.

Understandably, the State seeks some kind of reassurance that the resources it is directing to the access organizations are being used responsibly. Yet the controls in place seem to bring the State dangerously close to being liable for the access organizations' acts, thus negating the major purpose of their existence, shielding the State from deep-pocket liability.

For the purposes of this report, based on the OIP letters, it will be assumed that the access organizations are independent organizations and not creatures of the State, although this assumption may be subject to challenge.

Proponents of Board Selection

The organizations in this State who contacted the Bureau generally preferred the existing method and expressed doubts about the concept of subscriber election. The League of Women Voters of Honolulu states that:

. . . [w]hile our organization generally supports the involvement of everyone affected ... in this case, we don't think cable subscribers as a whole are ready to select the members of access corporations' boards. Too many subscribers are unfamiliar with the access corporations' missions and their operations and not knowledgeable about the necessary qualifications necessary to serve on the boards. We feel that the response in such an election would be very low and not worth the cost....This is not to say that at a future date when their services are known to more people, inclusion of all cable subscribers in the selection of board members would not be feasible or worthwhile or desirable."¹⁴

The Bureau contacted the cable companies and asked for their positions on this topic. Three responded. Oceanic stated that while it is not aware of any complaints regarding the present composition of the 'Olelo board of directors, nonetheless, Oceanic would welcome subscriber participation should the Legislature or the DCCA provide for it.¹⁵ On the other hand, Kauai Cablevision stated that it is opposed to election of the board by subscribers due to the risk of allowing a vocal minority with a self-serving agenda to dominate the direction of PEG access to the exclusion of the community at large "despite their 'illusionary' role in 'electing' the board."¹⁶ Garden Isle CableVision also objects, pointing out that almost everyone on the Ho'ike board is a cable subscriber and that therefore, contrary to what is stated in S.R. No. 65, S.D.1, cable subscribers do have representation on the board. Garden Isle fears that allowing directors to be elected would lead to a vocal, self-serving minority

controlling the access organization, instead of the proven community leaders from a cross-section of the public, educational, business, and governmental communities.¹⁷

In testifying against Senate Concurrent Resolution No. 77, the companion concurrent resolution to S.R. No. 65, the access organizations supported continuation of the current board selection process. As stated in the Akaka testimony, "[w]e are concerned that a membership driven PEG access board would risk "stacking" or placement of Board members by the public for self-serving interests, which may not necessarily serve the best interests of the organization or the public."¹⁸ 'Olelo also shared the fear that the election process could be taken over by a small vocal group for their own interests: "A membership election process will create special interest groups that will adversely affect the structure of PEG access by focussing resources and policies ... to the benefit of those limited groups."¹⁹

Criticism of Current Selection Process

Criticism has been directed at the current board appointment structure by some producers on the grounds that this method:

- (1) Does not guarantee representation on the board for subscribers, who would represent the community point of view;
- (2) Does not guarantee representation on the board for producers, so that their needs are not adequately dealt with;
- (3) Is not democratic in that board members are appointed, not elected;
- (4) Removes choice of board members from the local community who know them best;
- (5) Involves the State too closely with the access organizations; and
- (6) Places cable company-chosen members on the board who have the potential for conflicts of interest.

1. *No Subscriber Representation*

There are two facets to this issue. The first is whether subscribers should in some way be represented on the board. The second is whether the subscribers should elect the board, instead of the board being appointed by the State and the cable companies. The second facet is discussed below under "no election of board members."

Subscribers represent the community. However, their interests are relatively uncomplicated. Their needs revolve around clear access to the specified number of channels, and an diligent effort on the part of the access organization to obtain a diversity of views. They do not appear to have any special or technical need to be on the board that the general range of board members -- the majority of whom, at 'Olelo, Akaka, and Ho'iike, must be cable subscribers -- cannot adequately represent. Some have stated that the community should also receive quality programming.²⁰ That of course would be desirable, but it does not seem as though that can be the overriding criterion for public access. Some more fundamental goal, such as the right to be heard and to make one's views known, must take precedence. When the framework of "quality" (beyond the technical quality required to produce a viewable, audible tape) is imposed on the basic requirement of access, diversity

starts to diminish as not all speakers are capable of or interested in the effort to produce quality shows. While quality, therefore, is always desirable, it cannot be used to stifle voices.

2. *No Producer Representation*

While not addressed in the resolution, some producers have raised the issue of the lack of producer (user) representation on the board. They argue that producers are intimately familiar with the daily needs and experiences of the producers. In some cases, no one on the board has production experience, which can lead the board into making inappropriate choices of equipment, training, and facilities.

The access organizations' response has been that the board needs to be focussed on the benefit to everyone, including the public who watches the show and the inexperienced potential producers, not just experienced producers who may put their own concerns foremost.

Producer input is important. PEG access is intended to benefit them, and access organizations have the role of facilitating that access. Failure to hear producer comments and complaints respectfully and to act on reasonable requests thwarts the intent of the law.

However, it is not clear that the only or best way for the producers to be heard is to reserve a place for them on the board. First-line responsibility for user complaints should be the staff of the access organizations. Next line would be the executive director or general manager. The board should not be put into the position of micro-managing the access organization. The board should assure itself that the staff and manager are treating producers appropriately, and should seek producer input on issues on which the board lacks expertise.

Each board should have advisory boards which have user members or otherwise freely accept user input. The current practice at Ho'iike, for example, is to allow anyone who applies to become a voting member of any of Ho'iike's advisory boards. In comparison, the Na Leo board has no advisory committees and has in the past discouraged public input through refusal to distribute minutes prior to the meeting and placing a three minute time limit on each user's input. The wisdom of continued refusal of user participation is questionable, especially as, at the time this report was prepared, none of the board members had completed Na Leo's training and thus had no first-hand experience with practical and technical issues.

3. *No Election of Board Members*

At present, all board members are appointed by either the DCCA or the cable companies. Criticism has been made by a few producers that it would be more democratic to have board members elected, either by the users, the subscribers, or both. Kathleen Schuler, the consultant who helped the State set up all of its access organizations, stated that an elected membership organization was rejected as a model for the initial formation of 'Olelo, the first access organizations, as due to the size of its franchise area, 'Olelo was going to be one of the richest public access organizations in the nation, handling millions of dollars per year in operating and capital funds. There was a concern among those forming 'Olelo that continuity and good management needed to be a predominant element, especially at the start-up stage. With an elected board, a relatively small number of voting members could force drastic changes on the board, and represent narrow rather than broad interests. An additional concern was that the planning group for the access organizations defined potential membership as more than just public access producers, and anticipated problems in

developing and sustaining a membership during the brief start up period and in the costs associated in supporting a large membership.²¹

Schuler adds that it was always understood that at some future time, the board appointment process would be reviewed, and in fact the 'Olelo agreement with the DCCA states that "it is agreed that the appointing agencies will consult with the Board of Directors over time concerning the appointment process with a view to making appropriate changes." According to Schuler, the 'Olelo board has declined to review the issue. The neighbor island access organization were patterned after 'Olelo, and it does not appear that either the DCCA or its consultant considered a model with an elected board, for reasons similar to 'Olelo's. While there are no dedicated seats per se the bylaws of all but Na Leo require that subscribers be a majority of the board.

One issue involved in elections is deciding on the electorate. A variety of options exist. In some cases, the producers -- those who have been certified to produce public access show -- vote. In others, voting membership is extended to all those who demonstrate an interest in the the access organization, including producers, those who pay dues, and even those who merely request to be on the organizations' program mailing list. In at least one, voting rights are extended to all cable subscribers, and in another, all property tax payers. Some organizations segregate voters by class, and have separate elections by individuals and by groups. Each of these models has its own benefits and pitfalls. Election by cable subscribers usually involves a large group, so running the election is costly, and often involves an electorate indifferent to the election as they subscribe to cable for other reasons. Election by producers can lead to stack the board with micro-managers and self-serving interest.

The Bureau contacted a number of access organizations nationwide for information of their board selection process. That information is presented in a later section. In brief, there are many different variations in the process. Some boards are elected by their membership, some are self-appointed, some are appointed by a variety of different sources, and some area hybrid mix of selection styles. The elected board does not appear to be any more successful than any other type of board, and in fact, in some situations boards have had to eliminate or reduce the proportion of elected members due to the narrow interests, infighting, and micromanagement of the elected user board members.

4. *Removal from Local Community*

Another criticism of the current system is that by placing the ultimate authority for appointing the majority of the board with the DCCA on O'ahu, the input from the neighbor islands as to whom they want on their board, based on their local observations, can be undercut. All the boards appear to have quite extensive criteria for selecting members, and endeavor to nominate a representative cross-section of the community. Only rarely has the DCCA has exercised its ability to appoint regardless of the access organization's nomination list. However, the potential for total control by the DCCA over its appointments exists, and there seems to be no good reason for that.

5. *State Appointments*

One producer sketched the scenario in which the governor, in retribution against producers who have aired programs criticizing his policies, orders the DCCA to appoint individuals to the board who will restrict the free speech access. While no one is suggesting that this opportunity has come to pass, the fact remains that the State is involved with board selection, a quite unusual arrangement for a private nonprofit organization.

6. *Cable Company Appointments*

Another unusual feature about the board selection process is that the cable companies are given the right to appoint board members. While at first glance this arrangement might seem reasonable, upon closer examination it proves troublesome. The cable companies are for-profit businesses whose primary assets are television channels. It is to the cable company's economic benefit to retain as many channels for itself as possible, rather than providing channels free of charge for PEG access. It is also to the company's economic benefit to keep its PEG payments as low as possible (although the cable companies pass the operational expenses to the subscribers, they do not pass on the equipment costs).²² In contrast, it is to the access organization's best interests to ask for more access channels and more funding.

While the number of channels to be devoted to access and the amount of capital payments is theoretically decided only by the DCCA, in practice the cable companies have asked for waivers from these obligations. Some examples: on the Big Island, the executive director of Na Leo stated that Jones Spacelink will be asking for a delay in fulfilling its PEG channel requirements due to a proposed upgrade. On Maui, Time Warner has proposed paying a flat fee per subscriber for PEG access capital, rather than the fixed amounts in the franchise agreement. The Akaka executive director notes that with the current number of subscribers, this would cause a significant reduction in capital contributions. And on O'ahu, while the current Oceanic franchise requires it to make ten percent of all available channels in excess of forty-two channels available for PEG purposes, in its attorney's letter to the Bureau, Oceanic recommends that the number of PEG access channels on Oceanic be limited to five.

While the DCCA is the ultimate judge of these and other issues, it would be reasonable for the DCCA to look to the PEG boards for their input. The boards must be able to speak freely as to what they think the best result would be for public access, which in most cases would be in favor of more channels and more money, not less. Having cable company representative on the board -- even if they are not cable company employees -- poses an unpleasant dilemma that may rise to the level of conflict of interest for those board members. This report is *not* stating that cable company-appointed board members have acted in a way that is contrary to the best interest of the access boards on which they sit. However, the potential exists and to ignore it postpones but does not resolve the issue. If the DCCA feels that someone with cable company expertise is important to have on the board, the substitution of an ex-officio cable company representative would be more appropriate than the current arrangement.

Other Models

The Bureau contacted a number of public access organizations throughout the country to report on their board structures.²³ One fact that quickly became evident is that there is no central source or clearinghouse for this information, and that there is no consensus as to the best system.

Access Sacramento [California]

This board had the most complicated structure of all the access organizations contacted. The individual members of the access organization elect four board members (an individual membership costs \$25 per year), the dues-paying subscribers of Sacramento Cable elect four members, and the non-profit organizations (membership costs \$100 per year) elect

four members. These twelve members then appoint three more board members, for a total of fifteen.²⁴

Austin Community Television [Texas]

ACTV is the second-oldest continuously operating non-profit access organization in the nation, having formed in 1972 and incorporated in 1973.²⁵ As such, its board has undergone considerable changes over the years. For the first six years, the eighteen member board was self-appointed.

In 1983, several people thought that a self-appointed board was too detached, distant, and undemocratic, and that policy decisions were made without adequate information. Six members were added to the board, to be elected by those certified to use the equipment and submit programs. For the first two to three years, the results were good; elections drew great interest and participation and there was a good blend of community representatives and active users. However, after this period, the number of user candidates and voters dropped (voters dropped from 70 to 25 people), and the more extreme and vocal candidates campaigned harder and won places on the board. The agenda of these directors was primarily self-centered: to add equipment which would further their free-lance work. Their extreme views drove off a number of board members, and the board dropped in size from 24 to 10, with users in the majority. They attempted to micromanage the facility. Various personality conflicts arose.

The board grew so dysfunctional that the City of Austin, the funder, intervened. Users were banned from the board on the basis of their inability to disregard personal interest and act in the public trust. The board is now slowly building back to a point of broad-based community representation.

Capital Community Television [Salem, Oregon]

As originally constituted, this seven-member board was appointed by local government.²⁶ In 1994, CCTV moved to self-appointment of board members. A nominating committee composed of advisory board members (representatives of local government, schools, and organizations) conducts a search for compatible candidates.

Davis Community Television [California]

Davis has a hybrid board in which six board members are elected by the membership, and three are appointed by the other board members.²⁷ The positions are not specified for any special interest group. There are two ex-officio members: the executive director and a cable company representative.

Larchmont-Mamaroneck Community Television [New York]

This nine-member board elects itself.²⁸ There are no designated slots for special interest groups. The access organization does have a membership, but they do not vote for the directors. The contact person also had personal experience on an access organization in Manhattan, which has a nineteen person board, of which 2 members are appointed by the borough president, and seventeen are elected. Of the seventeen that are elected, six "slots" are set aside for producers.

Montgomery Community Television [Maryland]

This organization has an unusual set-up in that board members are appointed by twelve county-wide organizations such as the League of Women Voters, the Chamber of Commerce, and the NAACP.²⁹ These appointees must then be voted into office. All cable subscribers are eligible to vote. The statute also provides that a cable company member be appointed ex officio, although the board later decided to make all the ex officio members voting members. This set-up is complicated by the over-involvement of government in the organization; the board is not allowed to change its bylaws without local government approval, and the cable company moneys are turned over to the county, which then appropriates them to the access organization, and by Maryland's privacy laws, which forbid the access organization from receiving the names of the cable subscribers, so that the access organization must run its election through the graces of the cable company, who mails out the ballots as a bill stuffer. The access organization has no way of verify who is entitled to vote. With over 200,000 cable subscribers, the cost of printing the ballots alone is \$5,000.

This arrangement has been termed "ludicrous," and the parties involved have agreed to change the system. Two recommendation made by the access organization are to create a hybrid board, with some elected and some appointed, and to reduce the universe of eligible voters from over 200,000 to 3,000 - 4,000 by including only those who have a demonstrated interest in public access cable television, either by becoming a certified user or by requesting placement on the mailing list for the program guide.

While the board selection process has been criticized, the general manager is pleased with the composition of the board, as it has a mix of active users, television professionals, and interested citizens. He commented that when the balance of the board tilts toward any one group, problems can develop. Too many users can lead to self-serving decision-making, while the opposite can lead to a board that is far too removed from the practicalities of the operation.

On the issue of a cable company representative, the comment was that this was a conflict of interest and probably should be avoided.

NorthWest Community Television Corporation [Minneapolis, MN]

The board here is a hybrid board, consisting of fifteen members, thirteen of which are appointed and two of which are elected.³⁰ The appointed members are appointed by the cable commission, which is an eighteen-person coalition composed of senior county and elected officials from the nine cities served by the access organization. Nine of the appointees represent each of the nine cities, and four are "at-large" representatives, which in practice means that they are four members of the cable commission. The two elected access producers positions are elected by the members of the access corporation. Membership is open to any resident and is free of charge.

The board has been active since 1981, and initially many city council members sought a position on the board. At some later point, they changed their minds and tried to distance themselves from the board to remove themselves from issues related to content. However, in 1985, a new contract was negotiated which gave the access organization a large budget, and the council members reversed this position, to allow themselves to have more control over the money.

Public Access Television [Iowa City, Iowa]

This board is a hybrid board with nine members, two of which are elected and seven of which are appointed.³¹ One of the elected board members is elected by the membership, and one is elected by the board. The board members then appoint the other board members. There are no designated slots for particular special interest groups.

Tampa Educational Cable Consortium [Florida]

This access organization handles E programming only. Its thirteen member board is all appointed.³² Each of the institutional members -- representing local education and cultural entities -- appoints one board member, and then the two funding sources, the city council and the county commission, each appoint one.

Thurston Community Television [Olympia, Washington]

Thurston has a 15-member hybrid board, with four members appointed by its funding jurisdictions, five elected as member representatives, and six elected as community representatives.³³ The general membership nominates the member representatives, and the board of directors nominates the community representatives from people who are not members. It was noted that having producers on the board can sometimes lead to "tunnel vision" on issues relating to equipment or facility policies. However, producers can also bring a "good sense of the operation" to the board.

Tucson Community Cable Corporation [Arizona]

This board is a hybrid board, in which nine members are elected and six are appointed.³⁴ The elected members are elected by the membership, which is composed of people living in the city limits who sign up to be members. No fee is charged. One each of the appointed members is appointed by the University of Arizona, Pima Community College, the largest school district in the area served, and the Pima-Tucson Arts Council, and two are appointed by the board for specialty slots: one to represent independent producers and one to represent health and human services.

This model has been in place since 1990. Prior to that, the board was entirely elected. However, there was a downside to the all-elected board; some of them represented their own interests as producers rather than considering the broader view of the entire community. There was a significant amount of micromanagement as well. The switch was made to include appointed members to get board members who would have this broader view.

Valemont Entertainment [Vancouver, Canada]

The Valemont Entertainment Society in Vancouver, British Columbia, has a board of directors elected by property tax payers. There are no designated spots for special interest groups. The station manager noted that "in the old days" many people participated in the vote, but that now, they have difficulty in reaching a quorum and that the turnout is poor.

Waycross Community Media [Forest Park, Ohio]

This access center covers a three community area. Elected officials from each of the three communities appoint five members to the board, and the fifteen members appoint one more member.³⁵ The board acts as its own nominating committee, making suggestions for vacancies, which typically are selected by the appointing authorities.

White Plains Cable Commission [New York]

This board is selected by the mayor and confirmed by the city council.³⁶ There are no designated slots for special interest groups.

Analysis

These examples reveal a multiplicity of structures; from all elected, to all appointed, to hybrid groups; from groups whose memberships elect to groups where the subscribers elect; groups with members appointed by government, by education, by nonprofit groups, and/or by the board itself. All but one of the the people contacted were relatively happy with their own board's structure. There was some reluctance to criticize the structure of other boards, but those who did voice criticism spoke against a model dominated by elected producers. As one observer, a member of the Alliance for Community Media who has had extensive experience with two public access organizations, stated:

As an ardent advocate of democracy, I in theory have opposed self-appointed boards. Experience has caused me to change my views. A self-appointed board with clear nomination guidelines based on the organization's mission, especially when a more detached nominating committee conducts the search, has many advantages: the committee can recruit candidates based on experience, skills, and service in the public trust. Perhaps as great, the board members will not act for personal gain but for community benefit. Realistically, most users cannot resist decisions which will provide personal gain.

I also do not favor elections from groups broader than active users, such as the general populace or cable subscribers. These groups have no realistic way to determine the merits of candidates. With the possible exception of a tiny community, the level of interest would be minimal, the voter turnout low, and the result subject to the same dysfunctional track as happened in Austin with the user group. The more extreme, vocal, and underemployed candidates -- with time on their hands -- have a distinct advantage. Good boards are not made in this way.³⁷

Another contact noted that access organizations are community-wide resources, and that having more than a limited number of current producers on the board constituted a clear and obvious conflict of interest and poor policy for a non-profit board.

Summary

There is no definitive text on access organization by board type. The sampling of organizations demonstrates that different types of boards can successfully exist, albeit not in every situation. However, to answer the legislature's specific question about whether the board selection process should be changed to include the votes of the cable subscribers, not only does it appear that cable subscribers are not a particularly appropriate group to serve as

BOARD SELECTION

an electorate, but it also does not appear that that option would be helpful in resolving any of the issues discovered during the course of this study.

While the rationale for having subscriber representation and ability to elect the board is that as the subscribers are the people paying to support PEG that they should have a voice in selecting the board, the problem with this arrangement is that often subscribers are subscribing the cable television for reasons quite separate from PEG access. Many subscribers choose cable simply to get better television reception, or to be able to watch well-established national specialty programming such as CNN, HBO, QVC, Nickelodeon, and others. There may be a vast amount of indifference by these subscribers, even those who do watch PEG programming, as to who puts the PEG programming on the air. This could lead to a tiny number of subscribers who actually care enough to vote and whose votes swing the election.

The goal of selecting a board is not merely to allow for the democratic process. It should be to select a well-balanced board capable, in 'Olelo's case, of handling large sums of money well, and in the case of the other counties, of managing small amounts wisely. A relatively small group of voters could stack the board in a manner that would not fulfill this most basic requirement. The fact that three of the boards described above -- Tucson, Austin, and Maryland - moved or are moving from elected positions to fewer or none at all indicates that this can be a real problem.

For those who claim that appointed boards are not "democratic," it must be remembered that the access organizations are *private*, not public. In general, private non-profit organizations have boards that are either appointed by the other board members, or by a supervisory body, or elected from their membership. They choose their own form of board selection, and there is no requirement for any public input, much an less election. 'Olelo, Ho'ike, Akaka, and Na Leo have the right to choose to change their board structures if they find it wise. But for the State to intervene in the board selection process and require a private board to (1) create a membership, and (2) have that membership elect the board, would be a completely novel invention in this State.

Nevertheless, due to concerns the State may have with its own role in the board selection process, the State may choose at this time to evaluate whether other methods of board structure are more appropriate. One issue that has arisen is whether the board should be elected by a membership of persons specifically interest in public access. In this situation, typically the access organization has a membership composed of people who have been certified, have paid to become a member, or who otherwise have demonstrated an active interest in public access. One observer³⁸ summed up the main benefits and drawbacks between elected and non-elected boards as follows: membership groups are regarded as the most democratic form, they keep the organization close to its constituency, they create the greatest "arms' length" between government and PEG access, and can be a source of funds and political support. However, membership groups are more cumbersome and more costly, are more difficult to ensure that a balance of members exist and include necessary expertise. There is also a concern that quorum requirements are low enough so that action can be taken but high enough so that a small group cannot take over.

Non-membership groups are generally more efficient and less costly to operate. Choice of board members can be fine-tuned to bring on needed expertise or to represent specific groups. There is usually more continuity with appointed boards. The drawbacks are that the groups run the risk of becoming self-serving and losing contact with their constituencies, and other methods of community involvement must be developed.

Is a membership-driven organization right for Hawai'i? Given the examples cited above, it seems that a board that is fully elected is subject to problems with self-interest. A board with one or two elected members, however, may be a stronger board with a better understanding of the producer's concerns. The tensions experienced at Na Leo, for example, might have been alleviated had the producers had unobstructed access and input to the board. In the alternative, the creation of advisory boards that include producer members would provide some balance to the board. The perception of a small number of producers in three of the four counties is that their input is not valued, not accepted, and not wanted. For most private nonprofit groups, this issue, whether legitimate or not, would not be a concern of government. The State has basic concerns that a nonprofit's operations be legitimate and that its directors not engage in self-dealing or other egregious behavior, but governmental concern does not extend to all the minutia of a nonprofit's internal affairs. However, the State's requirement that the cable companies fund PEG access gives the State additional cause to assure itself that these payments are being used properly. The State must balance this concern with an evaluation of its involvement in the board selection process, and with public access in general. The State should be involved neither in micro-managing the access organizations nor in exerting such a degree of high-level control over them that the State risks having them be considered state entities.

One option that would separate the State from the access organizations while avoiding the potential problems of an elected board is to release the State's appointment powers and permit the board to be self-appointing. The boards could either carry out their own nominations process, as they do now, or an independent advisory board could be created to submit nominations to the board.

The State could retain oversight authority by requiring detailed reporting requirements and goals for each of the access organizations. Currently only Ho'iike has detailed reporting requirements, including:

For public access programming:

- Total hours of programming
- Hours of original v. repeat programming
- Total hours of local v. imported programs
- Number of series v. single programs
- Programming by category
- Total hours of bulletin board programming
- Hours of programming submitted but not aired, and the reasons for that

For educational and governmental programming

- Total hours of programming by each participant
- Total hours of locally produced v. imported programming
- Hours of programming submitted but not aired, and the reasons

BOARD SELECTION

Channel outages: hours and reasons

Facility use:

- Number of people using and checking out equipment, and number of wait list
- Number of hours of studio use
- Number of hours of editing use
- Number of new v. repeat users

Re training:

- Number of people registered for training
- Number of people certified to use the access equipment
- Number of people on waitlists

A list of requirements of this type, plus realistic goals where applicable (e.g., set number of hours of original public access programming and people trained), would provide guidance and accountability to the system. The Bureau does not have the expertise to develop a set of goals and numbers for these requirements. The State would have to contract with an expert in the field to derive this system, which would establish standards. Monetary or other penalties could be set for unexcused failure to meet the goals. There would have to be some flexibility in the system to account for emergencies.³⁹

In addition to re-evaluating the State's role in the board selection process, it may also be time to re-evaluate the role of the cable companies. Hawai'i's cable company appointments were almost unanimously disapproved of by the various access organizations contacted for this study. The potential for a conflict of interest was apparent to these respondents. The concept of an ex-officio, non-voting cable company representative was supported by some who saw the value of having that type of expertise available to the board.

Endnotes

1. Kathleen T. Schuler, "The Nonprofit Access Corporation: A Guide to Incorporation," Cable Scan, Volume 7, issue 1 (Spring 1988) at 1 (hereafter Schuler).
2. Id. at 7.
3. Id.
4. Id.
5. Contained in Department of Commerce and Consumer Affairs, Planning for Cable Communications in Hawaii, 7 volumes (1989).
6. Id., vol. III, at 66-67.
7. Id., vol. III at 61.

PEG ACCESS

8. Chapters 92 and 92F, Hawaii Revised Statutes.
9. OIP Opinion Letter No. 93-18 (October 20, 1993).
10. Letter to Kathryn S. Matayoshi, Director, DCCA, from Stella Lee, Staff Attorney, OIP, dated November 16, 1995.
11. Section 314-1, Hawaii Revised Statutes.
12. The OIP's contention that the access organizations were not created by the State does not appear to have taken into consideration the state moneys spent hiring experts to devise the structure of the boards, the state involvement in drafting the access organizations' bylaws, and the implementation of the creation of the access organizations through the DCCA's hand-picked initial directors.
13. As of the time this report was prepared, the State had contracts only with 'Olelo and Hō'ike. Contracts with Akaka and Na Leo were pending, despite the fact that both entities have been producing programs already (in Akaka's case, for over two years).
14. Letter from Jean Y. Aoki, Vice-President, League of Women Voters of Honolulu, August 25, 1995.
15. Comments of Oceanic Cablevision on S.R. 65, S.D. 1, dated August 8, 1995, at 12.
16. Letter from Richard J. Argus, General Manager, Kauai CableVision, July 26, 1995.
17. Letter from Bill Harkins, General Manager, Garden Isle Cablevision, July 24, 1995.
18. Testimony of Akaka on Senate Concurrent Resolution 77 before the Senate Committee on Communications and Public Utilities, March 21, 1995.
19. Testimony of 'Olelo on Senate Concurrent Resolution No. 77 before the Senate Committee on Communications and Public Utilities, March 15, 1995.
20. See, e.g., DCCA, Planning for Cable Communications in Hawaii, Vol. 1 (October 1989) at 147-48.
21. Response from Kathleen Schuler to researcher, dated November 13, 1995.
22. Comments of Oceanic Cable on S.R. No. 65, S.D. 1, August 8, 1995 at 10.
23. One local producer assisted the Bureau by forwarding information from the Internet. The researcher contacted a number of access centers identified in that email, and also asked others in the field for representative access organizations.
24. Telephone interview with Ron Cooper, Access Sacramento, on May 30, 1995.
25. Faxed letter from Alan Bushong, board member, Alliance for Community Media and former executive director of Austin Community Television, to researcher, September 12, 1995.
26. Faxed letter from Alan Bushong, board member, Alliance for Community Media, to researcher, September 12, 1995.
27. Telephone interview with Aaron Zinck, Davis Community Television, on September 28, 1995.
28. Telephone interview with Joel Windisch, Larchmont-Mamaorneck Community Television, on September 28, 1995.

BOARD SELECTION

29. Telephone interview with Ralph Malvick, Montgomery Community Television, October 4, 1995.
30. Telephone interview with Greg Moore, NorthWest Community Television Corporation, September 28, 1995.
31. Telephone interview with Rene Paine, Public Access Television, on September 28, 1995.
32. Telephone interview with Ann Flynn, Tampa Educational Cable Consortium, on October 13, 1995.
33. Electronic mail from Deborah Vinsel, executive director, on August 7, 1995.
34. Telephone interview with Sam Behrend, Tucson Community Cable Corporation, on September 28, 1995.
35. Telephone interview, Greg Vawter, Waycross Community Media, Forest Park, Ohio, on October 13, 1995.
36. Telephone interview with Fred Strauss, White Plains Cable Commission, September 28, 1995.
37. Id.
38. Schuler at 8.
39. If another hurricane, for example, were to hit the State as Iniki did, standards would have to be waived. Iniki had a negative impact on Hō'ike's operations.

Chapter 9

FINDINGS AND RECOMMENDATIONS

General Findings

1. There are three major players in the cable television public, educational, and government (PEG) access area: (1) the State, through the Department of Commerce and Consumer Affairs (DCCA), which requires the cable companies to provide and fund PEG access; (2) the private for-profit cable companies, which provide the access; and (3) the private nonprofit access organizations, which provide the programming broadcast on the PEG channels. The federal government has only a minor role, in that Congress permits franchising authorities (in Hawai'i, the State) to require PEG access as a condition of granting the cable company franchises.

2. Most jurisdictions delegate the management of public access centers to a third party, usually a nonprofit "access organization," in order to avoid First Amendment problems and liability problems. Although the access organization acts as a buffer, insulating the government from liability, its ability to do so is lessened as government involvement is increased. In Hawai'i, the State has an unusually high degree of involvement with its access organizations.

3. Neither the federal law nor the state law explicitly state what type of programming is intended under the public access rubric. One expert in the field has stated that beyond a general agreement that there should be adequate channel capacity, technically viewable tape, and equipment and facilities to support the users, there are no guidelines in terms of content or otherwise. PEG access is often described as the video equivalent of the speaker's soapbox or an electronic parallel to the printed leaflet.

4. The legislative history of the federal law indicates that there are two beneficiaries of PEG access: the individual speaker, who is given a forum for his or her ideas, and the community, who receives access to a diversity of viewpoints. There are two types of access available to a speaker: access to technology, which allows the speaker to create his or her own video vision and air it, and access to the medium, which permits someone with no training to have his or her views aired, without the need to know how to operate any equipment. At present, all four access organizations offer the first option of production training, but only 'Olelo and Akaku have the second option, which is often termed an "Open Mike" show, in which speakers can have their opinions taped and aired. Both Ho'ike and Na Leo state that their staff and budget are too tight to allow for this type of program. However, this type of program appears to be an important component of public access for those who do not have the time, money, or ability to produce their own shows.

5. While the neighbor islands' training takes about five weeks, 'Olelo's takes a total of six months: one thirteen week technical course and another thirteen week producer course.

6. There is some debate throughout the country on whether access organizations should act merely as facilitators, supplying training, equipment, and facilities through which individuals can produce their own shows, or as production units, in which the access organization provides the production crew while the user just supplies the content. In Hawaii, with the exception of political debates, access organizations follow the facilitator model.

FINDINGS AND RECOMMENDATIONS

7. At present, when selecting board members, access organization boards nominate a suggested slate of members, which is advisory only. The slate is transmitted to the DCCA, which has independent control on whom to appoint, and which in the past has appointed members who were not nominated by the access organization. The DCCA appoints a majority of the board members of each organization; the cable companies on each island appoint the rest. Considerable controversy exists on this method, especially with the level of state involvement with the board appointment process.

8. The access organizations prefer an appointed board format and oppose an elected board on the ground that the latter is prone to "stacking" by producers who would seek the position to further their own interests.

9. Criticism has been directed at the board selection process by producers who contend that this method does not guarantee representation by cable subscribers or producers, is not democratic, removes choice of board members from the community that knows them best, involves the State too closely with the organization, and poses a conflict of interest through cable company appointment of board members.

10. The Bureau looked at other models throughout the nation and found boards of all types: elected boards, appointed boards, self-appointed boards, and hybrid boards with both elected and appointed members. Very few of the access organizations contacted have boards selected by the votes of all the cable subscribers, although some create memberships that include cable subscribers who have demonstrated interest in PEG access, and permit these memberships to vote for board members. There appears to be no consensus as to the best board format.

One serious problem was brought to the Bureau's attention concerning elected boards. In some instances, elected producer members took over the board and stifled it through micro-management and self-serving decisions, to the point where the elected members had to be either eliminated or significantly reduced in number.

11. Election of board members by membership groups is regarded as the most democratic form of board selection: they keep the organization close to its constituency, they create the greatest "arms' length" between government and PEG access, and can be a source of funds and political support. However, membership groups are more cumbersome and more costly, can lead to the stacking of the board by self-interest members, and have more of a problem ensuring that a balance of members exist and include necessary expertise. Quorum requirements must be carefully balanced to ensure that action can be taken but that a small group cannot take over.

Non-membership groups are generally more efficient and less costly to operate. Choice of board members can be fine-tuned to bring on needed expertise or to represent specific groups. There is usually more continuity with appointed boards. The drawbacks are that the groups run the risk of becoming self-serving and losing contact with their constituencies, and other methods of community involvement must be developed.

12. The cable company appointees to the access organization boards were disapproved of by almost all the access organizations contacted; they perceived a real conflict of interest between the desires of cable companies and the role of access organizations.

Findings Concerning the Access Organizations

1. 'Olelo, the access organization for O'ahu, is one of the largest access organizations in the nation, receiving three percent of the gross revenues of the cable companies on O'ahu for operating expenses, which for 1995 amounted to over \$2.6 million. 'Olelo owns its own 38,000 square foot building in Mapunapuna.

2. The basic 'Olelo training is a lengthy process, consisting of one thirteen week technician class and another thirteen week producer class. Training feedback indicates that for many trainees, the training attempts to convey too much information in too short a time. Less than a quarter of the trainees complete the course and actually work on public access programming. The reason cited most often by trainees for not producing programming is lack of time, but an 'Olelo survey also revealed that the primary goal for just over half of all trainees is to gain practical career skills, not to produce public access programming. 'Olelo has recognized the problems associated with its training and was in the process of reinventing its training program at the time this study was prepared.

3. While it has been alleged that 'Olelo diverts more assets to support the education (E) and government (G) than the public (P) access, in reality the vast majority of facility time and equipment usage goes to P users. In terms of budget, 'Olelo spends over half its operating budget on P access, about 30 percent on E, and 13 percent on G.

4. 'Olelo allocates funds between the P, E, and G elements based on priorities established by its board in its strategic planning process. The current priorities place public access first, education second, and government third. Within each division, decisions on allocation to the different elements -- production, overhead, staff -- are made through the business plan, which is created with public, committee, and staff input and feedback.

5. 'Olelo has various mechanisms available for public input. Despite these, tension exists between the staff at 'Olelo and some of the independent producers who feel that their concerns are being deliberately ignored.

6. 'Olelo did not report any problems with abuse of G access by government officials.

7. Ho'ike, the access organization for the county of Kaua'i, is the smallest access organization in the State, with an annual operating budget of approximately \$150,000. Ho'ike only receives two percent of the gross revenues from its cable companies, although this figure is supposed to rise to three percent in 1996, which will be received on December 31, 1996. Ho'ike rents a nine hundred square foot building and does not have a studio.

8. Ho'ike offers a five week training course that has received enthusiastic evaluation by trainees. The program covers field production only and does not include studio production as Ho'ike lacks the funds for a studio.

9. Ho'ike makes its equipment available on a first-come, first-served basis, although to ensure equitable access, a maximum number of requests per producer is established. Ho'ike has a standardized priority list in the event of a conflict.

10. Ho'ike's allocations between its P, E, and G components are made by its board based on recommendations by the finance committee. Ho'ike employees devote more of their time to P than they do to the E or G access.

FINDINGS AND RECOMMENDATIONS

11. The Ho'ike board president personally supports the current process of appointed board members as he feels that through this mechanism a representative board can be obtained. Ho'ike has three standing committees, and any citizen can request to be placed on any of the committees as a voting member.

12. Ho'ike appears to have had no problem with potential abuse of G access by government officials.

13. There is a small but vocal group of producers on Kaua'i who are highly critical of Ho'ike for not having an elected board; for having cable company-appointed directors; for training residents as television producers instead of providing a forum on which residents can speak; for competing with local independent producers by contracting with nonprofit organizations and helping to prepare their programs; and for some of the actions of the general manager, whom they claim has violated some of Ho'ike's procedures. These producers would like to see the board democratically elected from the group of all cable subscribers.

14. Akakū, the access organization for Maui county, is unique in Hawai'i as, while it serves as the clearinghouse for P, E, and G, it assists only in producing P access on the island of Maui. E access is handled by Maui Community College (MCC) and the department of education (DOE) on Maui, and G access is handled by the Maui county council and office of the mayor. MCC is also supposed to handle P access on Moloka'i and Lana'i, but as of the date this report was prepared, P access was not available on these islands.

15. Akakū has an annual operating budget of approximately \$185,000 and rents a 1345 square foot office, which includes a small studio.

16. Akakū certified 132 people between February 1994 and July 1995. The basic access class is a five week course. Equipment is available on a first-come, first-served basis to any certified user. The only equipment that is restricted is the multi-camera studio equipment when used outside of Akakū's studio, due to risk of wear and tear.

17. Budgeting is supposed to be handled by a consortium of Akakū, MCC, the local DOE office, and the county government, but this year the individual members could not agree on a unified budget, so separate budgets were submitted to the DCCA, which then had the task of making allocations.

18. Each member of the consortium tends to act individually, which has led to duplicative efforts, such as multiple studio facilities. While an overall PEG access plan for Maui was proposed, it was never finalized and no deadlines or guidelines were given for its implementation.

19. Akakū wants to keep the current board appointment process, as it is concerned that a membership-driven board would risk acquiring self-serving board members/producers who may act in their own self-interest and not for the public benefit. Akakū has a number of mechanisms for public input into its decision-making.

20. Akakū has experienced no significant problems with abuse of the G access by government officials.

21. Na Leo 'O Hawai'i was the last of the access organizations to begin providing services. It has two offices, one in Kona and one in Hilo, with a total annual operating budget of approximately \$350,000. It receives between two and three percent of the gross revenues

from the Big Island cable companies, depending on the company. It rents two facilities, an eight hundred square foot office in Hilo and a nine hundred sixty square foot office in Kona. Neither of these sites has a studio.

22. Training at the Hilo Na Leo site started in April 1995; training had not yet begun at the Kona site at the time this report was prepared. Much pent-up demand for public access training exists on the Big Island. At the time this report was prepared, training is offered monthly at the Hilo site only and consists of sixteen hours of class.

23. Equipment is made available on a first-come, first-served basis, although Na Leo also lists priority of users.

24. Na Leo does not specifically allocate funds for the individual P, E, and G components; most of the funds are expended to cover the costs of staff.

25. Na Leo has proposed but then tabled the concept of charging producers \$5 for each piece of equipment loaned out, plus a \$100 refundable deposit to cover loss or damage to the equipment. No other access organization contacted in the course of preparation of this study has such a requirement.

26. Na Leo objects to an elected board format on the grounds that it would be too costly; would discourage people running for the board; would very probably result in a board of special interest groups, which would lead to chaos and stalemate; and would not guarantee diversity on the board.

27. Na Leo has no effective way for a member of the public to have significant input into its deliberations. It has no advisory committees, and offers extremely limited opportunities for public input at its board meetings. It has been reluctant to share its minutes with the public.

28. A group of independent producers, Na Maka 'O Hilo, have raised concerns about the proposed \$100 deposit and the lack of opportunity for public input, especially as, at the time this report was made, no one on the board had either been certified by Na Leo or had had other public access production experience. Na Maka indicated that the lack of experienced input on a number of issues had led to choices that were not in the users' best interests.

29. Na Leo did not indicate the need for additional controls to prevent abuse of G access by government officials.

Conclusions of Relevance to the State

1. Speaking generally, it appears that the access organizations are providing a diversity of viewpoints, and this seems to be the type of programming intended by federal and state law.

2. It appears, with two exceptions, that the access organizations are providing the type of access intended by federal and state law. Ideally, the access organizations should provide both training in video production and "Open Mike" types of shows that permit speakers to present their opinions without having to be trained in the technology. At present, all four organizations offer production training, but only 'Olelo and Akaka offer this type of Open Mike show. Ho'ike and Na Leo do not. Ho'ike's shoestring budget is cited by that

FINDINGS AND RECOMMENDATIONS

organization as the reason they do not have an Open Mike show, and the general Na Leo program was just starting. These organizations should establish Open Mike programs as soon as time and budget permit.

3. It is not within the State's direct power to decide whether to change the board structure of the access organizations to include the votes of cable subscribers, as the access organizations are private nonprofit organizations. The only act the State can directly perform relating to the board would be to have the DCCA withdraw from the board selection process, which would cause the access organizations to have to restructure their boards. The Bureau finds that there is an unusually high degree of state control and involvement with the access organizations. Given that the greater the amount of state involvement the more possible it becomes to run into First Amendment problems and to open the State to liability, the DCCA may want to reevaluate its close involvement with the access organizations and decide whether it is now appropriate for the state government to give up that role.

If that were to happen, the Bureau would not recommend to the access organizations that they elect board members using the votes of all their cable subscribers, as it appears that, taken as a whole, cable subscribers are relatively indifferent to the structure of an access organization board. If the access organization wanted to have one or more elected members, the Bureau would recommend that they create a voting membership of cable subscribers who have demonstrated an interest in access and/or their users who have demonstrated a current interest in public access, similar to some of the Mainland access organizations cited in the previous chapter.

4. The demand for training and personnel is not being met on any of the islands except for Kaua'i, which has a relatively small wait list of about thirty. All of the others have much larger wait lists that will last for months. Na Leo has not even started training in Kona yet. Given the limited Akaka budget, Akaka seems to be making a diligent effort to fulfill the needs of its constituents. However, the total lack of training and facilities on Moloka'i and Lana'i, which are supposed to be provided through Maui Community College, should be rectified immediately. Na Leo seems to be moving at a slow pace, which may be partly the fault of its budget and its relative newness.

The basic 'Olelo training program is overly long; there should be a way to offer a short basic course along the same lines as the neighbor island courses. The time commitment as it is seems daunting and the course work for a substantial minority was too complex. 'Olelo has a long wait list and a long training period. It is to be hoped that its revamped training, which was not finalized at the time this report was completed, will provide shorter, more basic courses to help decrease the backlog.

5. None of the access organizations cited any significant problems with abuse of governmental access. All have guidelines in place to help prevent such abuse. No additional guidelines appear to be necessary at this time.

6. To the extent that diverting the cable franchise fee to the Hawaii Public Broadcasting Authority (HPBA) puts a cap on access organization spending, the Legislature may want to reevaluate such diversion in the future. HPBA has its own revolving fund into which appropriations may be placed, while the access organizations, being private nonprofit groups, do not have that option. At this point in time, though, 'Olelo seems adequately funded, and there is still room to provide more funds to the neighbor islands without breaching the five percent cap.

7. The DCCA, through its renegotiations of the franchise agreements with the cable companies, should ensure that the neighbor island access organizations receive, now

and in the future, no less than three percent of the cable companies gross receipts, up from the two percent that they had been receiving from some franchises. While this issue is not an explicit part of the study, it became evident during the research for this study that Ho'ike in particular was underfunded for the work it was doing and the interest expressed by the public. Akaka has more funds but the Maui county area encompasses three islands, two of which have received virtually no PEG access. Na Leo has taken a lot of time to initiate operations, and the pent-up demand for public access on the Big Island seems very strong.

The DCCA has indicated that funding for PEG access through the cable companies' franchise fees should not be viewed as permanent, and "strongly encourages" short- and long-term alternative funding strategies. The extent to which this is feasible is not clear, given the non-commercial nature of PEG access and the extent to which P access in particular is geared to small discrete groups, rather than large, cohesive audiences. Until a realistic determination of the reasonable probability of successful outside funding sources is made, cutting the amounts that the neighbor island access organizations are receiving could jeopardize their programs.

8. The DCCA needs to assist Maui county by helping it to complete its PEG plan, including a timetable for public access for Moloka'i and Lana'i. The DCCA may also want to reconsider its decision to allow the P, E, and G elements to be handled separately, especially as the consortium seems to have broken down this year in the budget area.

9. The DCCA should support the access organizations if they choose to change their board structure so as to make the cable company appointments non-voting.

Conclusions Concerning the Access Organizations

1. There is a certain amount of friction between the 'Olelo staff and certain independent producers on issues ranging from the minute to the pressing. Many of the complaints centered around 'Olelo's lack of responsiveness. This complaint is not new; it surfaced in the 'Olelo 1993 Draft Plan as well. Without making any judgment on the validity of these issues, it seems clear that 'Olelo needs to improve communications between itself and its producers.

2. Ho'ike has been the most active and most progressive of the access organizations. It instituted interactive video bulletin boards in the State, combining it with job vacancies to create a valuable community resource; established a teen program to serve young adults who otherwise would not have been able to participate due to their youth; became an Aloha United Way and Combined Federal Campaign agency to generate additional funds, and is exploring the possibility of captioning its programs. Unfortunately, it has had to do so on a shoestring budget that has precluded options such as a studio and an Open Mike program. Additional funding for Ho'ike is needed for it to be able to continue and to provide necessary programming such as an Open Mike show.

3. The Maui set-up, with five organizations handling the three elements, does not appear to be a success. The consortium was unable even to produce a joint budget this year and there is duplication of facilities. Due to lack of a timetable, Lana'i and Moloka'i still lack public access. The consortium's quasi-official status has raised problems for Akaka and for the Maui county government. The members of the consortium should reevaluate their situation.

FINDINGS AND RECOMMENDATIONS

4. Na Leo should be more open to producer input and should work with Jones Spacelink to have its programs listed in the television pullout guide in the newspaper rather than rely on a generic listing. Specific listings will increase viewer interest in the channel and make them aware of the programs available.

5. Na Leo should not continue its efforts to charge a \$5 equipment fee and a \$100 equipment rental deposit.

6. Na Leo should institute at least one advisory committee that includes interested producers to obtain relevant and timely input on decisions affecting the access organization.

7. Na Leo should institute an Open Mike program as soon as its budget permits.

8. Both the "access center as facilitator" and the "access center as producer" are valid expressions of public access. At present, except for political debates, in which some of the access centers help to produce, the access centers act strictly as facilitators, in part because of criticism by producers who are seeking to obtain payment for the same type of work.

9. 'Olelo, with its large budget, should consider acting as a producer of PEG television, rather than just as a facilitator. The neighbor island centers should also consider that option as their budgets permit.

10. The board of each access organizations should reevaluate the propriety of having cable company appointments.

SENATE RESOLUTION

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.

1 WHEREAS, the Department of Commerce and Consumer Affairs
2 (DCCA) is designated as the cable franchising authority for the
3 State of Hawaii by the Federal Communications Commission; and
4

5 WHEREAS, federal law allows the DCCA to assess up to
6 five per cent of the cable companies' gross revenues to fund
7 public, educational, and government (PEG) access in exchange
8 for the value given to cable companies to operate using the
9 public rights of way; and
10

11 WHEREAS, the congressional legislative intent in
12 assessing five per cent of the cable companies' gross revenues
13 is to ensure cable companies contribute to the community; and
14

15 WHEREAS, the cable companies throughout the State pass
16 on the costs of funding PEG access to the cable subscriber as
17 part of their cable bill; and
18

19 WHEREAS, PEG access is provided on Oahu, by 'Olelo: The
20 Corporation for Community Television, on Maui by Akaku: Maui
21 Community Television, on the Big Island by Na Leo 'O Hawaii,
22 Inc., and Hoike: Kauai Community Television, Inc. which are
23 all non-profit corporations with no individual memberships; and
24

25 WHEREAS, the directors of these corporations are
26 appointed by the Director of Commerce and Consumer Affairs and
27 by the local cable providers as directed by the bylaws of the
28 corporations; and
29

30 WHEREAS, the cable subscribers whose rates include the
31 costs of PEG access programming presently have no
32 representation on these non-profit corporation boards; and
33

34 WHEREAS, other non-profit cable access corporations
35 across the United States are operated and managed similarly to
36 the local community cable access corporations; and
37

1 WHEREAS, emerging issues in this area such as the
2 appropriate mix of programming, the efficient use of public
3 funds, and other similar areas of concern indicate that it may
4 be appropriate to review the structures and roles of the PEG
5 access corporations in Hawaii; now, therefore,
6

7 BE IT RESOLVED by the Senate of the Eighteenth
8 Legislature of the State of Hawaii, Regular Session of 1995,
9 that the Legislative Reference Bureau is requested to study the
10 non-profit public, education, and government cable access
11 corporations in Hawaii to determine if their operation provides
12 the type of access and programming intended by both federal and
13 state law, and examine the following issues related to
14 management, funding, and operation:
15

- 16 (1) Whether the method of choosing the boards of
17 directors should be changed to include the votes of
18 cable subscribers living in the cable service
19 franchise area in which the non-profit access
20 corporation operates;
21
- 22 (2) How funds are allocated to the three different
23 arenas of access (public, education, and
24 government) and how that money is budgeted by the
25 corporations for production, overhead,
26 administrative staff, and other expenses that are
27 incurred;
28
- 29 (3) Whether the demand for training and personnel is
30 adequately being met through current training
31 requirements; and
32
- 33 (4) What guidelines, if any, are needed to ensure that,
34 from the perspective of programming content,
35 government officials do not abuse cable access for
36 purposes other than public access to government?
37

38 and
39

40 BE IT FURTHER RESOLVED that the Director of Commerce and
41 Consumer Affairs and the boards of each of the non-profit
42 corporations in each county managing PEG access are requested
43 to provide their full cooperation and assistance to the
44 Legislative Reference Bureau; and
45

1 BE IT FURTHER RESOLVED that certified copies of this
2 Resolution be transmitted to the Director of the Legislative
3 Reference Bureau, the Director of Commerce and Consumer
4 Affairs, the Chairpersons of the Boards of 'Olelo: The
5 Corporation for Community Television, Akaku: Maui Community
6 Television, Na Leo 'O Hawaii, Inc., and Hoike: Kauai Community
7 Television, Inc.

Appendix B

BENJAMIN J. CAYETANO
GOVERNOR



KATHRYN S. MATAYOSHI
DIRECTOR

CLYDE S. SONOBE
CABLE TELEVISION ADMINISTRATOR

STATE OF HAWAII
CABLE TELEVISION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809
(808) 586-2620
FAX (808) 586-2625

November 15, 1995

VIA FACSIMILE ONLY - 587-0681

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii 96813

Attention: Susan Ekimoto Jaworowski, Esq.

Re: Study on Public Access Organizations

Dear ^{Susan}~~Ms. Jaworowski~~:

Thank you for the opportunity to provide you with some information regarding the above-referenced study. As we discussed, the three (3) neighbor island public access organizations or entities receive access fees and capital contributions from certain cable companies.

At the present time, Sun Cablevision, Hawaiian Cablevision and Chronicle Cablevision - Maui system are required to contribute to the respective neighbor island access organizations or entities access fees in an amount equal to three percent (3%) of annual gross revenues. A brief summary of the present and future access fees and capital contribution requirements for the neighbor island access organizations or entities is provided below.

Ho'ike: Kauai Community Television, Inc. ("Hoike") which serves the communities on the island of Kauai receives its access fees and capital contributions from Garden Isle Cablevision and Kauai Cablevision. For the year ending December 31, 1995, Ho'ike is scheduled to receive access fees of \$58,000 from Garden Isle Cablevision (see section 7.2 of Decision and Order No. 143) and \$116,000 from Kauai Cablevision (see section 6.1 of Decision and Order No. 152).

Legislative Reference Bureau
Attention: Susan Ekimoto Jaworowski, Esq.
November 15, 1995
Page 2

With respect to capital contributions for facilities and equipment, Garden Isle Cablevision is scheduled to contribute \$21,700 on December 31, 1996 and certain other amounts for the remainder of the franchise term (see section 7.3(c) of Decision and Order No. 143), and Kauai Cablevision is scheduled to contribute \$10,778 on December 31, 1995 and certain other amounts for the remainder of the franchise term (see section 6.4(a) of Decision and Order No. 152).

Effective January 1, 1996, Hoike is scheduled to receive on December 31st of each year of the remaining franchise terms for Garden Isle and Kauai Cablevision, access fee contributions in an amount equal to three percent (3%) of the annual gross revenues of Garden Isle Cablevision and Kauai Cablevision (see section 7.2 of Decision and Order No. 143 and section 6.1 of Decision and Order No. 152, respectively).

Na Leo o'Hawaii, Inc. ("Na Leo") which serves the communities on the island of Hawaii receives its access fees and capital contributions from Jones Spacelink of Hawaii and Time Warner Entertainment Company, L.P. dba Sun Cablevision. For the year ending May 31, 1995, Na Leo was scheduled to receive the greater of \$119,000 or an amount equal to 2% of annual gross revenues of Jones Spacelink (see section 7.2 of Decision and Order No. 155), and for each year of the franchise term an amount equal to 3% of the annual gross revenues of Sun Cablevision (see Decision and Order No. 159 and Decision and Order No. 173). Please note that in connection with its application for transfer of the Jones Spacelink cable franchise, which is presently pending before the Division, Time Warner Entertainment Company, L.P. has proposed to contribute an amount equal to 3% of the gross revenues derived from the Jones Spacelink system.

With respect to capital contributions for facilities and equipment, Jones Spacelink is scheduled to contribute \$20,000 on May 31, 1996 and certain other amounts for the remainder of the franchise term (see section 7.3(a) of Decision and Order No. 155), and Sun Cablevision is scheduled to contribute \$40,000 on July 1, 1996 and certain other amounts through the year 2001 (see section 4.5 of Decision and Order No. 173).

Legislative Reference Bureau
Attention: Susan Ekimoto Jaworowski, Esq.
November 15, 1995
Page 3

Akaku: Maui Community Television, Inc. (public access) and other entities such as Maui Community College, Department of Education, and the County of Maui comprise a consortium ("Maui Consortium") for public, educational and governmental access for the islands of Maui, Molokai and Lanai. The Maui Consortium receives its access fees and capital contributions from Chronicle Cablevision and Time Warner Entertainment Company, L.P. dba Hawaiian Cablevision. For the year ending December 31, 1995, the Maui Consortium is scheduled to receive the greater of \$361,000 or an amount equal to 3% of the annual gross revenues of Chronicle's Maui system and 2% of the annual gross revenues of Chronicle's Lanai/Molokai system (see section 7.2 of Decision and Order 148), and the greater of \$111,000 or an amount equal to 2% of the annual gross revenues of Hawaiian Cablevision (see section 4.2 of Decision and Order No. 174). For the years ending December 31, 1996 through the remainder of the franchise terms for Chronicle Cablevision and Hawaiian Cablevision, the Maui Consortium is scheduled to received an amount equal to 3% of the annual gross revenues of Chronicle and Hawaiian Cablevision.

With respect to capital contributions for facilities and equipment, Chronicle Cablevision is required to contribute a total of \$500,000 (see section 7.3 of Decision and Order No. 148), and Hawaiian Cablevision is scheduled to contribute \$10,000 on December 31, 1995 and certain other amounts through December 31, 1999 (see section 4.5 of Decision and Order No. 174).

I believe copies of the above-referenced Decision and Orders were previously provided to you. Please call me if you need additional information or if you have any questions.

Very truly yours,



Sanford T. Inouye
Staff Attorney

■ October 18, 1995

Ms. Susan Ekimoto Jaworowski
Legislative Reference Bureau
State of Hawai‘i
State Capitol
Honolulu, Hawai‘i 96813

**BOARD OF
DIRECTORS**

President

S. Haunani Apoliona

Vice President

Gerald Kato

Secretary

Margaret Oda

Treasurer

Richard Schaller

Robbie Alm
Heather Giugni
Dorothy Lum
Dennis Ogawa
Marilyn Yoza

Executive Director

Richard D. Turner

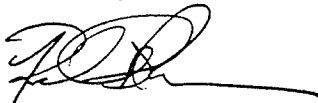
Dear Ms Jaworowski:

My apologies for the delay in getting these materials into your hands. As we discussed, this initiative of reinventing ‘Ōlelo and reengineering our business processes is currently evolving, is still largely conceptual and has not been fully adopted by staff or our Board of Directors. Our work in this area is still underway and the proposals are refined weekly, if not daily. This has made it most difficult to spend the time completing the outline but also having it be as accurate as possible.

This outline emanates from the presentations made to the staff, public and our Board of Directors. I anticipate that a revised organizational structure will be put into place by late November. New services will be proposed starting around the same time and be presented for public comment prior to adoption by our Board of Directors.

I hope this provides you with the additional information that you were looking for and if you have additional questions, please don't hesitate to contact me or my staff. Thank you for your patience.

Sincerely,



Richard D. Turner
Executive Director

/jb

Enclosure

Reinventing 'Ōlelo for a *Total Quality Experience*

In Progress Report -- October 16, 1995

I. Why Reinvent?

- A. Demand has grown, but our services haven't evolved.
- B. We want to give more efficient, effective and personalized service.
- C. We want to eliminate obstacles to access, such as our training waiting list.
- D. "One size" does not fit all.
- E. "Process Reinvention" allows for *revolutionary*, not *evolutionary* levels of change.

II. 'Ōlelo's Vision

- A. O'ahu will be a media literate community with the resources to create effective electronic communication
- B. 'Ōlelo will be the leading provider of access services, setting new standards of excellence in our industry
- C. 'Ōlelo will consistently deliver services guaranteed to exceed our customer's expectations
- D. We will do it right, the first time for our customers, employees and partners

III. What will it look like?

- A. "Menu" of services/options.
- B. Flexible enough to meet differing needs.
- C. "One-stop shopping" with staff.

IV. Getting our Clients

- A. We call the first step in a client's interaction with 'Ōlelo "**Getting our Clients.**" This process describes how our clients connect with us or how we connect with our clients.
- B. We Go to Them: 'Ōlelo will conduct outreach to ensure that our client base is representative of our diverse community.
- C. They Come to Us: Individuals and groups who hear about 'Ōlelo come to us with something to communicate.
- D. Then discuss client needs with an 'Ōlelo staff member, either in person or on the phone. A single point of contact will be established for consulting on the majority of clients production needs, rather than having to seek out many different staff members.

1. Consider certain factors:
 - a. Does the client have a message to express?
 - b. Is the client someone who enjoys helping others make video?
 - c. If you do have a message, is it urgent?
 - d. Does the client have “no time to waste?”
 - e. Does the client want to communicate a message spending no money, or is there a budget?
2. Review ‘Ōlelo’s menu of services, and choose the option most appropriate.

V. Proposed Service Options...

A. Independent Production

This production option is for clients who have previous experience and demonstrate a high degree of comfort operating independently.

1. Client Characteristics

- a. Has a message to express.
- b. Has experience.
- c. Wants to “do it themselves.”
- d. Needs to use ‘Ōlelo facilities.
- e. Desire to control production value.
- f. Has the time required.

2. Production Steps:

- a. Develop Production Plan
- b. Schedule equipment
 - (1) Self-Service
 - (2) Staff-Assisted (req. for van only)
- c. Assemble Crew
 - (1) Review Printouts
 - (2) Search Crew Database
 - (3) Staff-Assisted
- d. Produce Program
- e. Optional Production Critique (Required first-time.)
- f. Move onto Message Distribution.

B. Assisted Production

This production option allows the client to “learn on-the-job”, effectively integrating *training* and *production* into one process.

1. Client Characteristics

- a. Has a message to express.
- b. May/may not have experience.
- c. Wants assistance/facilitation.
- d. Needs to use 'Ōlelo facilities.
- e. Has the desire to learn.
- f. Has the time required.

2. Production Steps:

- a. Based on assessment, receive training in access/media literacy.
- b. With guidance, develop production plan.
- c. Assemble crew from:
 - (1) Family/group
 - (2) Volunteer pool
 - (3) Fully staffed production
 - (4) Hired crew
- d. Production phase.
- e. Optional Production Critique (Required first-time.)
- f. Move into Message Distribution.

C. EZ Access

This option allows clients to create an electronic message without the need for extensive training or commitment of time to create the message.

- 1. *O'ahu Speaks* -- A fully-facilitated mini-studio which allows individuals and groups with no prior video experience to quickly record a message.
- 2. *O'ahu Speaks Mobile/Remote* -- Similar as above and offered on a roving or fixed basis (malls, schools, libraries, events, etc.).
- 3. *Homemade* -- Clients using their own camcorder will record their own message for submission.

D. Instant Access

Instant Access is be the fastest method 'Ōlelo can offer to receive, translate or distribute information.

1. Client Characteristics

- a. They have an urgent need to communicate.
- b. They want to be done in 15 minutes or less.
- c. They are not necessarily interested in learning TV production skills.

2. Service Options -- Information and Referral

- a. *FAX on Demand* -- provides a system for transmitting and receiving community information using facsimile technology.
- b. *Phone Access* -- records, then cablecasts callers' comments on any subject.
- c. *'Ōlelo Net* A computer bulletin board creating a system for transmitting and receiving community information using computers.

- d. *Info. Services* will permit users to publicize non-commercial events and services on a computerized, cablecast format.

3. Service Options -- Advocacy

- a. *Voice Mail Services* -- allow user to submit or access community information at the touch of a telephone.
- b. *Broadcast FAX* -- provides a system for transmitting information using facsimile technology.
- c. *'Ōlelo Net* a computer bulletin board that creates a system (e.g. E-mail, list servers, news groups, forums, etc.) for transmitting and receiving advocacy information using computers.

E. Message on Tape

Message on Tape allows individuals and organizations to submit non-commercial pre-recorded programs and public service announcements for cablecast on one or more of 'Ōlelo's channels.

1. Client Characteristics

- a. Has a prerecorded message.
- b. Wants flexible formats.

2. Service Requirements

- a. 'Ōlelo will ensure that both the technical and procedural requirements (e.g., Public Disclosure, etc) are met.

F. Equipment Consultation

'Ōlelo will provide varying degrees of consultation and assistance in equipment selection and installation.

1. Client Characteristics

- a. Have a message for presentation on the PEG Access channels.
- b. Individuals.
- c. Not-for-profit organizations.
- d. Educational institutions.
- e. Governmental agencies, etc.
- f. Are interested in purchasing or already have equipment.

2. Service Characteristics

- a. Recommending equipment options.
- b. Assistance with installation.
- c. Training in unique equipment operations.

VI. Message Distribution

This includes all aspects of getting the clients message to the appropriate consumer.

1. Program Intake
 - a. Dubbing.
 - b. Technical corrections.
2. Message Scheduled
 - a. Self-service scheduling.
 - b. Staff-assisted scheduling.
 - c. Program guides.
 - d. Promotion.
3. Viewer Feedback
 - a. Producer/Vwr. Hotline.
 - b. Viewer Surveys.
 - c. E-mail Response.
 - d. Cable Box 2-way polling.

VII. Supporting Services

A. Volunteers

Volunteers are the lifeblood of any access organization. They give their time to help others create access messages without the expectation of compensation.

1. Client Characteristics
 - a. Do not have a message to express.
 - b. Are seeking experience.
 - c. Supports access principles.
 - d. Likes to learn by doing.
 - e. Wants to increase their skills.
 - f. Wants to network with others.
2. Service Characteristics
 - a. Mentoring.
 - b. "On the job training".
 - c. Formal classroom instruction.
 - d. Self-directed instruction.
 - (1) Videos
 - (2) CD-ROM's
 - (3) Manuals

B. Advanced Workshops

Advanced Workshops allow the client the opportunity to explore topics of interest at a more in-depth level than would be covered in a basic experience, such as Assisted Production.

1. The workshops will be designed and implemented based on the needs and requests from the clients.
2. Workshops will be held frequently and designed to be supplemental to the primary experience of our clients.



Na Maka 'O Hilo

Post Office Box 5237
Hilo, Hawaii 96720

Voice/Fax:
(808) 965-0042

E-mail:
malama@ilhawaii.net

OFFICERS:

President

Keola G.A. Downing

Vice-President

Baba Sundar Shay

Recording Secretary

Aina Steward Campbell

Treasurer

Prema Qadir

Corresponding Secretary

MayApple McCullough

Board Member At-Large

G.B. Hajim

Board Member At-Large

Katherine "Kassy" Schultz

September 22, 1995
A:\BOD\LETTERS\LRB-0922.WPD
Page 1

Na Maka 'O Hilo

The Alliance for Public Access Media

September 22, 1995

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii 96813
Voice: 808-587-0666 Fax: 808-587-0681
Attention: Susan Jaworowski

Subject: Senate Resolution No. 65, S.D. 1.

Aloha,

We, the Board of Directors of Na Maka 'O Hilo: The Alliance for Public Access Media, on behalf of our membership, are writing to lend support to Senate Resolution No. 65, S.D. 1.

We are aware that the Eighteenth Legislature of the State of Hawaii, Regular Session of 1995, has requested the Legislative Reference Bureau to study the non-profit PEG (Public-Education-Government) cable access corporations. Furthermore, we understand that the purpose of the study, is to determine if the operation of these non-profit corporations provides the type of access and programming intended by both federal and state law, and to examine certain issues related to the management, funding and operation of non-profit PEG cable access corporations, statewide.

Our membership includes a broad range of people from the Big Island who have earned certifications to use the facilities, equipment and services provided by Na Leo 'O Hawaii: The Corporation for Community Television. We are the only group of organized PEG Public Access Users on the island of Hawaii.

Na Maka 'O Hilo: The Alliance for Public Access Media is a nonprofit, progressive, grassroots organization - founded on March 22, 1994. Our mission is to educate and empower the people of the island of Hawai'i to use and protect their rights of access to "Community Media", such as Public Access Television, the Internet, and other emerging technologies

Na Maka 'O Hilo

The Alliance for Public Access Media

Post Office Box 5237

Hilo, Hawaii 96720

Voice/Fax: (808) 965-0042 E-mail: malama@ilhawaii.net

September 22, 1995

TO: Legislative Reference Bureau

SUBJECT: Senate Resolution No. 65, S.D.1.

A:\BOD\LETTERS\SLRB-0922.WPD

Page 2

A comparison of our membership list and the Na Leo 'O Hawaii training schedule will reveal that our members are the among the first 40 people to receive training and certification from Na Leo 'O Hawaii. We had waited, over a year, for the cable access center to begin the training program.

We have specifically addressed the four (4) issues which are outlined on page 2 of the senate resolution, as indicated below. These issues were presented and discussed at our last general membership meeting by Ms. P. Qadir. Ms. Qadir is the Chair of our Program Committee. Her committee is responsible for monitoring legislation, attending meetings, informing our membership of pending legislation and coordinating correspondences for the organization.

Although there was no "tally of votes", each issue was given due consideration. Our responses to Senate Resolution No. 65, S.D.1. are indicated below:

(1) Whether the method of choosing the boards of directors should be changed to include the votes of cable subscribers living in the cable service franchise area in which the non-profit access corporation operates.

We feel that the method of choosing the boards of directors should be changed. However, we have concerns with regards to the scope of the change.

We would like to point out that Na Leo 'O Hawaii does not require proof of subscribership as a pre-requisite to training; i.e. those of us who are certified to use the Na Leo facilities, equipment and services are not required to subscribe to cable television. Some of our members live in rural areas where there is no cable service. Yet, we are enabled by Na Leo 'O Hawaii to produce content for the PEG community access channel.

We would support the formation of a cable access corporation membership (made up of residents) which would elect the board of directors from the membership, with as much autonomy as possible from politicians and cable company representatives.

(2) How funds are allocated to the three (3) different arenas of access (public, education, and government) and how that money is budgeted by the

Na Maka 'O Hilo: The Alliance for Public Access Media is a nonprofit, progressive, grassroots organization - founded on March 22, 1994. Our mission is to educate and empower the people of the island of Hawai'i to use and protect their rights of access to "Community Media", such as Public Access Television, the Internet, and other emerging technologies

corporations for production, overhead, administrative staff, and other expenses that are incurred.

Our organization has not had the opportunity to review the funding allocations to the three (3) PEG cable access segments: Public-Education-Government. Na Leo 'O Hawaii has a policy of not providing our organization with financial records and organizational documentation. This policy has precluded our membership from access to information which indicates how money is budgeted by Na Leo 'O Hawaii for production, overhead, administrative staff, and other expenses that are incurred.

The only certain means of keeping abreast of developments at Na Leo 'O Hawaii is by attending their monthly board meetings. Members of the Na Maka 'O Hilo Program Committee car pool from East Hawaii to West Hawaii (Waimea), once a month, to attend the Na Leo 'O Hawaii board meetings. But, because we are denied copies of both their board minutes and their committee meeting minutes we must rely upon the listening and note-taking skills of our Program Committee members, who attend the monthly board meetings. Or we must wait until the day after the board meeting when we can pay for copies of documents, at the Na Leo 'O Hawaii office in Hilo.

There is one expense which Na Leo 'O Hawaii neglected to include in their budget. While the Na Leo 'O Hawaii board protected themselves with insurance coverage, they neglected to secure insurance coverage for the PEG cable access facilities and equipment. In an attempt to resolve the equipment insurance issue, Na Leo 'O Hawaii imposed "User" fees which were to be set aside for equipment repairs/replacement. The "User" fee schedule is indicated below:

\$100.00	Refundable Deposit for the use of the remote camera systems
\$ 5.00	Non-Refundable Fee for the use of the remote camera system
\$ 5.00	Non-Refundable Fee for the use of the editing systems

As it turns out, members of Na Maka 'O Hilo were instrumental in convincing the PEG cable access corporation board to take back their decision to charge these fees. Our members wrote letters of protest and testified at the July Na Leo 'O Hawaii board meeting. We had determined that the imposition of "User" fees would disenfranchise far more people than Na Leo 'O Hawaii would empower and that the monies collected would be insufficient to cover

Na Maka 'O Hilo: The Alliance for Public Access Media is a nonprofit, progressive, grassroots organization - founded on March 22, 1994. Our mission is to educate and empower the people of the island of Hawai'i to use and protect their rights of access to "Community Media", such as Public Access Television, the Internet, and other emerging technologies

Na Maka 'O Hilo

The Alliance for Public Access Media

Post Office Box 5237

Hilo, Hawaii 96720

Voice/Fax: (808) 965-0042 E-mail: malama@ilhawaii.net

September 22, 1995

TO: Legislative Reference Bureau

SUBJECT: Senate Resolution No. 65, S.D.1.

A:\BOD\LETTERS\LRB-0922.WPD

Page 4

the repair/replacement costs of damaged/lost/stolen equipment. In July 1995, the Na Leo 'O Hawaii board agreed to table the issue. Then, at the August 1995 Na Leo 'O Hawaii board meeting, the Board re-introduced this issue and planned to take action to resolve the issue at the September 1995 board meeting, which has since been cancelled.

If the Na Leo 'O Hawaii board is successful and "User" fees are imposed upon the people of the Big Island, then Na Leo 'O Hawaii will have the distinction of being the first PEG cable access corporation in the United States to charge such fees. The "User" fees were to be collected to cover the cost of repair/replacement of damaged/lost/stolen equipment/facilities.

(3) *Whether the demand for training and personnel is adequately being met through current training requirements.*

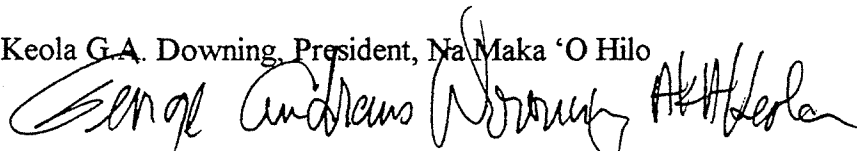
The general view is that the current training requirements are inadequate to meet the current demand for training and personnel. The waiting list for training is several months long and the training and certification process does not impart essential video production skills, such as writing scripts, logging videotapes, preparing edit decision lists, creating program rundown sheets, etc. Television production competency is based upon the production of two (2) Public Service Announcements (PSA's) for which there is no training on how to make a PSA.

We feel that the Na Leo 'O Hawaii training and certification process should guarantee the success of each learner to produce content, albeit of specified technical standards, for the PEG cable access channel. The current training and certification program is inadequate.

(4) *What guidelines, if any, are needed to ensure that, from the perspective of programming content, government officials do not abuse cable access for purposes other than public access to government.*

From the perspective of programming content, government officials should be restricted from abusing cable access for any purpose!

Dr. Keola G.A. Downing, President, Na Maka 'O Hilo



Na Maka 'O Hilo: The Alliance for Public Access Media is a nonprofit, progressive, grassroots organization - founded on March 22, 1994. Our mission is to educate and empower the people of the island of Hawai'i to use and protect their rights of access to "Community Media", such as Public Access Television, the Internet, and other emerging technologies